

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Psut	:	
	:	
v.	:	C-2019-3014485
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Joseph Psut against PECO Energy Company because Complainant failed to appear for his hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On November 21, 2019, Joseph Psut (Complainant or Mr. Psut) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed check marks next to the statements: “The utility is threatening to shut off my service or has already shut off my service,” and “Other.” The attachments to the Complaint appear to indicate that the Complainant wants service in his name and that he should not be liable for an outstanding balance from his parents, who passed away in 2018.

On December 10, 2019, PECO filed an Answer to the Complaint. In its Answer, PECO either admitted or denied the various averments of the Complaint. PECO requested that the Complaint be dismissed.

On December 16, 2019, an Initial In-Person Hearing Notice was issued, scheduling an initial hearing for Wednesday, February 12, 2020 at 10:00 a.m. and the matter was assigned to me. On December 18, 2019, I issued a Prehearing Order which indicated the procedures for the hearing.

On February 12, 2020, the Complainant contacted my office to indicate that he was ill and would not be able to attend the scheduled hearing and requested a continuance. I sent an electronic mail to counsel for PECO and counsel indicated that PECO had no objection to the Complainant's request to reschedule the hearing. I granted the request and had my legal assistant contact the parties to notify them that the hearing was cancelled.

On March 3, 2020, a Cancel/Reschedule Hearing Notice was issued, and the matter was rescheduled for a hearing on Tuesday, April 21, 2020, at 10:00 a.m.¹ Another Prehearing Order was issued on March 6, 2020.

By Initial Hearing Type Change/Reschedule Notice dated May 6, 2020, a telephonic hearing was scheduled for July 9, 2020, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the call-in information, date and time of the scheduled hearing and warned in bold and underlined type: "**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.**"

¹ Due to the Governor's Emergency Order related to the COVID-19 pandemic, Commission offices were closed, and the in-person hearing scheduled for April 21, 2020, was cancelled. However, the Commission continues to work remotely.

The hearing began on July 9, 2020, as scheduled. Counsel for PECO was present with a witness and was prepared to proceed. The Complainant failed to call-in. The Complainant was given an additional 20 minutes to call-in 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 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 July 15, 2020, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Joseph Psut.
2. The Respondent is PECO Energy Company.
3. On November 21, 2019, the Complainant filed a Complaint with the Commission against the Respondent.
4. On December 10, 2019, the Respondent filed an Answer to the Complaint.
5. By Initial Call-In Telephonic Hearing Notice dated May 6, 2020, a telephonic hearing was scheduled for July 9, 2020, at 10:00 a.m.
6. 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).

7. The May 6, 2020 Hearing Notice was 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

8. The Hearing Notice was not returned as undeliverable.

9. The Complainant failed to appear at the July 9, 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.Cmwlt. 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.Cmwlt. 2016).

On May 6, 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 call-in information, date and time of the scheduled hearing and warned in bold and underlined type:

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.

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).

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.

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. 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) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*); 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 July 9, 2020 hearing. *Zirkel; Morella*.

As the Commission noted in *Strydio v. PPL Elec. Utils. Corp.*, 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 Elec. Utils. Corp.*, 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 Utils., 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 that he could lose his case if he 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 Utils., Inc.*, Docket No. Z 00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. West Penn Power Co.*, 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 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.Cmwlt. 1994), *appeal den.*, 653 A.2d 1234 (Pa. 1994).

3. 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.Cmwlt. 2016); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

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

5. 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 Joseph Psut at Docket No. C-2019-3014485 is granted;
2. That the formal Complaint of Joseph Psut against PECO Energy Company at Docket No. C-2019-3014485 is dismissed without prejudice; and
3. That Docket No. C-2019-3014485 be marked closed.

Date: October 13, 2020

_____/s/
Marta Guhl
Administrative Law Judge