

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Vandiver	:	
	:	
v.	:	F-2020-3015446
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On January 4, 2020, James Vandiver (Complainant or Mr. Vandiver) filed a formal Complaint (Complaint) against PECO Energy Company (Respondent or PECO) with the Pennsylvania Public Utility Commission (Commission) alleging that PECO had shut off his service and that he was having a reliability, safety or quality problem with his service.¹

On January 28, 2020, PECO filed an Answer to the Complaint denying all material allegations of fact and conclusions of law in the Complaint. Also, PECO alleged that the Complainant was enrolled in its Customer Assistance Program (“CAP”) on January 10, 2020, with a Pre-Program Arrearages ("PPA") amount of \$728.95, leaving a current balance of \$0. As

¹ The Complaint is a timely appeal from a decision of the Commission’s Bureau of Consumer Services (BCS) dated November 12, 2019 at BCS case number 3738321.

a result, PECO alleged that all issues raised in the Complaint have been resolved and requests that the Complaint be dismissed.

By Hearing Notice dated January 29, 2020, a hearing was scheduled for March 11, 2020, 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 February 10, 2020. 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 March 11, 2020, 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 March 20, 2020, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is James Vandiver.
2. The Respondent is PECO Energy Company.

3. On January 4, 2020, the Complainant filed a Complaint with the Commission against the Respondent.
4. On January 28, 2020, the Respondent filed an Answer to the Complaint.
5. By Hearing Notice dated January 29, 2020, a hearing was scheduled for March 11, 2020, at 10:00 a.m.
6. On February 10, 2020, 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 March 11, 2020 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 January 29, 2020, 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 February 10, 2020, 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); *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).

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 for 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 formal Complaint filed by James Vandiver at Docket No. F-2020-3015446 is granted.

2. That the formal Complaint of James Vandiver against PECO Energy Company at Docket No. F-2020-3015446 is dismissed with prejudice; and

3. That Docket No. F-2020-3015446 be marked closed.

Date: June 8, 2020

_____/s/
F. Joseph Brady
Administrative Law Judge