

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gregory Thomas	:	
	:	
v.	:	F-2020-3019212
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Alphonso Arnold, III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint because the Complainant failed to appear for the hearing to prosecute his Complaint.

HISTORY OF THE PROCEEDING

On March 1, 2020, Gregory Thomas (Complainant or Mr. Thomas) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent or PECO), seeking a payment arrangement. The Formal Complaint is a timely appeal of a decision issued by the Commission's Bureau of Consumer Services (BCS), at BCS No. 3683837, wherein the BCS granted Mr. Thomas' Informal Complaint and awarded him a payment arrangement.

On April 1, 2020, PECO filed an Answer to the Complaint, alleging that the Complainant is currently on a payment arrangement and is not entitled to an additional payment arrangement. PECO requested that the Commission dismiss the Complaint.

By Hearing Notice served on the parties on May 12, 2020, the Commission scheduled this matter for a telephonic hearing on July 28, 2020 at 10:00 a.m. and assigned the case to me.

A Prehearing Order, served on the parties on July 9, 2020, reminded the parties of the date and time of the hearing and addressed, inter alia, the procedures applicable to the hearing and the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them.

Both the Hearing Notice and Prehearing Order provided the parties with the toll-free conference number they would need to call and the participant passcode they would need to enter in order to call in to participate in the July 28, 2020 hearing. The Notice and Order warned the parties that their failure to call in to the hearing to participate would result in the dismissal of their case.

The hearing was held on July 28, 2020 as scheduled. Khadijah Scott, Esquire, representing PECO, was on the hearing conference line on time and was ready to proceed with the hearing with a witness. Mr. Thomas was not on the hearing conference line at 10:00 a.m.; therefore, the hearing was delayed to give Mr. Thomas more time to call in. The hearing began at 10:15 a.m. without Mr. Thomas. No witnesses were presented, and no exhibits were introduced for the record. PECO made a Motion to dismiss the Complaint for failure to prosecute. PECO was informed that its Motion would be taken under advisement.

The record closed on July 28, 2020, following the conclusion of the telephonic hearing. As of the date of this Initial Decision, I have received no communication from Mr. Thomas or anyone on Mr. Thomas' behalf explaining Mr. Thomas' absence from the telephonic hearing. For the reasons discussed below, PECO's Motion will be granted, and the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Gregory Thomas.
2. The Respondent is PECO Energy Company.
3. By Hearing Notice served upon the parties on May 12, 2020, the Commission scheduled this matter for a telephonic hearing on July 28, 2020.
4. By Prehearing Order served upon the parties on July 9, 2020, the parties were reminded of the date and time of the telephonic hearing and were provided with the method by which a party could request a continuance of the hearing date, if needed.
5. The Hearing Notice and Prehearing Order provided the parties with the toll-free conference number they would need to call and the participant passcode they would need to enter in order to call in to participate in the July 28, 2020 hearing.
6. The Hearing Notice and Prehearing Order warned the parties that the failure of a party to call in to the hearing to participate would result in the dismissal of their case.
7. The Hearing Notice and Prehearing Order were served to the Complainant's mailing address, and neither document was returned to the Commission as being undeliverable by the postal authorities.
8. The Complainant did not call in to participate in the July 28, 2020 telephonic hearing.

DISCUSSION

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). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem

described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlt. 1984).

The Complainant did not participate in the July 28, 2020 hearing. The date and time of the hearing were provided in the Hearing Notice and Prehearing Order served to the Complainant in this matter. The Notice and Order provided the Complainant with the toll-free conference number he would need to call and the participant passcode he would need to enter in order to call in to participate in the July 28, 2020 hearing. The Notice and Order warned the Complainant that failure to call in to the hearing to participate would result in the dismissal of his case.

The Hearing Notice and Prehearing Order were sent to the Complainant by regular first-class mail, to the Complainant's mailing address. Neither document was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents, which were sent to the Complainant in the ordinary course of business, were received by him. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mutual Insurance Co., 449 A.2d 658 (Pa. Super. 1982). Therefore, the Complainant is deemed to have had sufficient notice of the day, date and time of the scheduled hearing and for whatever reason chose not to appear at the hearing to prosecute his Complaint. The Complainant made no attempt to notify the presiding officer that he did not plan to participate in the scheduled hearing.

Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlth. 1984). Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Complainant did not appear, and the hearing proceeded in his absence. Both 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245(a) provide that a party who fails to be represented at a scheduled hearing shall waive the opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat.

§ 332. Procedures in general.

(f) Actions of parties and counsel.--Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination. . . .

66 Pa.C.S. § 332(f).

§ 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.

. . .

52 Pa. Code § 5.245(a).

As the party seeking relief from the Commission, the Complainant bears the burden of proof. By choosing not to participate in the hearing and proffer any evidence to support the Complaint, the Complainant failed to meet this burden.

The due process rights of the Complainant have been protected. The Complainant had notice of the scheduled hearing and failed to appear to prosecute his Complaint. Therefore, the Respondent's Motion to dismiss the Complaint is granted. Accordingly, the Complaint in this matter will be dismissed in its entirety with prejudice. El-Ayazra v. West Penn Power Co., Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); Volgstadt v. UGI Penn Natural Gas, Inc., Docket No. F-02266429 (Opinion and Order entered September 12, 2008) and Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. Administrative agencies are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlth. 1984).

4. Documents sent to a party in the ordinary course of business and not returned to the Commission as undeliverable are presumed to be received by the party. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mutual Insurance Co., 449 A.2d 658 (Pa. Super. 1982).

5. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

6. By failing to appear at his scheduled hearing, the Complainant waived his opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. The Complainant's due process rights have been fully protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

8. By failing to appear and proffer any evidence in support of the Complaint, the Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Complaint at Docket No. F-2020-3019212 for failure to prosecute is granted.

2. That the Complaint filed by Gregory Thomas against PECO Energy Company at Docket No. F-2020-3019212 is hereby dismissed with prejudice.

