

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tauheed Davenport	:	
	:	
v.	:	C-2019-3009246
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision grants PECO Energy Company’s Motion to Dismiss the formal Complaint (Complaint) of Tauheed Davenport with prejudice because he failed to appear and prosecute the case.

HISTORY OF THE PROCEEDING

On April 15, 2019, Tauheed Davenport (Mr. Davenport or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) alleging that the utility is threatening to shut off his electric service; that he is unable to pay his electricity bills to PECO; and that PECO had denied his enrollment in its Consumer Assistance Program (CAP). As relief, the Complainant requests that the Pennsylvania Public Utility Commission (Commission) establish a payment arrangement on his behalf.

On April 22, 2019, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated April 29, 2019, notified the parties that an initial hearing was scheduled as part of the morning session of a call of the docket hearing on Tuesday, June 4, 2019, at 10:00 a.m. The Hearing Notice instructed the parties as follows: “**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.**” (Emphasis in the original).

A Prehearing Order dated May 26, 2019, reminded the parties of the date and time of the scheduled hearing, informed them of the procedures applicable to this proceeding, and directed the submission of documents prior to the hearing. It also warned in bold type: “**You may lose this case if you do not take part in this hearing and present evidence on the issues raised.**” (Emphasis in the original).

The hearing convened as scheduled on June 4, 2019. Shawane Lee, Esq. appeared representing PECO. Neither Complainant nor a counsel for the Complainant appeared at the hearing. The hearing convened at approximately 10:20 a.m. after I confirmed that the Complainant had not called, or otherwise shown good cause not to appear at the scheduled hearing.

Counsel for PECO moved to dismiss the Complaint with prejudice for lack of prosecution. That Motion is granted pursuant to the ordering paragraphs below.

The record was closed upon receipt of the hearing transcript on June 28, 2019.

FINDINGS OF FACT

1. The Complainant is Tauheed Davenport, whose mailing address is 4002 Gideon Road, Brookhaven, PA 19015 (service address).
2. The Respondent is PECO Energy Company.
3. On April 15, 2019, Mr. Davenport filed a Complaint against PECO alleging that the utility is threatening to shut off his electric service; that he is unable to pay his electricity bills to PECO; and that PECO had denied his enrollment in its CAP.
4. As relief, the Complainant requests that the Commission establish a payment arrangement on his behalf.
5. On April 22, 2019, the Respondent filed an Answer denying the material allegations of the Complaint.
6. A Hearing Notice dated April 29, 2019, notified the parties that an initial hearing was scheduled as part of the morning session of a call of the docket hearing on Tuesday, June 4, 2019, at 10:00 a.m.
7. A Prehearing Order dated May 28, 2019, reminded the parties of the date and time of the scheduled hearing, informed them of the procedures applicable to this proceeding, and directed the submission of documents prior to the hearing.
8. Neither of the documents mailed to Complainant at the address provided in his Complaint were returned to the Commission by the United States Postal Service as undeliverable.
9. Both the Hearing Notice and the Prehearing Order informed the parties that they may lose this case if they do not appear at the hearing.

10. The Complainant failed to appear at the scheduled hearing.

11. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

DISCUSSION

In this formal Complaint, Mr. Davenport alleged that the utility is threatening to shut off his electric service; that he is unable to pay his electric bills to PECO; and that PECO has denied his enrollment in its Consumer Assistance Program. As relief, the Complainant requests that the Commission establish a payment arrangement on his behalf.

As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S.A. § 332(a). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

Administrative agencies, like the Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm’n.*, 479 A.2d 10 (Pa.Cmwlth. 1984). 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 Mr. Davenport at the address listed on his formal Complaint form. Both the Hearing Notice and the Prehearing Order informed the parties that they may lose this case if they do not appear at the hearing. Neither of these documents were returned to the Commission as undeliverable by the post office. Therefore, the Complainant was deemed to have received these documents and had sufficient

notice of the day, date and time of the scheduled hearing. Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the hearing on his behalf. To date, there is no further information about the Complainant regarding this hearing. His failure to appear is unexcused.

Once notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to appear and participate in the hearing. *Craig Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Complainant waived the opportunity to participate in the hearing by failing to appear. Mr. Davenport's Complaint will be dismissed with prejudice. 52 Pa.Code § 5.245(a); *Martin W. Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S.A. § 701.
2. As the Complainant, Tauheed Davenport had the burden of proof. 66 Pa.C.S.A. § 332(a).
3. 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).
4. By failing to appear and be heard on this Complaint, Complainant waived the opportunity to participate in the hearing. 52 Pa.Code § 5.245(a); *Martin W. Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.
5. Mr. Davenport has failed to meet his burden of proving that he is entitled to the relief sought from the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the formal Complaint of Tauheed Davenport at Docket No. C-2019-3009246 is granted.

2. That the formal Complaint filed by Tauheed Davenport against PECO Energy Company at Docket No. C-2019-3009246 is dismissed with prejudice for failure to prosecute.

3. That the Secretary's Bureau should mark this matter closed.

Date: September 20, 2019

_____/s/
Eranda Vero
Administrative Law Judge