

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Amir Williams	:	
	:	
v.	:	C-2018-3000734
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On March 26, 2018, Amir Williams (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). The complaint alleges that the Respondent was threatening to shut off his service. The Complainant alleged there were incorrect charges on his bill and requested a payment arrangement. The Complainant also indicated that he wished to be enrolled in the Respondent's Customer Assistance Program (CAP) . The Complainant requested that the Commission reduce his bill, provide him with a payment arrangement and enroll him in the CAP program.

The Respondent filed an answer on April 13, 2018. The answer admitted that the Respondent provided electric service to the Complainant but denied that the Complainant was

eligible for a payment arrangement as his entire outstanding balance consisted of CAP arrears. The answer requested that the Commission deny the complaint.

By notice dated April 19, 2018, the Commission scheduled this matter for an initial telephonic hearing on June 7, 2018 at 10:00 a.m. and assigned the case to me. A prehearing order was issued on April 20, 2018 addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

On June 4, 2018, the Office of Administrative Law Judge (OALJ) received correspondence from the Complainant requesting a continuance of the June 7, 2018 telephonic hearing. The Complainant indicated that he was experiencing complications and other adverse effects from pneumonia as well as a medical procedure and that he had difficulty speaking and being understood. The Complainant's request for a continuance of the June 7, 2018 hearing was granted.

On June 6, 2018, a hearing cancellation/reschedule notice was issued rescheduling this matter for an initial telephonic hearing on July 26, 2018 at 10:00 a.m. On the afternoon of July 25, 2018, the OALJ received written correspondence from the Complainant requesting that the telephonic hearing scheduled for the following day be continued and rescheduled for an in-person hearing in Philadelphia. The Complainant further indicated in this request that he did not have a "telephone land-line available to accompany his witness(es)." The Complainant alleged that he had previously requested to have an in-person hearing and that his request had not been honored. There is no indication the Complainant previously requested an in-person hearing in this matter. Included with the Complainant's request was a shut-off notice from the Respondent as well as a July 18, 2018 letter from Temple Health regarding an appointment at 10:15 a.m. on July 26, 2018.

The telephonic hearing was conducted as scheduled on July 26, 2018 at 10:00 a.m. The Complainant failed to appear for that hearing. The Complainant did not call the conference number shown on the June 6, 2018 hearing notice at 10:00 a.m.

It was verified with the support staff for the OALJ that the Complainant had not contacted that office on the day of the hearing to indicate that he would be unable to participate in the telephonic hearing. No voice mail or email messages were received from the Complainant stating that he would be unable to participate in the hearing. After verifying that the Complainant had not contacted OALJ, the hearing commenced at approximately 10:10 a.m.

Upon commencement of the hearing, Shawane Lee, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. I advised the Respondent that I would take its motion under advisement.

On August 8, 2018, prehearing order #2 was issued directing Mr. Williams to provide evidence of the reason for his absence from the July 26, 2018 hearing within 15 days. Mr. Williams did not provide such evidence.

The record closed on August 23, 2018, the deadline for Mr. Williams to provide evidence of the reason for his absence from the July 26, 2018 hearing. This decision grants the Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Amir Williams.
2. The Respondent in this case is PECO Energy Company.
3. On March 26, 2018, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on April 13, 2018.
5. By notice dated April 19, 2018, the Commission scheduled this matter for an initial telephonic hearing on June 7, 2018 at 10:00 a.m.

6. The Commission sent notice of the telephonic hearing to the Complainant by regular first-class mail to the address stated on the complaint.

7. The Commission's notice of hearing was never returned as being undeliverable by the postal authorities.

8. On June 4, 2018, the Complainant requested a continuance of the June 7, 2018 telephonic hearing.

9. The Complainant's continuance request was granted and this matter was rescheduled for a telephonic hearing on July 26, 2018.

10. The Commission's second notice of hearing was never returned as being undeliverable by the postal authorities.

11. On July 25, 2018, the Complainant submitted a second continuance request indicating that he wished to have this matter rescheduled for an in-person hearing in Philadelphia.

12. The Complainant never requested an in-person hearing prior to his second continuance request on July 25, 2018 and was provided notice that both hearings in this matter had been scheduled to be conducted telephonically.

13. The Complainant did not participate in the July 26, 2018 telephonic hearing.

14. On August 8, 2018, prehearing order #2 was issued directing Mr. Williams to provide evidence of the reason for his absence from the July 26, 2018 hearing within 15 days.

15. Mr. Williams did not provide such evidence.

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 June 7, 2018 telephonic hearing in this case to the Complainant on April 19, 2018, by regular first-class mail to the address stated on the complaint. This notice of hearing was never returned to OALJ as being undeliverable by the postal authorities.

In addition, a prehearing order was issued on April 20, 2018, which, inter alia, reminded the parties that failure to participate in the telephonic hearing would constitute a failure to appear. The prehearing order, which was also mailed to the Complainant at the address shown on the complaint, was never returned to OALJ as being undeliverable by the postal authorities. Accordingly, it must be presumed 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).

On June 4, 2018, the Complainant requested a continuance of the June 7, 2018 telephonic hearing for reasons relating to his health. This continuance was granted and this matter was rescheduled for a telephonic hearing on July 26, 2018. The notice rescheduling this matter to July 26, 2018 was again sent to the Complainant's address of record and was not returned as undeliverable by the postal authorities. This notice once again advised the Complainant that the July 26, 2018 hearing was to be conducted telephonically.

The Complainant did not appear for the scheduled hearing because he did not call the toll-free number shown on the June 6, 2018 hearing notice. On August 8, 2018,

prehearing order #2 was issued directing Mr. Williams to provide evidence of the reason for his absence from the July 26, 2018 hearing within 15 days. Mr. Williams did not provide such evidence. Under these 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).

The Complainant has argued in his second continuance request that he had previously requested an in-person hearing in Philadelphia and that this request was not honored. This argument is not credible.

The Complainant received a previous continuance of the June 7, 2018 telephonic hearing as a result of what he described as medical complications from pneumonia and a medical procedure. The Complainant was aware at that time that the June 7, 2018 hearing was to be conducted telephonically. In addition to a prehearing order providing directions on how to participate in a telephonic hearing, the cancellation/reschedule notice sent to the parties on June 6, 2018, cancelling the June 7, 2018 telephonic hearing, rescheduled this matter for a telephonic hearing on July 26, 2018. The Complainant would, therefore, have been aware for a period of over one month that the July 26, 2018 rescheduled hearing was to be conducted telephonically. The Complainant, however, waited until the afternoon before the July 26, 2018 hearing to request a second continuance and argue that his request for an in-person hearing in Philadelphia had not been honored. This argument is not credible and the Complainant's second continuance request was not timely¹. There is no indication that the Complainant requested the hearing be held in person prior to the letter he submitted July 25, 2018, the day before the rescheduled hearing.

¹ 52 Pa. Code § 1.15(b) provides that continuances should be filed at least five days prior to the date of hearing.

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 his complaint, the Complainant has failed to meet this burden. Under these circumstances, the complaint should be dismissed. 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 by Amir Williams at Docket No. C-2018-3000734 is granted.

2. That the complaint of Amir Williams against PECO Energy Company at Docket No. C-2018-3000734 is dismissed for failure of the Complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. C-2018-3000734 is marked closed.

Date: August 28, 2018

/s/
Benjamin J. Myers
Administrative Law Judge