

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Peter Mimmo	:	
	:	
v.	:	C-2018-3000900
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of Peter Mimmo against PECO Energy Company because he failed to prosecute his Complaint.

HISTORY OF THE PROCEEDING

On March 13, 2018, Peter Mimmo (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box indicating “I am having a reliability, safety or quality problem with my utility service.” Complainant alleged in his Complaint that PECO has experienced numerous outages on his circuit. The Complainant further alleged that PECO provides limited, and often inaccurate, information to the public following these outages. As relief, the Complainant has requested that problem circuits should go underground, that outside crews should be on hand prior to storm related outages, and that, weather permitting, PECO should respond immediately to any outages that occur.

On April 20, 2018, the Respondent filed an Answer denying the material allegations of fact stated in the Complaint. PECO responded that the power outages were caused by weather and vegetation events beyond the Company's control. PECO further responded that, pursuant to Section 12.1 of its Commission-approved tariff, "the Company does not guarantee continuous, regular and uninterrupted supply of service." PECO averred that there are no unreasonable service reliability issues at the Complainant's premises due to any failure on the Company's part.

By Hearing Notice dated April 25, 2018, a hearing was scheduled for June 14, 2018, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in italicized type: "*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*"

I issued a Prehearing Order on April 26, 2018. The Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. It also explained that the complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

Due to my unavailability on June 14, 2018, the hearing had to be rescheduled. By Hearing Cancellation/Reschedule Notice dated May 2, 2018, the hearing was rescheduled for June 25, 2018 at 10:00 a.m.

By fax received on May 15, 2018, the Complainant requested a continuance of the hearing on June 25, 2018, citing a previously scheduled engagement on that date. PECO did not object to the Complainant's request, which I granted by Order dated May 22, 2018.

By Hearing Cancellation/Reschedule Notice dated May 23, 2018, the hearing was rescheduled for July 13, 2018 at 10:00 a.m.

The hearing convened as scheduled on July 13, 2018. Counsel for PECO was present with a witness and was prepared to proceed. Mr. Mimmo was not present, and had not contacted this office to indicate that he would or would not appear.

Because a customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint, I deemed Mr. Mimmo's failure to appear at the location, date and time of the scheduled hearing as evidence that he did not wish to participate in the hearing.

No witnesses were presented and no exhibits were introduced into the record. Respondent's counsel moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record was closed at the end of the hearing on July 13, 2018.

FINDINGS OF FACT

1. The Complainant in this case is Peter Mimmo.
2. The Respondent in this case is PECO Energy Company.
3. On March 13, 2018, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on April 20, 2018.
5. By Hearing Cancellation/Reschedule Notice dated May 23, 2018, the Commission scheduled this matter for a hearing on July 13, 2018 at 10:00 a.m.

6. The Commission's Hearing Notice was never returned to the sender.
7. The Complainant did not request a continuance of his hearing.
8. The Complainant failed to appear for the hearing on July 13, 2018.
9. The Complainant did not settle or withdraw his Complaint.

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 notice of the hearing in this case to the Complainant on May 23, 2018, by regular first-class mail to the address stated on the Complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge (OALJ) in Harrisburg.

In addition, I issued a prehearing order dated April 26, 2018, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. The prehearing order, which was mailed to the Complainant at the address shown on the Complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the 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).

The Complainant did not appear for the scheduled hearing. Under the circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. 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 his requested relief. By failing to participate and proffer any evidence to support his Complaint, the Complainant has failed to meet his 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 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).

3. By failing to appear for the hearing and proffer any evidence to support the Complaint, the 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 Complaint filed at Docket No. C-2018-3000900 is granted;
2. That the Complaint of Peter Mimmo against PECO Energy Company at Docket No. C-2018-3000900 is dismissed with prejudice; and
3. That the Secretary mark this docket closed.

Date: July 26, 2018

_____/s/_____
Christopher P. Pell
Deputy Chief Administrative Law Judge