

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Khalid Paige	:	
	:	
v.	:	C-2020-3023163
	:	
PECO Energy Company	:	

INITIAL DECISION

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 November 24, 2020, Khalid Paige (Complainant) filed a Complaint alleging that there were incorrect charges on his bill from Respondent PECO Energy Company (PECO, Respondent or Company).

PECO filed an Answer on December 15, 2020. The Company denied all material allegations of fact and averred that the Complainant was associated with the property at the time the charges at issue were incurred.

Pursuant to an Interim Order issued by the Chief Administrative Law Judge, by Notice dated December 22, 2020, a Resolution Conference was to be held no later than January 19, 2021. The matter was not resolved.

On February 16, 2021, a Hearing Notice for a Telephonic Hearing was e-mailed to the Complainant at the address provided on the Complaint and e-served to the Respondent, setting the hearing for March 30, 2021, at 10:00 a.m. Included in the Hearing Notice were the date, time and dial-in information for the hearing.

Also on February 16, 2021, a Prehearing Order was issued and e-mailed to the Complainant at the address provided on the Complaint and e-served to the Respondent, setting forth procedural guidelines for the hearing. Included in the Prehearing Order was the date, time and dial-in information for the hearing.

Angela Lorenz, Esquire, filed a Notice of Appearance on behalf of PECO on March 17, 2021.

The telephonic hearing convened as scheduled on March 30, 2021. PECO appeared, represented by Ms. Lorenz. Neither the Complainant nor a representative for the Complainant called in to the telephonic hearing.

The record remained open until April 4, 2021 to allow the Complainant or a representative for the Complainant time to contact the Commission. To date, neither the Complainant nor a representative on the Complainant's behalf has contacted the Commission.

FINDINGS OF FACT

1. The Complainant is Khalid Paige.
2. The Respondent is PECO Energy Company.

3. On November 24, 2020, Khalid Paige filed a Complaint alleging that there were incorrect charges on his bill from Respondent PECO Energy Company.

4. PECO filed an Answer on December 15, 2020, denying all material allegations of fact alleged in the Complaint.

5. On February 16, 2021, a Hearing Notice was issued to all parties setting the hearing for March 30, 2021.

6. On February 16, 2021, a Prehearing Order was issued to all parties.

7. The telephonic hearing began on March 30, 2021, at 10:00 a.m., as scheduled.

8. The Hearing Notice and Prehearing Order were e-mailed to the Complainant at the address provided on the Complaint and e-served to the Respondent and included the date and time of the hearing and a toll-free dial-in telephone number.

9. The Hearing Notice and Prehearing Order were not returned as undeliverable to the Complainant.

10. The Hearing Notice and Prehearing Order advised the Complainant that the Complaint may be dismissed if the Complainant did not call in to the hearing.

11. The Complainant did not call in to the March 30, 2021 hearing.

12. Counsel for PECO was present at the March 30, 2021 hearing and moved that the matter be dismissed for failure to prosecute and the motion was taken under advisement.

13. 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. 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 Notice and Prehearing Order for hearing were sent to the Complainant at the email address that the Complainant provided to the Commission. The Notice and Order 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*.

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 telephonic hearing and did not appear. Additionally, the Hearing Notice and Prehearing Order 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 Notice and the Prehearing Order that the Complainant could lose the case for 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. W. 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. 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, 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Complaint filed by Khalid Page at Docket Number C-2020-3023163, is granted.
2. That the Complaint of Khalid Paige against PECO Energy Company at Docket Number C-2020-3023163, is dismissed.
3. That Docket Number C-2020-3023163 be marked closed.

Date: April 21, 2021

_____/s/
Darlene Davis Heep
Administrative Law Judge