

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Muhammad Ahmad	:	
	:	
v.	:	C-2018-2644297
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This decision dismisses the formal complaint (complaint) filed in this matter for failure of Complainant to appear for the hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

On January 8, 2018, Muhammad Ahmad (Complainant) filed a formal complaint against PECO Energy Company (Respondent or Company) alleging the existence of incorrect charges on his electric bill. In addition, Complainant averred that a Protection From Abuse Order was previously granted for his personal safety or welfare. As relief, Complainant requested that his bill be reduced. Respondent filed an answer to the formal complaint on February 9, 2018. Respondent essentially denied the material averments set forth in the formal complaint.

By notice dated February 26, 2018, the Commission scheduled this matter for a telephonic hearing on April 25, 2018, at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated February 28, 2018, addressing, inter alia, requests for continuance,

subpoena procedures, attorney representation and the Commission's policy encouraging settlements. An interim order was also entered on February 28, 2018 directing Complainant to provide a copy of his Protection From Abuse Order currently in effect, on or before March 19, 2018. The interim order provided that if Complainant failed to comply with the interim order, he would not be provided the protections normally provided to individuals having received a Protection From Abuse Order. Complainant did not respond to the interim order entered on February 28, 2018.

I conducted a telephonic hearing on April 25, 2018, at 10:00 a.m. Complainant failed to appear for that hearing. A recess was taken at approximately 10:04 a.m. My legal assistant called the telephone number listed on Complainant's complaint and left a message for Complainant to call into the hearing no later than 10:20 a.m. and to inform him that the hearing would proceed at that time, even in his absence. The hearing was reconvened at approximately 10:20 a.m. Upon reconvening the hearing, Shawane L. Lee, Esquire, counsel for Respondent, moved to dismiss the complaint for the failure of Complainant to appear and prosecute. I advised Respondent that I would take its motion under advisement.

The record closed on April 25, 2018, upon conclusion of the hearing. This decision grants Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. Complainant in this case is Muhammad Ahmad.
2. Respondent in this case is PECO Energy Company.
3. By hearing notice dated February 26, 2018, the Commission scheduled this matter for a telephonic hearing on April 25, 2018, at 10:00 a.m.
4. A prehearing order was issued on February 28, 2018, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation, the procedure to

call the conference number to participate in the hearing and the Commission's policy encouraging settlements.

5. A telephonic hearing was conducted on April 25, 2018, at 10:00 a.m. Complainant failed to appear for that hearing.

6. Complainant did not call the conference number shown on the February 26, 2018, hearing notice.

7. Shawane L. Lee, Esquire, appeared for Respondent and indicated she was prepared to proceed.

8. A recess was taken at approximately 10:04 a.m. An attempt was made to call Complainant at the telephone number listed on the complaint and a message was left for Complainant to call into the hearing no later than 10:20 a.m. and to inform him that the hearing would proceed at that time.

9. The hearing was reconvened at approximately 10:20 a.m. Upon reconvening the hearing, Shawane L. Lee, Esquire, counsel for Respondent, moved to dismiss the complaint for failure to appear and prosecute.

10. The Commission sent the hearing notice of the telephonic hearing and the prehearing order in this case to Complainant by regular first-class mail to the address stated on the formal complaint.

11. The Commission's hearing notice and prehearing order were never returned to the sender.

12. Complainant did not advise the undersigned presiding officer of any settlement, withdrawal or request for a continuance of the matter and did not contact the office of

the undersigned presiding officer prior or subsequent to the April 25, 2018 hearing to explain his absence.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties with notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to Complainant prior to the hearing scheduled for April 25, 2018, by regular first-class mail to the address stated on the formal complaint. The notice was never returned to the sender.

In addition, a prehearing order dated February 28, 2018, was issued, which inter alia, directed the parties to notify me if the telephone numbers where they could be reached at the time of the hearing changed. The prehearing order, which was mailed to Complainant at the address shown on the formal complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by Complainant. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); Judge v. Celina Mutual Insurance Co., 444 A.2d 658 (Pa.Super. 1982).

Complainant did not appear for the scheduled hearing because he did not call the conference number shown on the February 26, 2018 hearing notice. Under these circumstances, it appears Complainant had ample opportunity to appear and be heard in this proceeding, but did not do so. Therefore, the due process rights of Complainant have been fully protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this complaint, Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief. By failing to appear and proffer any evidence to support his complaint, Complainant has failed to meet this burden. Under these circumstances, the complaint should be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The due process rights of Complainant have been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear for the hearing and proffer any evidence to support the complaint, Complainant has failed to meet his burden of proving that he is entitled to the relief that he seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PECO Energy Company to dismiss the formal complaint filed by Muhammad Ahmad at Docket No. C-2018-2644297 is granted.

2. That the formal complaint of Muhammad Ahmad v. PECO Energy Company at Docket No. C-2018-2644297 is dismissed with prejudice for failure of Complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. C-2018-2644297 is marked closed.

Date: May 11, 2018

_____/s/
Jeffrey A. Watson
Administrative Law Judge