

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tony Ramos	:	
	:	
v.	:	C-2018-3006208
	:	
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 is dismissed for failure to prosecute.

HISTORY OF THE PROCEEDING

On November 28, 2018, Tony Ramos (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent). On the Complaint form, Mr. Ramos states that he is a gas and electric customer of PECO and that the utility is threatening to shut off his service.

On December 18, 2018, Respondent filed its Answer, denying the material averments of the Complaint and stating that the Complainant was sent a shut-off notice because he had defaulted on a payment arrangement and has an outstanding balance of \$15,725.57.

On December 21, 2018, a Hearing Notice was mailed to all parties, setting an Initial In-Person Hearing for February 4, 2019.

On January 7, 2019, a Pre-hearing Order was issued. The Pre-hearing Order advised the Complainant of the procedures applicable to this proceeding.

PECO notified the Commission on February 1, 2019, that the Complainant had filed a Bankruptcy Petition. Pursuant to Section 362(a)(1) of Title 11 of the United States Code, 11 U.S.C.A. § 362(a)(1), the filing of the Bankruptcy Petition by the Complainant operates as a stay with respect to the continuation of judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the filing of the Bankruptcy Petition.

On February 7, 2019, an Order was issued holding the matter in abeyance until conclusion of the bankruptcy matter. The Order also required that the parties file status reports every 90 days.

On September 6, 2019, PECO sent a letter advising that the Complainant's bankruptcy petition had been discharged on July 25, 2019.

On September 10, 2019, a Notice was mailed to all parties setting a Call-In Telephone Hearing for November 5, 2019 at 10:00 a.m. The Notice also stated:

AT THE ABOVE DATE AND TIME, YOU MUST CALL INTO THE HEARING. IF YOU FAIL TO DO SO, YOUR CASE WILL BE DISMISSED. YOU WILL NOT BE CALLED BY THE ADMINISTRATIVE LAW JUDGE.

The hearing began as scheduled on November 5, 2019, at 10:00 a.m. Angela Lorenz, Esquire, called in on behalf of PECO. The Complainant was not present on the call.

A recess was taken, and the undersigned called the telephone number provided by the Complainant on his Complaint. There was no answer.

The hearing resumed at approximately 10:21 a.m. Mr. Ramos had not called into the hearing 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 Tony Ramos, who is a PECO Energy Company customer in Philadelphia, Pennsylvania.
2. The Respondent is PECO Energy Company.
3. On November 28, 2018, the Complainant filed this action.
4. The Respondent filed an Answer on December 18, 2018.
5. A hearing was set for February 4, 2019.
6. The Complainant filed a bankruptcy petition and this matter was held in abeyance pending the conclusion of his bankruptcy filing.
7. The Complainant's bankruptcy petition was discharged on July 25, 2019.
8. On September 10, 2019, a Hearing Notice was mailed to all parties, setting a Call-In Telephone Hearing for November 5, 2019, beginning at 10:00 a.m.

9. The Hearing Notice was mailed to the Complainant at the address provided in the Complaint.

10. On page 1, in underlined, bold print, the Hearing Notice advises the Complainant:

AT THE ABOVE DATE AND TIME, YOU MUST CALL INTO THE HEARING. IF YOU FAIL TO DO SO, YOUR CASE WILL BE DISMISSED. YOU WILL NOT BE CALLED BY THE ADMINISTRATIVE LAW JUDGE.

11. A toll-free dial in number and passcode were also provided on page 1 of the Hearing Notice.

12. On page 2 of the Hearing Notice, it states, in italicized print:

Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.

13. The hearing began as scheduled on November 5, 2019, at 10:00 a.m.

14. On the day of the hearing, PECO was present and represented by counsel by telephone.

15. The Complainant had not called in when the hearing began at 10:00 a.m.

16. A recess was taken, and the undersigned called the number provided by the Complainant on the Complaint form; there was no answer.

17. The Complainant had not called in when the hearing resumed at 10:21 a.m.

18. To date, the Complainant has not contacted the Commission about the hearing.

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

20. 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 Pre-hearing Order were mailed to the Complainant setting the hearing for February 4, 2019. The matter was stayed on February 7, 2019 pending the Complainant's bankruptcy filing.

Upon discharge of the Complainant's bankruptcy proceeding, a Hearing Notice was mailed to all parties advising that a Call-in Telephone Hearing would be held on November 5, 2019, at 10:00 a.m. The Hearing Notice provided a toll-free call-in number and pass code. Moreover, the Hearing Notice advised the Complainant on page 1 that the matter would be dismissed if he did not call in to the hearing. The Hearing Notice was mailed to the address provided by the Complainant in his Complaint and was not returned by the U.S. Postal Service as

undeliverable. It is therefore deemed that the Complainant 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, at any time, call in to the hearing. Additionally, the Complainant did not answer the telephone when called by the undersigned.

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 is entitled to relief.

The Hearing Notice advised the Complainant on page 2 that he could lose the case if he did not participate in the hearing and present facts on the issues raised. 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, did not present any evidence and, therefore, he failed to meet his burden of proving he is eligible for the relief that he 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 Tony Ramos at Docket No. C-2018-3006208 is granted.

