

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Temple of Bethel	:	
	:	
v.	:	C-2019-3013389
	:	
PECO Energy Company	:	

INITIAL DECISION ON REMAND

Before
Darlene D. Heep
Administrative Law Judge

INTRODUCTION

The Complaint is dismissed for the failure of the Complainant to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDINGS

On October 4, 2019, Temple of Bethel (Complainant) filed a Complaint alleging that Respondent PECO Energy Company (PECO, Respondent or Company) was threatening to shut off its service and that the Company did not honor the terms of a payment arrangement between the Company and the Complainant.

PECO filed an Answer on October 28, 2019. The Company denied all material allegations of fact and averred that the Company may terminate the service for failure to pay an outstanding balance.

On October 30, 2019, a Hearing Notice was mailed to all parties setting the hearing for December 11, 2019.

A Prehearing Order was issued on November 1, 2019, setting forth procedural guidelines for the hearing. Included in the Prehearing Order was notice that nonindividual parties must be represented by an attorney.

On November 21, 2019, a second Prehearing Order was issued that instructed the Complainant to have an attorney enter an Appearance on behalf of the Complainant no later than December 2, 2019, or the matter would be dismissed.

No attorney entered an appearance on behalf of the Complainant on or before December 2, 2019.

On December 2, 2019, PECO filed a Motion for Judgment on the Pleadings, asserting that the matter should be dismissed because the Complainant is a business and is not represented by counsel. Attached to the Motion was a Notice to Plead informing the Complainant that any response had to be filed within 20 days of service of the motion.

On December 3, 2019, a Hearing Cancellation of the hearing scheduled for December 11, 2019, was issued to the parties.

On or about December 18, 2019, the Minister Queen Khadiyah El Lazar sent a letter to the Commission, captioned "Amended Complaint," stating that the Complaint should have named the Minister rather than the Temple of Bethel as the Complainant. The Complainant stated that the property at issue is a row home residence and not a business, that the house is a parsonage for the Minister and her son, and that the case be addressed to an individual rather than a business.

On December 19, 2019, an Order was issued setting a telephonic prehearing conference with the parties for January 8, 2020 to discuss the appropriate parties to this matter.

On January 2, 2020, PECO filed an Answer to Amended Formal Complaint. PECO averred that the Complaint should not be amended to address Minister El Lazar rather than Temple of Bethel. PECO requested that the Commission deny the amended complaint because Minister El Lazar is not a licensed Pennsylvania attorney, nor an attorney licensed in another jurisdiction requesting *Pro Hac Vice* status.

On January 3, 2020, PECO refiled its Motion for Judgment on the Pleadings¹ stating that the matter should be dismissed because the Complainant failed to have an attorney enter an appearance.

On January 8, 2020, the telephonic prehearing conference was convened as scheduled. PECO appeared, represented by Counsel. Neither the Complainant nor a representative for the Complainant called in to the telephonic conference.

The record remained open until January 10, 2020 to allow the Complainant or a representative for the Complainant time to contact the Commission. Neither the Complainant nor a representative on the Complainant's behalf contacted the Commission.

On February 13, 2020, an Initial Decision dismissing the Complaint was issued because the Complainant did not comply with the order requiring representation by counsel and other orders issued in this matter, including calling into the January 8, 2020, conference.

No exceptions were filed; however, the Commission exercised its right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h). The Commission reversed the Initial Decision, and remanded the proceeding to the Office of Administrative Law Judge (OALJ) for further proceedings: The Commission stated:

The Complainant's actions of initially filing this case under a business name then later filing a letter naming an individual as the complainant has caused confusion. Nonetheless, because the

¹ The cover letter for the Motion for Judgment on the Pleadings stated PECO's original Motion contained an error.

requests for counsel may have dissuaded the Complainant from appearing at the Prehearing Conference, the matter should be remanded to the OALJ for hearing. We further note that, if fact finding is required regarding the appropriate rate for this customer's usage, that too can be conducted on remand. Under the circumstances of this case, we believe it is appropriate to remand this matter to the OALJ for further proceedings, as may be deemed necessary.

Temple of Bethel v. PECO Energy Co., Docket No. C- 2019-3013389 at 7 (Opinion and Order entered June 2, 2020).

Following remand, a Hearing Notice setting a telephonic hearing for October 29, 2020 was issued on October 1, 2020. This Hearing Notice was emailed to the Complainant at the email address provided by the Complainant. A Prehearing Order for the October 29, 2020, hearing was issued on October 6, 2020.

The Complainant did not call into the October 29, 2020 hearing. Counsel for PECO was present and moved that the matter be dismissed for failure to prosecute. The motion was taken under advisement.

In an effort to ensure that the Complainant had received the Hearing Notice and Prehearing Order, the matter was rescheduled for a further hearing on December 7, 2020. A Hearing Notice and Prehearing Order were emailed to the Complainant at the email address the Complainant provided, on November 10 and 12, 2020, respectively.

All Hearing Notices and Prehearing Orders advised the Complainant that the case could be dismissed if the Complainant did not call in and participate in the hearing.

The Complainant did not call in for the hearing on December 7, 2020. Counsel for PECO was present and moved that the matter be dismissed for failure to prosecute. The motion was taken under advisement.

The record is closed on December 10, 2020.

FINDINGS OF FACT

1. On October 4, 2019, Temple of Bethel filed a Complaint alleging that Respondent, PECO Energy Company, was threatening to shut off service and that the Respondent did not honor the terms of a payment arrangement.
2. PECO filed an Answer on October 28, 2019, denying all material allegations of fact.
3. On October 30, 2019, a Hearing Notice was mailed to all parties setting the hearing for December 11, 2019.
4. On November 1, 2019, a Prehearing Order was issued to all parties.
5. The Prehearing Order informed all parties that nonindividual parties must be represented by an attorney, pursuant to 52 Pa. Code §§ 1.21 and 1.22.
6. On November 21, 2019, a second Prehearing Order was issued that instructed the Complainant to have an attorney enter an Appearance on behalf of the Complainant no later than December 2, 2019, or the matter would be dismissed.
7. No attorney entered an appearance on behalf of the Complainant on or before December 2, 2019.
8. On December 2, 2019, PECO filed a Motion for Judgment on the Pleadings, asserting that the matter should be dismissed because the Complainant is a business and is not represented by counsel.
9. Attached to the PECO Motion for Judgment on the Pleadings was a Notice to Plead that informed the Complainant that any response had to be filed within 20 days of service of the motion.

10. On December 3, 2019, a Hearing Cancellation Notice of the hearing scheduled for December 11, 2019 was issued to the parties.

11. On or about December 18, 2019, the Minister Queen Khadiyah El Lazar sent a letter to the Commission, titled “Amended Complaint,” stating that the Complaint should have named the minister rather than the Temple of Bethel as the Complainant.

12. On December 19, 2019, an Order was issued setting a telephonic conference for January 8, 2020, to identify the appropriate parties to this matter.

13. On January 3, 2020, PECO refiled a Motion for Judgment on the Pleadings stating that the matter should be dismissed because the Complainant failed to have an attorney enter an appearance.

14. The telephonic conference began on January 8, 2020, as scheduled.

15. The Order for the telephonic prehearing conference was mailed to all parties and included a toll-free dial-in telephone number for the conference.

16. The Order for the telephonic prehearing conference which was mailed to the Complainant was not returned as undeliverable.

17. Counsel for PECO called into the January 8, 2020 scheduled telephone conference.

18. The Complainant did not call in to the January 8, 2020 telephone conference.

19. On February 13, 2020, an Initial Decision dismissing the Complaint with prejudice was issued, stating that the Complainant did not comply with the order requiring

representation by counsel and other orders issued in this matter, including calling in to the January 8, 2020, conference.

20. The Commission exercised its right to review and, by Opinion and Order on June 2, 2020, the Commission remanded the matter for further proceedings.

21. A Hearing Notice setting a telephonic hearing for October 29, 2020 was issued on October 1, 2020.

22. This Hearing Notice for the October 29, 2020 telephonic hearing was emailed to the Complainant at the email address provided by the Complainant.

23. A Prehearing Order for the October 29, 2020 hearing was issued on October 6, 2020 and emailed to the Complainant at the email address provided by the Complainant.

24. The Complainant did not call in to the October 29, 2020 hearing.

25. Counsel for PECO was present at the October 29, 2020 hearing and moved that the matter be dismissed for failure to prosecute and the motion was taken under advisement.

26. On November 10, 2020, the Complainant was emailed, at the email address provided by the Complainant to the Commission, a Further Hearing Notice for a telephonic hearing on December 7, 2020.

27. A Prehearing Order for the December 7, 2020 further hearing was issued on November 12, 2020 and emailed to the Complainant at the email address provided by the Complainant to the Commission.

28. The December 7, 2020 telephonic hearing convened as scheduled.

29. The Complainant did not appear for the December 7, 2020, hearing.

30. The hearing notices and prehearing orders issued for the October 29, 2020 and December 7, 2020 hearings each contained the date, time, dial-in number, and passcode to participate in the hearings as well as contact information for the Commission.

31. The hearing notices and prehearing orders issued for the October 29, 2020 and December 7, 2020 hearings advised the Complainant that the case could be dismissed if the Complainant did not call in and participate in the hearing.

32. None of the hearing notices or prehearing orders was returned as undeliverable.

33. Neither the Complainant nor a representative for the Complainant called in to the telephonic conference.

34. Neither the Complainant nor a representative for the Complainant has contacted the Commission since the scheduled hearing date.

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). 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. Phila. 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 Notices and Prehearing Orders for both the October 29, 2020 and December 7, 2020 hearings were sent to the Complainant at the email address that the Complainant provided to the Commission in compliance with the Commission's March 20, 2020, Emergency Order, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency issued by Pennsylvania Governor Wolf in response to the COVID-19 pandemic. *See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262 at 4 (Order entered March 20, 2020). The Notices and Orders were not returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time of the scheduled hearings. *Zirkel, Morella*.²

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 hearings and did not appear for the hearing on either October 29, 2020 or December 7, 2020. Additionally, the Hearing Notices and Prehearing Orders advised the Complainant that the case could be dismissed if the Complainant 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 Notices and the Prehearing Orders that the Complainant could lose the case for

² Counsel for PECO stated during the hearing on December 7, 2020 that the company had contacted the Complainant to discuss the matter and that the Complainant was aware of the date and time of the hearing.

failure to participate in the hearings 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. Therefore, the Motion of PECO Energy Company to dismiss the matter 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. & Commercial Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & Review*, 645 A.2d 944 (Pa.Cmwlth. 1994), *appeal denied*, 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, has failed to meet the burden of proving that the Complainant is eligible for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

