

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Richard Rhodes	:	
	:	
v.	:	C-2019-3011233
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On June 27, 2019, Richard Rhodes (Complainant or Mr. Rhodes) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility was threatening to shut off his service or had already shut off his service and requesting a payment agreement.

On July 8, 2019, PECO filed an Answer to the Complaint alleging that the Complainant is actively enrolled in the Customer Assistance Program (CAP) and his outstanding balance is comprised of CAP arrears. Thus, PECO argues the Commission has no jurisdiction to order a payment agreement in this case and requests that the Complaint be dismissed.

By Hearing Notice dated July 11, 2019, a hearing was scheduled for August 20, 2019, at 1:30 p.m., and the matter was assigned to me. The matter was scheduled along with other cases as part of a Call of the Docket. I issued a Prehearing Order on July 17, 2019. Both the Hearing Notice and the Prehearing Order advised the parties of the location, date and time of the scheduled hearing, and warned in bold and underlined type: **“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 Call of the Docket began on August 20, 2019, at 1:30 p.m. as scheduled. This matter was called at 2:14 p.m. Counsel for PECO was present with a witness and was prepared to proceed. The Complainant was not present.

No witnesses were presented, and no exhibits were introduced into the record. Counsel for PECO 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 September 10, 2019, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Richard Rhodes.
2. The Respondent is PECO Energy Company.
3. On June 27, 2019, the Complainant filed a Complaint with the Commission against the Respondent.
4. On July 8, 2019, the Respondent filed an Answer to the Complaint.

5. By Hearing Notice dated July 11, 2019, a hearing was scheduled for August 20, 2019, at 1:30 p.m.

6. On July 17, 2019, a Prehearing Order was sent to all parties.

7. Both the Hearing Notice and the Prehearing Order advised the parties of the location, date and time of the scheduled hearing, and warned in bold and underlined type: **“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.”**

8. Both the Hearing Notice and the Prehearing Order were sent to the Complainant by regular first-class mail.

9. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

10. The Complainant failed to appear at the August 20, 2019, hearing.

11. 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 July 11, 2019, the Commission sent notice of the Initial Hearing in this case to the Complainant by regular first-class mail. In addition, I issued a Prehearing Order on July 17, 2019. Both the Hearing Notice and the Prehearing Order advised the parties of the location,

date and time of the scheduled hearing and warned in bold and underlined type: **“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.”**

To my knowledge, none of the documents mailed to the Complainant were returned as undeliverable. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were 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.*, 449 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. Notice properly mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meirerdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 449 A.2d 658 (Pa. Super. 1982).

3. 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).

4. 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 eligible 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 Richard Rhodes at Docket No. C-2019-3011233 is granted;

2. That the Complaint of Richard Rhodes against PECO Energy Company at Docket No. C-2019-3011233 is dismissed with prejudice; and

3. That Docket No. C-2019-3011233 be marked closed.

Date: November 4, 2019

/s/
F. Joseph Brady
Administrative Law Judge