

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Davoud Baravordeh	:	
	:	
v.	:	C-2020-3018164
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint (Complaint) of Davoud Baravordeh against PECO Energy Company because the Complainant failed to comply with the presiding officer’s Order to have an attorney, licensed to practice in the Commonwealth of Pennsylvania, enter an appearance on Complainant’s behalf and failed to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On February 10, 2020, Davoud Baravordeh (Mr. Baravordeh) filed a Complaint against PECO Energy Company (Respondent or PECO) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Baravordeh stated that the Complaint involved utility service provided to a different name and address than his own – Davrob Properties (Complainant). Mr. Baravordeh alleged that PECO was threatening to shut off service or has already shut off service to Davrob Properties and that there were incorrect charges on the bill.

On February 26, 2020, PECO filed an Answer to the Complaint, along with a New Matter and Notice to Plead. In its Answer, PECO denied all material allegations of fact and conclusions of law in the Complaint. In its New Matter, PECO alleged that the Complainant is a commercial customer corporation operating a business at the service address. PECO requested that the Complainant be given a date certain to have an attorney enter an appearance on its behalf in this matter. No response to PECO's New Matter was filed.

By Telephonic Hearing Notice dated April 28, 2020, an Initial Call-In Telephonic Hearing was scheduled for June 2, 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.*" The Notice was sent to the Complainant at the email address provided in the Complaint. The Respondent was served by the Commission's eService.

I issued a Corrected Prehearing Order¹ on May 1, 2020. The Prehearing Order directed the parties to comply with various procedural requirements and warned in underlined bold type: "**You must call into the hearing on the scheduled day and time. If you fail to do so, your case may be dismissed. You will NOT be called by the Administrative Law Judge.**" Also, I directed Mr. Baravordeh to have an attorney licensed in Pennsylvania enter an appearance on behalf of the Complainant on or before May 21, 2020, and that failure to do so would result in the Complaint being dismissed.

The hearing began on June 2, 2020, as scheduled. The Respondent was represented by Khadijah Scott, Esquire, who had one witness on the call prepared to testify. The Complainant failed to call-in. The Complainant was given an additional 20 minutes to call-in but failed to do so.

¹ The original Prehearing Order issued on April 30, 2020 contained an incorrect hearing date.

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 June 9, 2020, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Davrob Properties.
2. The Respondent is PECO Energy Company.
3. The Complainant is a Corporation.
4. On February 10, 2020, the Complainant filed a Complaint with the Commission against the Respondent.
5. On February 26, 2020, the Respondent filed an Answer and New Matter to the Complaint.
6. By Telephonic Hearing Notice dated April 28, 2020, an Initial Call-In Telephonic Hearing was scheduled for June 2, 2020, at 10:00 a.m.
7. The Hearing Notice emailed to the Complainant stated:

“The Public Utility Commission offers a free eFiling Subscription Service, which allows users to automatically receive an email notification whenever a document is added, removed, or changed on the PUC website regarding a specific case. Instructions for subscribing to this service are on the PUC’s website at http://www.puc.pa.gov/Documentation/eFiling_Subscriptions.pdf.”

8. The Complainant did not sign up for eService or eFiling.
9. The Hearing Notice emailed to the Complainant 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 Presiding Officer.”

and

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

(emphasis in originals).

10. On May 1, 2020, a Prehearing Order was sent to all parties directing them to comply with various procedural requirements and warning in underlined bold type:

“You must call into the hearing on the scheduled day and time. If you fail to do so, your case may be dismissed. You will NOT be called by the Administrative Law Judge.”

(emphasis original).

11. The May 1, 2020 Prehearing Order also contained the following order:

1. DAVOUD BARAVORDEH: Have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance on behalf of Davrob Properties prior to May 21, 2020. FAILURE TO DO SO WILL RESULT IN YOUR COMPLAINT BEING DISMISSED.

(emphasis original).

12. Both the Hearing Notice and the Prehearing Order were sent to the Complainant by email, at the email address provided by the Complainant on the Complaint, pursuant to Commission work from home orders related to the COVID-19 pandemic.²

13. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

14. The Complainant failed to appear at the June 2, 2020 hearing.

15. As of the date of this initial decision, the Complainant has not had an attorney enter an appearance on Complainant's behalf.

DISCUSSION

The Complainant in this case is a corporation that is not represented by counsel. The Commission's Regulations require corporations, *inter alia*, to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa. Code § 1.21(b).³

The term "adversarial proceeding" is defined as "[a] proceeding initiated by a person to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission which is contested by one or more other persons and which will be decided on the basis of a formal record." 52 Pa. Code § 1.8. Additionally, the term "person" is defined as including "individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities, municipal corporations or other political subdivisions." *Id.*

² The Commission issued an Order on March 20, 2020, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. *See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262, at 4 (March 20, 2020).

³ The Commission's regulations concerning representation and notice of appearance are set forth in 52 Pa. Code §§ 1.21-24.

This matter constitutes an adversarial proceeding, as it involves the formal Complaint filed by Davrob Properties against PECO regarding a billing dispute, in which the Complainant was seeking relief from the Commission. Accordingly, pursuant to the Commission's Regulations, the Complainant is required to be represented by counsel in this adversarial proceeding since it is a corporation.

The Complainant was informed of this requirement by both the Hearing Notice and my Corrected Prehearing Order. However, to date, no notice of appearance to represent the Complainant has been filed. Failure to comply with an order issued by a presiding officer warrants dismissal of the application or complaint. See, e.g., *Application of And Ex Cor*, A-2012-2337848 (Final Order entered June 19, 2013); *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009); and *Snyderville Community Development Corp. v. PECO Energy Company*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

In this case, the Complainant failed to comply with my May 1, 2020 Corrected Prehearing Order directing it to be represented by counsel since it is a corporation. Therefore, the Complaint will be dismissed on this basis.

Further, 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. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016).

On April 28, 2020, the Commission sent notice of the Initial Call-In Telephonic Hearing to the Complainant at the email address provided on the Complaint. 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.*" The Hearing Notice contained information about signing up for

eService on the Commission's website and provided the website address. The Complainant did not sign up for this service.

In addition, I issued a Corrected Prehearing Order on May 1, 2020, also warning in underlined, bold type: "**You must call into the hearing on the scheduled day and time. If you fail to do so, your case may be dismissed. You will NOT be called by the Administrative Law Judge.**"

During this period of the Governor's Disaster Emergency Declaration in response to the COVID-19 pandemic, the Commission directed service to be electronic. Here, email was the method of delivery of notice for the hearing and prehearing order. Service was made pursuant to the Commission's Order issued on March 20, 2020, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. *See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262, at 4 (March 20, 2020). Notice electronically served to a party with no notification that service failed is presumed received. *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017); and *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019).

None of the emails sent by the Commission to the Complainant were returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time and participation information for the June 2, 2020 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. Additionally, the Hearing Notice advised the Complainant that the case could be dismissed for failure to call-in and participate in 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).

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 Hearing Notice and the Prehearing Order that it could lose its case if it did not participate in the hearing or present facts on the issues presented. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Consequently, the Complaint will be dismissed on this basis as well. *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. The Commission's Regulations require corporations, *inter alia*, to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa. Code § 1.21(b).

3. This matter constitutes an adversarial proceeding, as it involves the formal Complaint filed by Davrob Properties against PECO regarding a billing dispute, in which Davrob Properties was seeking relief from the Commission. 52 Pa. Code § 1.8.

4. Failure to comply with an order issued by a presiding officer warrants dismissal of the application or complaint. See, e.g., *Application of And Ex Cor*, A-2012-2337848 (Final Order entered June 19, 2013); *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009); and *Snyderville Community Development Corp. v. PECO Energy Company*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

5. 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 den.*, 653 A.2d 1234 (Pa. 1994).

6. 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).

7. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

8. 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 that he is eligible for the relief 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 formal Complaint filed by Davoud Baravordeh at Docket No. C-2020-3018164 is granted;
2. That the formal Complaint of Davoud Baravordeh against PECO Energy Company at Docket No. C-2020-3018164 is dismissed; and
3. That Docket No. C-2020-3018164 be marked closed.

Date: July 21, 2020

_____/s/
F. Joseph Brady
Administrative Law Judge