

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shawn Mathis	:	
	:	
v.	:	C-2018-3001616
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of Shawn Mathis against PECO Energy Company because he failed to appear for his hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On April 30, 2018, Shawn Mathis (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: “The utility is threatening to shut off my service or has already shut off my service;” “I would like a payment agreement;” and “Other” – wherein the Complainant stated that he believed his meter had foreign wiring attached to it.

This matter is the untimely appeal of a decision from the Bureau of Consumer Services (BCS) dated April 13, 2018, at Case No. 3595445, which dismissed the informal complaint of the Complainant.

On May 22, 2018, PECO filed an Answer denying all material allegations of fact in the Complaint. In its Answer, PECO avers the Complainant established service at 1828 Diamond Street, 1st Rear, Philadelphia, PA effective November 5, 2016. PECO also avers that the Complainant enrolled in its Customer Assistance Program (CAP) on November 29, 2016. PECO further avers that it investigated the Complainant's foreign wiring concerns during a field visit on June 20, 2017 and found no issues. Lastly, PECO avers that the Complainant is actively enrolled in the CAP and his current outstanding balance is \$9,115.06.

By Hearing Notice dated May 30, 2018, an Initial In-Person Hearing was scheduled for Friday, July 20, 2018, 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 June 5, 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. Also, it warned in bold type: **“THE COMPLAINT WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.”**

On July 13, 2018, the Complainant requested a continuance to allow a proposed key witness, the owner of the service address, to appear and testify.

On July 18, 2018, upon finding good cause shown, I issued an Order granting the Complainant's first request for a continuance.

By Hearing Cancellation/Reschedule Notice dated July 16, 2018, the Initial In-Person Hearing was rescheduled for Friday, August 31, 2018 at 10:00 a.m.

On August 9, 2018, the Respondent filed a Motion for Continuance because one of its key witnesses was unavailable on August 31, 2018. Counsel for PECO represented that the Complainant had no objections to this request.

On August 10, 2018, upon finding good cause shown, I issued an Order granting the Respondent's first request for a continuance.

By Hearing Cancellation/Reschedule Notice dated September 7, 2018, the Initial In-Person Hearing was rescheduled for Monday, October 29, 2018 at 10:00 a.m.

On October 11, 2018, I received a letter, via facsimile, from the Complainant requesting another continuance. The Complainant requested the continuance due to the start of new employment, however, he did not provide any additional information for my consideration, such as when he began this employment. Moreover, the request also failed to state the agreement or opposition of the Respondent, as required by paragraph 2 of my Prehearing Order issued on June 5, 2018. As a result, I forwarded, via email, a copy of the request to Counsel for the Respondent, Shawane L. Lee, Esq., and inquired if PECO had any objection to the Complainant's second continuance request. Ms. Lee responded that PECO objected to the continuance request since it was Mr. Mathis' second request for a continuance and Mr. Mathis has a \$9,913.06 outstanding balance that he has not made any payments on for an entire year.

Based on the ambiguous nature of the Complainant's request, PECO's objection to the request, and the fact this matter had already been continued once on behalf of the Complainant, I did not find good cause shown. Accordingly, on October 19, 2018, I issued an Order denying the Complainant's second request for a continuance.

The hearing began on October 29, 2018, at 10:00 a.m. as scheduled. Counsel for PECO was present with a witness and was prepared to proceed. The Complainant was not present. I waited an additional fifteen minutes and the Complainant still did not appear.

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 in this case consists of the pleadings and my Prehearing Order. The record in this case closed on October 29, 2018.

FINDINGS OF FACT

1. The Complainant in this case is Shawn Mathis.
2. The Respondent in this case is PECO Energy Company.
3. On April 30, 2018, the Complainant filed a Complaint with the Commission against the Respondent.
4. On May 22, 2018, the Respondent filed an Answer to the Complaint.
5. By Hearing Notice dated May 30, 2018, an Initial In-Person Hearing was scheduled for Friday, July 20, 2018, and the matter was assigned to me.
6. On June 5, 2018, a Prehearing Order was sent to all parties containing, *inter alia*, a warning in bold type advising that: **“THE COMPLAINT WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.”**
7. On July 13, 2018, the Complainant requested a continuance that I granted on July 18, 2018.

8. By Hearing Cancellation/Reschedule Notice dated July 16, 2018, the Initial In-Person Hearing was rescheduled for Friday, August 31, 2018 at 10:00 a.m.

9. On August 9, 2018, the Respondent filed a Motion for Continuance that I granted on August 10, 2018.

10. By Hearing Cancellation/Reschedule Notice dated September 7, 2018, the Initial In-Person Hearing was rescheduled for Monday, October 29, 2018 at 10:00 a.m.

11. On October 11, 2018, I received a letter, via facsimile, from the Complainant requesting a second continuance.

12. On October 19, 2018, I issued an Order denying the Complainant's second request for a continuance.

13. All hearing notices and orders were sent to the Complainant by regular first-class mail.

14. None of the documents mailed to the Complainant were returned as undeliverable.

15. The Complainant failed to appear at the October 29, 2018 hearing.

16. 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.

On September 7, 2018, the Commission sent notice of the initial hearing in this case to the Complainant by regular first-class mail. 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 on June 5, 2018, containing a warning in bold type advising that: “**THE COMPLAINT WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.**” Also, on October 19, 2018, I issued an Order denying the Complainant’s second request for a continuance and informing him that the hearing would proceed as scheduled on October 29, 2018, at 10:00 a.m. Neither Order was returned by the Postal Service as undeliverable. Accordingly, I must presume that the mailings, which were sent in the ordinary course of business, were received by the Complainant. See *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 hearing and has not contacted the Commission. Under these circumstances, the Complainant has had ample opportunity to appear and be heard in this proceeding. 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 appear and proffer any evidence to support his Complaint, the Complainant has failed to meet this burden. Therefore, 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 by Shawn Mathis at Docket No. C-2018-3001616 is granted;

2. That the Complaint of Shawn Mathis against PECO Energy Company at Docket No. C-2018-3001616 is dismissed with prejudice; and

3. That Docket No. C-2018-3001616 be marked closed.

Date: October 30, 2018

/s/
F. Joseph Brady
Administrative Law Judge