

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Carlos Padro

v.

PECO Energy Company

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C-2018-3003320

**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 June 28, 2018, Carlos Padro (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). The complaint alleges that the Complainant was being billed for services that had been cancelled and at a property location where he did not reside.

On July 30, 2018, the Respondent filed an answer to the complaint. The answer admitted or denied the various averments of the complaint but specifically denied that the Complainant was being billed for services that had been cancelled or for services at a property location where he did not reside.

By notice dated August 15, 2018, the Commission scheduled this matter for an initial telephonic hearing on September 24, 2018 at 10:00 a.m. and assigned the case to me. A prehearing order was issued on August 16, 2018, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The telephonic hearing was conducted on September 24, 2018 as scheduled. The Complainant failed to participate in the hearing. Additional time was given for the Complainant to call into the conference number to participate in the hearing however the Complainant never made contact.

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

The record closed on September 24, 2018, at the conclusion of the hearing. This decision grants the Respondent's motion to dismiss the complaint.

#### FINDINGS OF FACT

1. The Complainant in this case is Carlos Padro.
2. The Respondent in this case is PECO Energy Company.
3. On June 28, 2018, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer to the complaint on July 30, 2018.
5. By notice dated August 15, 2018, the Commission scheduled this matter for an initial telephonic hearing on September 24, 2018 at 10:00 a.m.

6. The Commission sent notice of the telephonic hearing to the Complainant by regular first-class mail to 4113 L Street, 1<sup>st</sup> Floor, Philadelphia, PA 19124, the address stated on the complaint.

7. A prehearing order was issued to this same address on August 16, 2018 providing additional information to the parties regarding the hearing.

8. None of the correspondence sent to the Complainant was returned to the Office of Administrative Law Judge (OALJ) as being undeliverable by the postal authorities.

9. The Complainant failed to participate in the September 24, 2018 telephonic hearing.

### 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 telephonic hearing in this case to the Complainant on August 15, 2018, by regular first-class mail to the address stated on the complaint. This notice was never returned to OALJ as being undeliverable by the postal authorities.

A prehearing order was also issued on August 16, 2018 which reminded the parties that they were to call into the conference telephone number provided to participate in the hearing. 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.

Given that this correspondence was sent to the Complainant's address of record and was never returned as undeliverable, it must be presumed that this mail 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 call into the conference number on September 24, 2018 to participate in the hearing despite being given additional time to do so. The Complainant has 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 relief. By failing to participate 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).

