

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Toms	:	
	:	
v.	:	C-2019-3015143
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

The Complaint is dismissed for the failure of the Complainant to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On December 24, 2019, Joseph Toms (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent or Company). In the Complaint, Mr. Toms alleges that PECO is trying to shut off his service, that there are incorrect charges on his bill and that he is having a reliability, safety or quality problem with his utility service.

On January 15, 2020, Respondent filed its Answer (Answer), denying the material averments of the Complaint and stating that the Complainant has an outstanding balance. The Respondent further averred that Complainant's service was terminated for non-payment and that PECO is entitled to payment of the outstanding balance before the service is restored.

On January 21, 2020, a Hearing Notice was mailed to all parties, setting an Initial In-Person Hearing for March 4, 2020 at 10:00 a.m.

On January 31, 2020, a Prehearing Order was issued which advised the parties of various applicable procedures, as well as reminded the parties of the date and time of the hearing.

The hearing convened as scheduled on March 4, 2020 at 10:00 a.m. The Complainant did not appear for the hearing; PECO appeared and was represented by Angela Lorenz, Esquire.

A break was taken to allow the Complainant an opportunity to appear. The hearing resumed at 10:36 a.m. The Complainant was not present.

The Company moved that the matter be dismissed for failure of the Complainant to appear and prosecute her Complaint. This Motion was taken under advisement.

The record closed on March 16, 2020, upon my 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 Joseph Toms, who resides in Philadelphia, Pennsylvania.
2. The Respondent is PECO Energy Company.
3. On December 24, 2019, the Complainant filed this action against PECO.
4. The Respondent filed an Answer on January 15, 2020.

5. On January 21, 2020 a Hearing Notice was issued to all parties, setting an Initial In-Person Hearing for March 4, 2020 at 10:00 a.m.

6. A prehearing order was issued on January 31, 2020 to all parties which reminded the parties of the hearing date and time and advised the Complainant, in bold print, that the matter would be dismissed if she failed to appear; it also advised that the Complainant had the burden of proof.

7. The hearing began as scheduled on March 4, 2020 at 10:00 a.m.

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

9. The Complainant was not present when the hearing began at 10:00 a.m.

10. A recess was taken, and the undersigned confirmed that the Complainant had not contacted the Commission.

11. When the hearing resumed at 10:36 a.m., the Complainant was not present.

12. To date, the Complainant has not contacted the Commission about his absence from the hearing.

13. The Hearing Notice and prehearing order were mailed via first-class mail to the address provided by the Complainant on his Complaint form.

14. The Hearing Notice and prehearing order mailed to the Complainant were not 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 prehearing order containing the time, date and location were mailed to the Complainant. Neither was returned 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 appear for the hearing.

To date, the Complainant has not contacted the Commission or the undersigned regarding his absence from the hearing. Thus, 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) (*Jefferson*).

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. The Complainant was advised in the prehearing order that, as the Complainant, he had the burden of proof. 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; 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; therefore, he failed to meet his burden of proving that he is eligible to the relief that is sought from the Commission. 66 Pa.C.S. § 332(a).

