

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bennett Seidman	:	
	:	
v.	:	C-2018-3001466
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

The undersigned through this decision dismisses the formal complaint (Complaint) filed in this matter for failure of the Complainant to appear at the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On April 20, 2018, the Complainant, Bennett Seidman, filed a Complaint with the Pennsylvania Public Utility Commission (Commission or PUC) against PECO Energy Company (PECO or Company or Respondent). The Complainant indicated that the utility changed his customer assistance program (CAP) rate. The Complainant alleged that the change resulted in his billed electric service charges doubling. The Complainant requested to be returned to his initial CAP rate.

The Complaint was served on PECO electronically (eService) by the Commission's Secretary on April 26, 2018, according to the audit history of the docket. The eService is pursuant

to the waiver of Section 702 program, under which the Respondent waives the service requirements in 66 Pa.C.S. § 702.

On May 9, 2018, Shawane Lee, Esquire, counsel for the Respondent, filed an Answer to the Complaint. The Answer admitted that the Complainant initially enrolled in the Company's CAP on November 5, 2007. The Complainant re-enrolled in the CAP program on March 27, 2018.

Additionally, the Company averred that it received Commission approval of a new CAP program, called the CAP Fixed Credit Option (CAP-FCO) program in October 2016, which considers the customer's household income and historic energy usage. The Company does not dispute that the Complainant received a new rate under the CAP-FCO program. The new CAP-FCO program required the Company to calculate the Complainant's annual energy burden that is compared to the federal poverty line percentage that corresponds to the Complainant's household income. If the calculation shows that the customer's energy burden is less than the customer's usage, the customer receives a discount. If, conversely, the customer's usage is less than his energy burden, then the customer does not receive discounted energy service. Based on the Company's calculation, the Complainant's usage is lower than his corresponding energy burden, and therefore, the Complainant was not eligible for discounted energy service.

The Respondent also averred in its Answer that on October 4, 2017, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at Case No. 003567968. By decision dated January 25, 2018, BCS dismissed the informal complaint because the customer was not eligible for a CAP credit. The Respondent averred that it has complied with the requirements of its CAP-FCO program and the corresponding Commission regulations. The Respondent requested that the Commission dismiss the Complaint.

A Hearing Notice dated May 17, 2018, notified the parties that an initial in-person hearing was scheduled for Friday, July 6, 2018, at 10:00 a.m. This Notice indicated that the case was assigned to the undersigned Administrative Law Judge (ALJ) as the presiding officer.

A Prehearing Order dated May 18, 2018, provided procedural rules and guidelines for the proceeding and emphasized the following:

- (1) a request to change the scheduled hearing should be sent at least five days prior to the hearing date;
- (2) the request for a hearing change is to be in writing and sent to all parties of record; and
- (3) a caution that Complainant may lose the case if he does not take part in the hearing and present evidence on the issues raised.

The evidentiary hearing convened as scheduled. The Complainant was not present and had not communicated a reasonable excuse as to why he was unable to appear. Attorney Lee, counsel for the Respondent, was present along with one potential witness. The hearing recessed until approximately 10:19 a.m. to allow the Complainant to provide a reasonable excuse for his absence. When the hearing reconvened at 10:19 a.m., the Complainant remained absent. Attorney Lee moved to dismiss the Complaint with prejudice. I stated that I would rule on the motion in writing and adjourned the hearing.

The transcript of this Complaint consists of six pages of transcribed testimony. The record closed on July 20, 2018, when the undersigned received the transcript.

To date, there has been no further communication from the Complainant. This matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is Bennett Seidman, who requests a change in his CAP rate for electric service he receives from the Respondent at 53 Concord Road, Trailer #19, Aston, Pennsylvania (service address).

2. The Respondent is PECO Energy Company, a jurisdictional public utility that provides electric and gas distribution service in the Commonwealth of Pennsylvania.

3. On April 20, 2018, the Complainant filed a Complaint with the Commission against the Respondent.

4. The Respondent filed its Answer on May 9, 2018, which denied any wrong doing.

5. A Hearing Notice dated May 17, 2018, was sent by regular first-class mail to the Complainant and scheduled an initial hearing for Friday, July 6, 2018, at 10:00 a.m.

6. A Prehearing Order, dated May 18, 2018, advised the Complainant of the proper procedure to participate in the initial hearing and to obtain a continuance to reschedule the hearing date.

7. None of the documents mailed to the Complainant were returned to the Commission by the United States post office as undeliverable.

8. Neither the Complainant nor any counsel representing the Complainant appeared at the scheduled hearing on July 6, 2018.

9. The Complainant did not settle or withdraw the Complaint.

DISCUSSION

In this Complaint, the Complainant requested that he obtain the initial CAP rate discount for his electric service at his service address. The issue in this proceeding is determined by whether the Complainant sustained his burden of proof. By failing to participate in the hearing, the Complainant was unable to meet this burden.

The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint to prevail. *Patterson v. Bell*

Tel. Co. of Pa., 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This responsibility or accountability to the named utility must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984). 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).

The Commission sent a Hearing Notice dated May 17, 2018, to the Complainant by regular first-class mail to the address listed on the Complaint. This document was never returned to the sender, the scheduling staff of the Office of Administrative Law Judge (OALJ) in Harrisburg.

The undersigned issued a Prehearing Order dated May 18, 2018, which *inter alia*, instructed the parties that any request to change the scheduled hearing date should state the agreement or opposition of the other party and be submitted in writing no later than five days prior to the hearing. The Prehearing Order also stated the day, date and time for the scheduled initial hearing. The Prehearing Order, which was mailed to the Complainant at the address shown in the Complaint, was never returned by the U.S. post office as undeliverable. Accordingly, it is presumed that this mailing, which was done through the ordinary course of business, was received by the Complainant. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meirerdierck 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 is deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. The Complainant was notified of the scheduled hearing date and time, as well as how to contact the OALJ for the hearing. The Complainant made no attempt whatsoever to notify the presiding officer that he did not plan to participate in the scheduled July 6, 2018 hearing.

Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. Once notice of a hearing and the opportunity to be heard has been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. The due process rights of the Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Section 332(a) of the Public Utility Code (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.

The failure of the Complainant to appear at this scheduled hearing is unexcused. By failing to attend the hearing and present evidence on the issue raised, the Complainant failed to sustain his burden of proof.

As the Commission stated in *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002), “It is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” See, *Schneider v. Pa. Pub. Util. Comm’n*, 479 A.2d 10 (Pa.Cmwlth. 1984); *Plummer v. Columbia Gas of Pa., Inc.*, Docket No. Z-00847836 (Opinion and Order entered September 27, 2001). The Pennsylvania Commonwealth Court has made it clear that in administrative hearings, “a party’s own negligence is not sufficient good cause as a matter of law for failing to appear at a ... hearing.” *Eat’N Park*

Hospitality Group, Inc. v. Unemployment Compensation Board of Review, 970 A.2d 492, 494 (Pa.Cmwlth. 2008).

The Respondent's counsel moved that the Complaint be dismissed with prejudice for failure to prosecute. The due process rights of the Complainant have been protected. The Complainant had notice of the scheduled hearing and failed to appear to prosecute his Complaint.

Due to the waste of the Commission's and Respondent's time, money and energy occasioned by the Complainant's failure to appear at a hearing of which he had notice, this Complaint will be dismissed with prejudice in accordance with well-established Commission precedent. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *Evans v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00957229 (Opinion and Order entered July 12, 1996); *King v. PECO Energy Co.*, Docket No. C-00967919 (Opinion and Order entered January 16, 1997); *Kenny v. PPL Electric Utilities Corp.*, Docket No. C-20042399 (Final Order entered October 13, 2004); *Jones v. The Peoples Natural Gas Co. d/b/a Dominion Peoples*, Docket No. C-20054885 (Opinion and Order entered February 14, 2006); *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

The Complainant waived the opportunity to participate in the hearing by failing to appear. This case will be dismissed. 52 Pa.Code § 5.245(a); *Martin W. Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

CONCLUSIONS OF LAW

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

2. Notice properly mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities, Inc.*, 317

A.2d 584 (Pa. 1974); *Meirerdierck 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).

3. By Hearing Notice dated May 17, 2018, the Complainant had notice of the day, date and time of the scheduled hearing. 52 Pa.Code § 5.201(a).

4. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).

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

6. The due process rights of the Complainant have been fully protected because the Complainant was afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

7. A formal complaint may be dismissed if, after notice and an opportunity to be heard, a Complainant fails to appear and prosecute the Complaint. *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002).

8. The Complainant, Bennett Seidman, failed to sustain his burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion by Shawane Lee, Esquire, on behalf of PECO Energy Company to dismiss the formal complaint of Bennett Seidman at Docket No. C-2018-3001466 for lack of prosecution is granted.
2. That the formal complaint filed by Bennett Seidman against PECO Energy Company at Docket No. C-2018-3001466, is dismissed in its entirety with prejudice.
3. That the Docket No. C-2018-3001466 is to be marked closed.

Dated: July 23, 2018

/s/
Angela T. Jones
Administrative Law Judge