

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joe Mehrman	:	
	:	
v.	:	F-2019-3012900
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On September 3, 2019, Joe Mehrman (Complainant or Mr. Mehrman) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission) wherein he stated that he disagreed with the way PECO calculates low income Customer Assistance Program (CAP) credits.

On September 25, 2019, PECO filed an Answer to the Complaint denying all material allegations of fact in the Complaint.

By Hearing Notice dated September 30, 2019, a hearing was scheduled for November 26, 2019, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice

advised the parties of the location, date and time of the scheduled hearing and warned in italicized type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*”

I issued a Prehearing Order on October 17, 2019. The Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It also warned in underlined bold type: “**If the customer is not present and prepared to go forward with the case when it is called, the case will be dismissed by the Administrative Law Judge.**”

The hearing began on November 26, 2019, as scheduled. Counsel for PECO was present with a witness and was prepared to proceed. The Complainant was not present. The Complainant was given an additional fifteen minutes to appear but failed to do so.

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 January 2, 2020, upon my receipt of the transcript.

#### FINDINGS OF FACT

1. The Complainant is Joe Mehrman.
2. The Respondent is PECO Energy Company.
3. On September 3, 2019, the Complainant filed a Complaint with the Commission against the Respondent.

4. On September 25, 2019, the Respondent filed an Answer to the Complaint.
5. By Hearing Notice dated September 30, 2019, a hearing was scheduled for November 26, 2019, at 10:00 a.m.
6. On October 17, 2019, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.
7. Both the Hearing Notice and the Prehearing Order were sent to the Complainant by regular first-class mail.
8. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.
9. The Complainant failed to appear at the November 26, 2019 hearing.

### 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 September 30, 2019, the Commission sent notice of the Initial Hearing in this case to the Complainant by regular first-class mail. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in italicized type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*” In addition, I issued a Prehearing Order on October 17, 2019, also warning in underlined, bold

type: **“If the customer is not present and prepared to go forward with the case when it is called, the case will be dismissed by the Administrative Law Judge.”**

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 Joe Mehrman at Docket No. F-2019-3012900 is granted;

2. That the Complaint of Joe Mehrman against PECO Energy Company at Docket No. F-2019-3012900 is dismissed with prejudice; and

3. That Docket No. F-2019-3012900 be marked closed.

Date: February 11, 2020

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/s/  
F. Joseph Brady  
Administrative Law Judge