

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Brian Overbey	:	
	:	
v.	:	F-2020-3019202
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses a formal complaint due to the failure of the Complainant to appear at the initial hearing and prosecute his complaint, despite having been given notice of the hearing and an opportunity to be heard.

HISTORY OF THE PROCEEDING

On March 10, 2020, the Complainant, Brian Overbey, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO), Docket No. F-2020-3019202. In his complaint, Mr. Overbey alleged that PECO is attempting to hold him responsible for charges placed on his account for service provided to someone else. The formal complaint is a timely appeal from a decision of the Commission's Bureau of Consumer Services (BCS) on an informal complaint filed by Mr. Overbey at BCS No. 3702377. Mr. Overbey requests that the disputed charges be removed from his bill.

On April 1, 2020, PECO filed an answer to Mr. Overbey's complaint. In its answer, PECO admitted it had mistakenly placed charges from another customer's account onto

Mr. Overbey's account but averred that, upon discovery of the mistake, it removed all disputed charges from his account. PECO requests that Mr. Overbey's complaint be dismissed.

On May 13, 2020, the Commission issued a Call-In Telephone Hearing Notice by which it scheduled an initial telephonic hearing for Thursday, July 9, 2020, at 10:00 a.m., and assigned me as the Presiding officer. The hearing notice instructed the parties to connect to the hearing by dialing the toll-free number and PIN provided on the notice. The notice informed the parties that they may lose the case if they do not appear at the hearing. This notice was sent to Mr. Overbey by electronic mail to the e-mail address provided by him on his formal complaint form.¹

On June 27, 2020, I issued a Prehearing Order in which I set forth certain procedural requirements pertaining to the hearing. The Prehearing Order provided the date and time of the hearing, as well as the conference telephone number and PIN for use to connect to the hearing. The Prehearing Order stated, "[y]ou may lose this case if you do not take part in this hearing and present evidence on the issues raised." The Prehearing Order also informed the parties that any requests to reschedule the hearing must be made at least three days before the hearing. The Prehearing Order was sent to Mr. Overbey by electronic mail to the e-mail address provided by him on his formal complaint form.

The hearing convened, as scheduled, at 10:00 a.m. on July 9, 2020. Khadijah Scott, Esquire, appeared on behalf of PECO. Mr. Overbey did not connect to the hearing. We waited until approximately 10:06 a.m. to begin the hearing in case the Complainant was running late, but he never connected to the hearing. The hearing was held in Mr. Overbey's absence. PECO's counsel moved to dismiss the complaint due to the Complainant's failure to appear at the hearing and prosecute his complaint.

¹ All notices were sent to Complainant by e-mail pursuant to the Commission's *Emergency Order re Suspension of Regulatory and Statutory deadlines, Modification to Filing and Service Requirements* at Docket No. M-2020-3019262, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency.

The hearing concluded and a brief transcript was generated. The record was closed on July 10, 2020. This Initial Decision grants PECO's motion and dismisses the complaint for failure of the Complainant to appear and prosecute his case.

FINDINGS OF FACT

1. The Complainant in this proceeding is Brian Overbey.
2. The Respondent in this proceeding is PECO Energy Company.
3. On March 10, 2020, the Complainant filed a formal complaint against PECO.
4. On April 1, 2020, PECO filed an answer to the complaint.
5. On May 13, 2020, the Commission issued a Call-In Telephone Hearing Notice by which it scheduled an initial telephonic hearing for Thursday, July 9, 2020, at 10:00 a.m.
6. On June 27, 2020, I issued a Prehearing Order in which I set forth certain procedural requirements pertaining to the hearing.
7. Both the Telephone Hearing Notice and the Prehearing Order provided the date and time of the hearing, as well as the conference telephone number and PIN for use to connect to the hearing.
8. Both the Telephone Hearing Notice and the Prehearing Order informed the parties that they would lose the case if they did not take part in this hearing and present evidence on the issues raised.
9. Both the hearing notice and the prehearing order were sent to Mr. Overbey by electronic mail to the e-mail address provided by him on his complaint form.

10. The Commission never received notification that the hearing notice or prehearing order failed to be delivered to the Complainant.

11. The Complainant never connected to the call-in telephonic hearing.

12. The Complainant never contacted the Commission prior to the hearing to discuss the hearing schedule or ask that it be rescheduled.

13. The Complainant failed to appear at the scheduled date and time for the hearing.

DISCUSSION

Mr. Overbey filed a formal complaint against PECO in which he challenged his responsibility for payment of certain charges he alleges were mistakenly placed on his account. He requested that the disputed charges be removed from his account.

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). As the party seeking relief from the Commission, Mr. Overbey bears the burden of proof in this proceeding.

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 when the parties are provided with notice and an opportunity to be heard. Id.

No one appeared on behalf of Mr. Overbey at the date and time set for the hearing in his case, despite notice of the hearing having been sent to him by electronic mail at the e-mail

address provided by him on his formal complaint form. Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

- (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
- (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa.Code § 5.245(a).

As noted, the hearing notice and the prehearing order were both sent to Mr. Overbey by electronic mail to the e-mail address provided by him on his complaint form. The Commission never received notification that either of these documents was not delivered to the Complainant. Both documents stated the time and date of the telephonic hearing and provided the call-in number and PIN with which to connect to the hearing. No one ever contacted the Commission on Mr. Overbey's behalf to discuss the hearing schedule or to request that it be rescheduled.

I find that the Complainant's due process rights were fully protected by sending the hearing notice and prehearing order to the e-mail address provided by him to the Commission. As noted, the Commission's records do not reflect that either of the two documents were not delivered. Accordingly, it may be presumed that these documents sent to the Complainant in the ordinary course of business were received by him. Morella v. PECO Energy Company, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); Zirkel v. Philadelphia Gas Works, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). Both documents instructed the parties that they may lose the case if they fail to appear and present evidence on the issues raised.

No request for a postponement or continuance of the hearing, nor any information about the status of the Complainant, was received by the Commission. Notice of the hearing and an opportunity to be heard in this proceeding were properly provided by the Commission. Mr. Overbey did not participate in the telephonic hearing. The Complainant's due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, counsel for PECO moved for dismissal of the complaint due to lack of prosecution by the Complainant. By the failure of Mr. Overbey to appear and present any evidence in support of his complaint, the Complainant failed to meet his burden of proof. Thus, the complaint will be dismissed. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995).

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. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

4. 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 when the parties are provided with notice and an opportunity to be heard. Id.

5. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to

participate in the conference or hearing; 2) not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa.Code § 5.245(a).

6. Mr. Overbey's due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

7. Mr. Overbey failed to carry his burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PECO Energy Company to dismiss the formal complaint of Brian Overbey at Docket Number F-2020-3019202 for failure to prosecute is granted.

2. That the formal complaint filed by Brian Overbey at Docket Number F-2020-3019202 is dismissed.

3. That this matter be marked closed.

Date: July 15, 2020

/s/
Steven K. Haas
Administrative Law Judge