

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tauheed Davenport	:	
	:	
v.	:	C-2018-3001278
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

The Complainant did not appear for the hearing and the formal Complaint (Complaint) is dismissed for failure to prosecute.

HISTORY OF THE PROCEEDING

On April 17, 2018, Tauheed Davenport (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). In the Complaint, Tauheed Davenport requested a payment arrangement and also stated that the utility was threatening to shut off his service or had already shut it off.

On May 7, 2018, PECO filed an Answer denying all material allegations of fact in the Complaint. PECO also stated that the Complainant is a PECO gas and electric customer and that he is not entitled to a payment arrangement on his balance because it is entirely comprised of customer assistance program (CAP) arrearages, citing 66 Pa. C.S. § 1405(c).

On May 8, 2018, a Hearing Notice was issued setting an Initial Hearing for July 12, 2018, at 9:00 a.m. and served on all parties. This hearing was part of a call of the docket scheduled for that day.

Also, on May 8, 2018, a Prehearing Order was issued and served on all parties. The Prehearing Order reminded the parties of the hearing date and time. The Prehearing Order also stated that the matter would be dismissed if the Complainant failed to appear, that any requests for a continuance must be submitted in writing five days in advance and that a change of the hearing date would be granted only where good cause existed. The Prehearing Order also advised the Complainant to arrive in the hearing room at 8:45 a.m.

A Corrected Hearing Notice was issued on May 25, 2018, correcting the time of the hearing to 9:30 a.m.

The hearing convened as scheduled on July 12, 2018. The Complainant did not appear at 9:30 a.m. on July 12, 2018. Counsel for PECO appeared at the hearing with a witness and was prepared to proceed. The hearing recessed to allow the Complainant time to appear and to determine whether the Complainant had contacted the Commission.

At approximately 9:55 a.m., the hearing resumed, and the Complainant had not made an appearance. The Complainant had also not contacted the Commission. Counsel for PECO moved that the matter be dismissed for failure to prosecute.

The record closed on July 12, 2018. This decision grants the Respondent's Motion to Dismiss the Complaint.

FINDINGS OF FACT

1. The Complainant is Tauheed Davenport, who is a PECO gas and electric customer at 4002 Gideon Road, Chester, PA.

2. PECO Energy Company is the Respondent.
3. On April 17, 2018, the Complainant filed this action.
4. The Respondent filed an Answer on May 7, 2018.
5. By Notice dated May 8, 2018, the Commission scheduled an Initial Hearing for July 12, 2018 at 9:00 a.m.
6. The Commission sent the Notice of the hearing to the Complainant by regular first-class mail to the address on the Complaint.
7. On May 8, 2018, a Prehearing Order was mailed to the Complainant, which reminded him of the hearing date, time and location and stated as follows:

THIS CASE WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.

and

A request for a change of the scheduled hearing date must state the agreement or opposition of other parties and must be submitted in writing no later than five (5) business days prior to the hearing.

52 Pa.Code § 1.15(b). Requests for changes of hearing dates must be sent to me and all parties of record.

...

Changes are granted only in rare situations where good cause exists.

8. On May 25, 2018, a Corrected Hearing Notice was issued, correcting the time of the hearing to 9:30 a.m.

9. The Complainant did not appear for the hearing.
10. The Hearing Notices and Prehearing Order were sent to the Complainant by first-class mail.
11. The documents mailed to the Complainant were not returned as undeliverable.
12. The Complainant did not contact the Commission to request a continuance or to state that he could not attend the hearing or for any other reason after the scheduled hearing date.

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 notice and the opportunity to be heard.

The Commission sent all notices by first-class mail to the last known address of the Complainant. None of those notices was returned as undeliverable. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994), appeal denied, 653 A.2d 1234 (Pa. 1994). Therefore, the due process requirement of notice was met.

The Complainant did not appear for the scheduled hearing and has not contacted the Commission since. Under these circumstances, the Complainant has had ample opportunity to appear and be heard in this proceeding. Therefore, the due process rights of the 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, the 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 the Complaint, the Complainant has failed to meet this burden. Therefore, 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 and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994), appeal denied, 653 A.2d 1234 (Pa. 1994).

3. The due process rights of the 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).

4. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. By failing to appear for the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet the burden of proving entitlement to the relief that is sought from the Commission. 66 Pa.C.S. § 332(a).

