

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Patrick Jorett

v.

PECO Energy Company

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F-2020-3021075

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Motion to Dismiss by PECO Energy Company (PECO or Respondent) because the Complainant failed to appear to prosecute his formal Complaint (Complaint).

HISTORY OF THE PROCEEDING

On June 15, 2020, Patrick Jorett (Complainant) filed a Complaint against the Respondent with the Pennsylvania Public Utility Commission (Commission). The Complainant alleged incorrect charges on his electric service bill. The Complainant alleged that the Respondent held him responsible for service at a previous address. The Complainant thought that he had agreed with the Respondent that the amount to be billed for the previous service would be about \$2,500.00. However, the Complainant was billed an amount more than \$7,000.00.

On August 17, 2020, Khadijah Scott, Esquire, counsel for PECO, electronically filed (efiled) an Answer to the Complaint.¹ The Respondent asserted that on June 25, 2019, the Complainant contacted the Respondent to establish service at his current address. The Respondent also admitted that there was discussion at this time with the Complainant about service at two previous service addresses. The Respondent stated that the Complainant did not dispute service at the previous addresses. The Respondent stated the Complainant agreed to a payment agreement for an outstanding balance of more than \$7,000.00 to obtain electric service.

The Respondent additionally asserted that on August 12, 2019, the Complainant filed an informal complaint that disputed his outstanding balance of more than \$7,000.00 with the Commission's Bureau of Consumer Services (BCS) at Case No. 003725299. On May 20, 2020, the BCS issued a decision report that dismissed the informal complaint because the balance was correct, and the Respondent complied with Commission regulations.² The Respondent requested that the Commission dismiss the Complaint.

By Hearing Notice dated August 18, 2020, the Complaint was scheduled for Initial Call-in Telephonic Hearing on Thursday, September 24, 2020 at 10:00 a.m. and was assigned to the undersigned. The Hearing Notice was eServed on the Respondent and emailed to the Complainant at the email address he provided in the Complaint.

A Prehearing Order issued by the undersigned was emailed to the Complainant and eServed on the Respondent on August 19, 2020. The Prehearing Order provided procedural rules, among other things, for the initial hearing. The Prehearing Order also stated that the Complaint may be dismissed if the Complainant failed to participate in the scheduled hearing.

The hearing convened as scheduled on September 24, 2020. Attorney Scott appeared representing the Respondent and was accompanied by one witness. Neither the Complainant nor a counsel for the Complainant appeared at the hearing. The evidentiary hearing

¹ The Complaint was served on the Respondent on July 29, 2020.

² This formal Complaint is a timely appeal from the BCS decision at BCS No. 003725299.

adjourned at about 10:02 a.m. to allow the Complainant to appear or to provide a reasonable excuse why he is unable to appear.

The hearing reconvened at approximately 10:17 a.m. Counsel for the Respondent moved to dismiss the Complaint for lack of prosecution. That Motion is granted pursuant to the ordering paragraphs below.

The record was closed upon receipt of the hearing transcript on October 6, 2020. The transcript contained six pages.

FINDINGS OF FACT

1. The Complainant is Patrick Jorett.
2. The Respondent is PECO Energy Company, a jurisdictional public utility that provides electric and gas services in the Commonwealth of Pennsylvania.
3. On June 15, 2020, a Complaint was filed with the Commission against the Respondent.
4. The Respondent efiled its Answer on August 17, 2020, which denied any wrongdoing.
5. On August 18, 2020, a Hearing Notice was emailed to the Complainant and eServed on the Respondent informing both parties of a scheduled Initial Call-in Telephonic Hearing on Thursday, September 24, 2020, at 10:00 a.m.
6. On August 19, 2020, a Prehearing Order was emailed to the Complainant and eServed on the Respondent advising both parties of the date and time of the scheduled hearing and informing them of the procedures applicable to the proceeding.

7. Neither the Complainant nor any counsel representing the Complainant appeared at the scheduled hearing on September 24, 2020.
8. The Complainant has not contacted the Commission about the hearing.
9. None of the documents emailed to the Complainant were returned as undeliverable.
10. The Complainant did not request a continuance or provide a statement of good cause for his failure to appear on the scheduled hearing date.

DISCUSSION

In this Complaint, the Complainant alleged that he was billed incorrectly for electric service from the Respondent. The issue in this proceeding is determined by whether the Complainant sustained his burden of proof. By failing to present evidence at the scheduled hearing, the Complainant was unable to meet this burden.

A. Applicable Law

The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This responsibility or accountability to the named utility must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

B. Complainant's Failure to Appear

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). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa.Cmwlth. 2016). 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).

The Hearing Notice and Prehearing Order for the September 24, 2020 hearing were sent to the Complainant at the email address that he provided. The Hearing Notice and Prehearing Order were not returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time of the scheduled September 24, 2020, hearing. *Zirkel, Morella*.

As the Commission noted in *Strydio v. PPL Elec. Utils. Corp.*, 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 and Prehearing Order advised the Complainant that his case could be dismissed if he did not call in and participate in the hearing.

To date, the Complainant has not contacted the Commission or the undersigned regarding the hearing. 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 and the Prehearing Order that he could lose his case if he did not participate in the hearing or present facts on the issues raised. 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. *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.

C. Conclusion

The Complainant failed to appear at the scheduled day, date, and time of the evidentiary hearing to prosecute his Complaint. The record evidence shows that the Complainant received notice of the scheduled hearing. The Complainant chose not to appear at the scheduled hearing. The Complainant has not communicated any reasonable cause why he failed to appear at the scheduled hearing. The Complainant's failure to appear at the scheduled hearing after notice was provided of the hearing is not excused and warrants the basis for dismissal of the Complaint. Therefore, the Motion of the Respondent to dismiss the matter without prejudice for failure to prosecute will be granted.

CONCLUSIONS OF LAW

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

2. The Complainant received notice of the hearing. *Chartiers Indus. and Commercial Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 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.Cmwlth. 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 Khadijah Scott, Esquire, counsel for PECO Energy Company, to dismiss the formal Complaint of Patrick Jorett at Docket No. F-2020-3021075 for lack of prosecution is granted.

2. That the formal Complaint of Patrick Jorett v. PECO Energy Company at Docket No. F-2030-3021075 is dismissed without prejudice.

3. That the Secretary's Bureau should mark this matter closed.

Date: October 20, 2020

_____/s/
Angela T. Jones
Administrative Law Judge