

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eric Shapiro and Kristin D'Auria	:	
	:	
v.	:	C-2018-3004639
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

The Complainants did not appear for the hearing and the formal Complaint (Complaint) is dismissed for failure to prosecute.

HISTORY OF THE PROCEEDING

On September 13, 2018, Eric Shapiro and Kristin D'Auria (Complainants) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). On the Complaint form, the Complainants checked the boxes indicating that the utility was threatening to shut off their service and that they are having a reliability problem. The Complainants added that the power was turned off with no notice and it took three days for a PECO technician to repair the problem.

On September 25, 2018, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint. PECO also stated that the previous account user

discontinued service and that PECO reconnected the service on the next available appointment date.

On October 23, 2018, a Hearing Notice was issued and mailed to all parties setting an Initial Hearing for November 14, 2018, at 10:00 a.m. The hearing was assigned to the undersigned.

A Prehearing Order was issued and mailed to all parties on October 31, 2018, informing the Complainants of the date of the hearing and providing procedural information. The Prehearing Order also advised the Complainants that:

A request for a change of the scheduled hearing date must state the agreement or opposition of other parties and must be submitted in writing no later than five (5) business days prior to the hearing. . . Changes are granted only in rare situations where good cause exists.

In Bold Print, the Prehearing Order advised that:

THIS CASE WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.

The hearing began as scheduled on November 14, 2018, at 10:00 a.m. Shawane Lee, Esq., appeared on behalf of PECO and was prepared to proceed. The Complainants were not present. A recess was taken to allow the Complainants time to arrive and to check with support staff to determine whether the Complainants had contacted the Commission.

At 10:25 a.m., the hearing reconvened. The Complainants had not arrived. A review of the record was conducted. PECO moved that the matter be dismissed for failure to prosecute and that motion was taken under advisement. The hearing adjourned at 10:28 a.m. The Complainants were not present.

The record closed on December 27, 2018, when the transcript was received.

FINDINGS OF FACT

1. The Complainants are Eric Shapiro and Kristin D'Auria, who are PECO electric customers in Plymouth Meeting, Pennsylvania.

2. PECO Energy Company is the Respondent.

3. On September 13, 2018, the Complainants filed this action.

4. The Respondent filed an Answer on September 25, 2018.

5. By Hearing Notice issued October 23, 2018, the Commission scheduled an Initial Hearing for November 14, 2018, beginning at 10:00 a.m.

6. The Hearing Notice was mailed to the Complainants at the address provided in the Complaint.

7. A Prehearing Order was issued on October 31, 2018 and mailed to the Complainants' address as listed in the Complaint.

8. The Prehearing Order informed the Complainants of the date, time and location of the hearing and provided procedural information.

9. The Prehearing Order informed the Complainants that the case would be dismissed if they failed to participate in the hearing and present evidence in support of their Complaint.

10. The Prehearing Order also stated,

A request for a change of the scheduled hearing date must state the agreement or opposition of other parties and must be submitted in writing no later than five (5) business days prior to the hearing. . . Changes are granted only in rare situations where good cause exists.

11. On the day of the hearing, PECO was present represented by counsel and the Complainants did not appear.

12. A recess was taken to allow the Complainants time to arrive and to check whether they had contacted the Commission about the hearing.

13. The Complainants did not contact the Commission about the hearing.

14. The Complainants had not appeared when the hearing reconvened at approximately 10:25 a.m.

15. The Complainants were not present when the hearing adjourned at approximately 10:28 a.m.

16. None of the documents mailed to the Complainants were returned as undeliverable.

17. The Complainants did not request a continuance or provide a statement of "good cause" for their absence on the scheduled hearing date.

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). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa.Cmwlth. 2016). 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).

A Hearing Notice and a Prehearing Order were mailed to the Complainants. All documents mailed to the Complainants, contained the date, time and location of the hearing and all were mailed to the Complainants at the address that they provided to the Commission on the formal Complaint form. None of these documents was returned by the U.S. Postal Service to the Commission as undeliverable. It is therefore deemed that the Complainants received these documents and had notice of the day, date and time of the scheduled hearing.

As the Commission noted in *Strydio v. PPL Electric Utilities Corporation*, 2018 Pa. PUC LEXIS 258, *8, Docket No. C-2017-2633043, p. 6 (Opinion and Order entered July 18, 2018) "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing", citing *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Order entered October 25, 1993). The Complainants did not appear for the hearing as scheduled and as they were notified. To date, the Complainants have not contacted the Commission or the undersigned regarding this hearing. The Complainants have waived the opportunity to participate in the hearing by failing to appear. 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159 (Opinion and Order entered December 26, 1995).

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 Complainants bear the burden of proving by a preponderance of the evidence that they are entitled to relief. By failing to appear and proffer any evidence to support the Complaint, the Complainants have failed to meet this burden. The Complaint will 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 and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The Complainants received notice of the hearing. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994), appeal denied, 653 A.2d 1234 (Pa. 1994).

3. The due process rights of the Complainants have been fully protected in this proceeding. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa.Cmwlth. 2016); *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

4. As the party seeking affirmative relief from the Commission, the Complainants bear the burden of proof. 66 Pa.C.S. § 332(a).

5. The Complainants did not participate in the hearing, failed to appear for the hearing and did not present any evidence, and therefore, they failed to meet their burden of proving entitlement to the relief that is sought 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 Eric Shapiro and Kristin D'Auria at Docket No. C-2018-3004639 is granted.

