

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Hoffman	:	
	:	
v.	:	C-2019-3013356
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

This Initial Decision dismisses the formal complaint filed by John Hoffman (Complainant) because he failed to appear for the initial call-in telephone hearing to prosecute his complaint and failed to satisfy his burden of proof.

HISTORY OF THE PROCEEDING

On October 4, 2019, Complainant filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Respondent or Penelec), at Docket No. C-2019-3013356. Complainant alleged that Penelec terminated service to his residence and that he would like a payment arrangement. As relief, he requested that service be restored in his name and that he be granted a payment arrangement. Penelec filed an answer on October 24, 2019, requesting that the complaint be denied and dismissed.

On October 29, 2019, an Initial Call-In Telephonic Hearing Notice was sent to Complainant and Penelec (the parties) scheduling an initial call-in telephone hearing for Thursday, January 16, 2020, at 10:00 a.m. The Notice included the telephone number and PIN for calling into the hearing on the scheduled day. A Prehearing Order was issued by me on

November 4, 2019, setting forth the date and time of the initial call-in telephone hearing as well as the telephone number and PIN for calling into the scheduled hearing. The Prehearing Order further advised the parties, *inter alia*, that “[y]ou may lose this case, if you do not take part in this hearing and present evidence on the issues raised. 52 Pa.Code § 5.245.” Prehearing Order, p. 4.

On January 16, 2020, at 10:00 a.m., the presiding officer attempted to convene the call-in telephone hearing. Counsel for Respondent, John L. Munsch, Esquire, was present and ready to proceed. Complainant was not present at the scheduled time for the hearing to begin. The presiding officer checked with the legal assistants in the Pittsburgh Office of the Office of the Administrative Law Judge to see if Complainant attempted to call the office. After waiting 15 minutes, the hearing reconvened at 10:15 a.m. and Complainant was not present and ready to proceed. The hearing proceeded in Complainant’s absence.

On the hearing record, counsel for Penelec made a motion to dismiss the complaint. The record consists of a 7-page hearing transcript of the initial call-in telephonic hearing held on January 16, 2020. The record was closed by Interim Order dated February 5, 2020.

FINDINGS OF FACT

1. On October 4, 2019, Complainant, John Hoffman, filed a formal complaint against Respondent, Pennsylvania Electric Company.
2. A Call-In Telephone Hearing Notice was mailed to the parties on October 29, 2019, scheduling the initial call-in telephone hearing for Thursday, January 16, 2020, at 10:00 a.m.
3. A Prehearing Order was issued on November 4, 2019.

4. The Call-In Telephone Hearing Notice and Prehearing Order were mailed to Complainant at the address provided on the complaint and were not returned to the Commission by the United States Postal Service as undeliverable.

5. Complainant was not present for the scheduled initial call-in telephone hearing on January 16, 2020.

6. No representative appeared on behalf of Complainant at the scheduled hearing or entered a notice of appearance in this proceeding.

7. Complainant did not file a petition to withdraw his complaint and no certificate of satisfaction has been filed with the Commission.

8. Complainant did not request a continuance of the January 16, 2020, initial call-in telephone 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 parties are accorded notice and the opportunity to appear and be heard. *Id.*

Notice of the scheduled initial call-in telephone hearing in this case was sent to Complainant on October 29, 2019, by regular first-class mail to the address stated in the complaint. This piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge in Harrisburg. In addition, I issued a Prehearing Order on November 4, 2019, that advised the parties, *inter alia*, that “[y]ou may lose this case, if you do not take part in this hearing and present evidence on the issues raised.” Prehearing Order, p. 4. This Order, which was also mailed to Complainant at the address stated on the complaint, was never returned. Accordingly, one must presume this mail, which was sent in the ordinary course

of business, was received by the addressee. 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); and Judge v. Celina Mutual Insurance Co., 303 Pa.Super. 221, 449 A.2d 658 (1982).

Neither Complainant nor a representative appeared for the scheduled call-in initial telephone hearing on January 16, 2020. Complainant's absence is unexplained. Complainant did not request a continuance of the hearing. Under these circumstances, it appears Complainant had ample opportunity to appear and be heard in this proceeding but failed to appear for the scheduled hearing. Therefore, the due process rights of Complainant have been fully protected. El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); and 52 Pa.Code § 5.245(a).

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a). By failing to appear and proffer any evidence to support his complaint, Complainant has failed to meet this burden. Complainant's failure to appear is unexcused. Complainant has waived the opportunity to participate in the hearing and this case may be dismissed with prejudice. 52 Pa.Code § 5.245(a); 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 parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. 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).

3. The due process rights of Complainant have been fully protected in this proceeding.

4. By failing to appear and proffer any evidence to support his complaint, Complainant has failed to meet his burden of proving that he is entitled to the relief he seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Pennsylvania Electric Company to dismiss the complaint of John Hoffman at Docket No. C-2019-3013356, made at the initial call-in telephone hearing on January 16, 2020, is granted.

2. That the complaint filed by John Hoffman against Pennsylvania Electric Company at Docket No. C-2019-3013356 is dismissed.

3. That the Docket in this proceeding, Docket No. C-2019-3013356, be marked closed.

Date: April 27, 2020

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge