

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joe Giadyu	:	
	:	
v.	:	F-2018-3002656
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On June 11, 2018, Joe Giadyu (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 checkmarks in boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service” and “I would like a payment agreement.”

On June 27, 2018, Respondent filed an Answer denying all material allegations of fact in the Complaint. Respondent further answered: that on May 10, 2017, the Complainant filed an informal complaint with the Commission’s Bureau of Consumer Services (BCS) requesting a payment agreement on a \$1,848.77 balance; that at that time, the Complainant reported a monthly

gross income of \$2,080.00 for three adults and two children in the household; that on May 12, 2017, BCS issued a decision granting the Complainant a Level 1 payment agreement, pursuant to which he was required to pay a monthly budget amount of \$184.00 and \$31.00 towards arrears; and that the agreement defaulted on July 10, 2017. Respondent indicated that, following notice, PECO terminated the Complainant's service on May 3, 2018, for a past due balance of \$3,074.87. Respondent maintains that the Complainant is not entitled to another Commission-issued payment agreement pursuant to 66 Pa.C.S. § 1405(d).

By Hearing Notice dated July 2, 2018, a hearing was scheduled for August 30, 2018, at 1:00 p.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 bold and underlined type: **“Attention: You must be available in the hearing room when your case is called by the presiding Administrative Law Judge. If you are not present and prepared to go forward with your case when it is called, your case will be dismissed by the Administrative Law Judge.”**

I issued a Prehearing Order on July 9, 2018.¹ 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.

By Hearing Notice dated July 10, 2018, the hearing was rescheduled for August 14, 2018, at 1:00 p.m. The Hearing Notice advised the parties of the location, date and time of the rescheduled hearing and again warned in bold and underlined type: **“Attention: You must be available in the hearing room when your case is called by the presiding Administrative Law**

¹ A corrected Prehearing Order was issued on July 11, 2018, to reflect that the hearing had been rescheduled for August 14, 2018, at 1:00 p.m.

Judge. If you are not present and prepared to go forward with your case when it is called, your case will be dismissed by the Administrative Law Judge.”

The hearing convened as scheduled on August 14, 2018. Counsel for PECO was present with a witness and was prepared to proceed. Mr. Giadyu 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. Giadyu’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 closed on August 29, 2018, when I received a copy of the transcript of the August 14, 2018 hearing.

FINDINGS OF FACT

1. The Complainant in this case is Joe Giadyu.
2. The Respondent in this case is PECO Energy Company.
3. On June 11, 2018, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on June 27, 2018.

5. By Hearing Notice dated July 10, 2018, the Commission scheduled this matter for a hearing on August 14, 2018, at 1:00 p.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 August 14, 2018, hearing.

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 July 10, 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 prehearing orders dated July 9, 2018 and July 11, 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 orders, which were mailed to the Complainant at the address shown on the Complaint, were 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. F-2018-3002656 is granted;
2. That the Complaint of Joe Giadyu against PECO Energy Company at Docket No. F-2018-3002656 is dismissed with prejudice; and
3. That the Secretary mark this docket closed.

Date: September 12, 2018

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