

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Scott Benner	:	
	:	
v.	:	C-2019-3012611
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On September 3, 2019, Scott Benner (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company or Respondent). On the Complaint form, the Complainant states that PECO is requesting that he pay the entire balance due to avoid shut off and that he and his wife need electric service for an oxygen machine.

PECO filed an Answer on September 13, 2019. PECO denied all material allegations in the Complaint. The Company also stated that 66 Pa.C.S. § 1405 (c) provides that the Complainant is not eligible for a Commission-issued payment arrangement because the Complainant's balance is comprised of Customer Assistance Program arrears.

On September 16, 2019, a Hearing Notice was mailed to all parties, setting an Initial In-Person Hearing for October 29, 2019, at 10:00 a.m., as part of a Call-of-the-Docket, where several cases are set for hearing at the same date and time.

A Prehearing Order was issued and mailed to all parties on September 19, 2019, again informing the Complainant of the date and time of the hearing and providing procedural information. The Prehearing Order on page 2 also advised the Complainant 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. (Emphasis in the original).

Also, in bold print on page 3, 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 October 29, 2019, at 10:00 a.m. Angela Lorenz, Esquire, was present on behalf of PECO. The Complainant was not present.

Other matters scheduled for Call-of-the-Docket were called and completed by 10:48 a.m. The Complainant still had not arrived for the hearing. The Complainant had not called or otherwise contacted the Commission to request a continuance or to explain his absence. Attorney Lorenz moved that the matter be dismissed for failure to prosecute.

The record closed on November 8, 2019, upon receipt of the transcript. PECO's Motion to Dismiss for Failure to Prosecute is ready for a decision.

## FINDINGS OF FACT

1. The Complainant is Scott Benner, who is a PECO Energy Company electric customer in Philadelphia, Pennsylvania.
2. PECO Energy Company is the Respondent.
3. On September 3, 2019, the Complainant filed this action.
4. The Respondent filed an Answer on September 13, 2019.
5. On September 16, 2019, a Hearing Notice was mailed to all parties, setting an Initial In-Person Hearing for October 29, 2019, beginning at 10:00 a.m. as part of the Call-of-the-Docket.
6. The Hearing Notice was mailed to the Complainant at the address provided in the Complaint.
7. A Prehearing Order was issued and mailed to all parties on September 19, 2019, again informing the Complainant of the date and time of the hearing and providing procedural information.
8. The Prehearing Order at page 2 also advised the Complainant 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.
9. In bold print, the Prehearing Order advised on page 4 that:

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

10. On the day of the hearing, PECO was present and represented by counsel.
11. The Complainant was not present when the hearing began at 10:00 a.m.
12. The Complainant did not appear for the hearing after other Call-of- the-  
Docket matters were completed at 10:48 a.m.
13. The Complainant has not contacted the Commission about the hearing.
14. None of the documents mailed to the Complainant were returned as  
undeliverable.
15. The Complainant did not request a continuance or provide a statement of  
“good cause” for his 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 Complainant. The Prehearing Order and the Hearing Notice contained information regarding the date, time and location of the hearing and the consequences of not participating in the hearing. These documents were mailed to the address provided by the Complainant in his Complaint and none of these documents was returned by the U.S. Postal Service to the Commission as undeliverable. It is therefore deemed that the Complainant received these documents and had notice of the date and time of the scheduled hearing. *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974).

As the Commission noted in *Strydio v. PPL Electric Utilities Corporation*, 2018 Pa. PUC LEXIS 258, \*8, Docket No. C-2017-263304, 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 Complainant was notified of the scheduled hearing and did not appear. To date, the Complainant has not contacted the Commission or the undersigned regarding this hearing. The Complainant has 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 Complainant bears the burden of proving by a preponderance of the evidence that he or she is entitled to relief. By failing to appear and proffer any evidence to support the Complaint, the Complainant has 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 Complainant 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 Complainant 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 Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. The Complainant did not participate in the hearing, failed to appear for the hearing and did not present any evidence and, therefore, he failed to meet his 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 Scott Benner at Docket No. C-2019-3012611 is granted.

