

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kaillup Dmayo	:	
	:	
v.	:	F-2021-3028311
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

The Complainant did not appear for the hearing and the formal Complaint (Complaint) is dismissed for failure to prosecute.

HISTORY OF THE PROCEEDING

On August 23, 2021, Kaillup Dmayo (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company or Respondent). On the Complaint form, the Complainant requested a receipt for all payments that he made to the Company and a transcript of the telephone conversation with the PECO representative.

The formal Complaint is a timely appeal of a decision of the Bureau of Consumer Services (BCS) at Case No. 3786955 issued on July 1, 2021, which dismissed the Complainant's informal complaint.

PECO filed an Answer on September 17, 2021.¹ PECO denied all material allegations.

On September 24, 2021, an Initial Call-In Telephonic Hearing Notice was served on all parties, setting an Initial Telephonic Hearing for November 4, 2021, at 10:00 a.m. and the matter was assigned to me. The Hearing Notice indicated the following:

You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

A Prehearing Order was served on all parties on September 29, 2021, again informing the Complainant of the date and time of the hearing and providing procedural information. The Prehearing Order in the first paragraph also advised the Complainant that:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

Also, in the second paragraph, the Prehearing Order advised that:

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. Continuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing.

On October 29, 2021, the Complainant contacted the Office of Administrative Law Judge (OALJ) and requested a continuance of the hearing on November 4, 2021, due to issues he was having with his computer. PECO did not oppose the request.

¹ The Formal Complaint was served on PECO on September 2, 2021.

On October 29, 2021, a Cancellation/Reschedule Initial Telephonic Hearing Notice was issued which rescheduled the matter for an initial telephonic hearing for December 21, 2021, at 10:00 a.m. The Notice also included language which again warned the parties that their failure to appear for the hearing could result in the Complaint being dismissed and the procedure to request a continuance in the case.

The hearing began on December 21, 2021, at 10:18 a.m. Angela Lorenz², Esquire, called in on behalf of PECO. The Complainant did not call in for the hearing. Ms. Lorenz made an oral motion to dismiss on the record for the Complainant's failure to prosecute the Complaint.

The record closed on December 21, 2021, upon the filing of the transcript with the Secretary's Bureau. PECO's Motion to Dismiss for Failure to Prosecute is ready for a decision.

FINDINGS OF FACT

1. The Complainant is Kaillup Dmayo.
2. PECO Energy Company is the Respondent.
3. On August 23, 2021, the Complainant filed this action.
4. The Respondent filed an Answer on September 17, 2021.
5. On September 24, 2021, a Hearing Notice was served on all parties, setting an Initial Call-In Telephonic Hearing for November 4, 2021, at 10:00 a.m.

² Ms. Lorenz entered her appearance on behalf of PECO on December 15, 2021.

6. The Hearing Notice was served on the Complainant electronically to the email address provided by Complainant and was not returned as undeliverable.

7. A Prehearing Order was served on all parties on September 29, 2021, again informing the Complainant of the date and time of the hearing and providing procedural information.

8. The Complainant's continuance request dated October 29, 2021 was granted on the same date.

9. On October 29, 2021, a Cancellation/Reschedule Initial Telephonic Hearing Notice which rescheduled the matter for December 21, 2021, at 10:00 a.m., was electronically served on all parties to the email addresses provided by the parties.

10. The Cancellation/Reschedule Initial Telephonic Hearing Notice was EServed on the parties and included language which warned the parties that their failure to appear for the hearing could result in the Complaint being dismissed and the procedure to request a continuance in the case.

11. On the day of the hearing, PECO called in represented by counsel.

12. The Complainant did not call in for the hearing.

13. The Complainant has not contacted the Commission about the hearing.

14. None of the documents served on the parties were returned as undeliverable to the Office of Administrative Law Judge.

15. The Complainant did not request a continuance or provide a statement of "good cause" for his absence on 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 mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Indus. & Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & Review*, 645 A.2d 944 (Pa. Cmwlth. 1994). Further, service which is not indicated undeliverable is considered presumed to be received by the parties. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974) (*Berkowitz*); *Geary v. Verizon Pa. Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered September 16, 2010).

The Cancellation/Reschedule Initial Telephonic Hearing Notice was EServed on the Complainant. The Cancellation/Reschedule Notice contained information regarding the date, time and call-in information for the hearing. Further, the Complainant had previously received a Hearing Notice and Prehearing Order which explained the procedures for the hearing and requesting a continuance and warned that failure to participate in the hearing could result in the Complaint being dismissed. These documents were served on the Complainant to the places indicated in his Complaint and the documents were not returned as undeliverable. It is therefore deemed that the Complainant received these documents and had notice of the date and time of the scheduled hearing. *Berkowitz*.

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 (Opinion and Order entered January 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Complainant was notified of the scheduled hearing and did not appear. To date, the Complainant has not contacted the Commission or the undersigned regarding this 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. As the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. 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.

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. & Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & Review*, 645 A.2d 944 (Pa. Cmwlth. 1994), *app. 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 and did not present any evidence and, therefore, he failed to meet his burden of proving entitlement to the relief that is 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 Kaillup Dmayo at Docket No. F-2021-3028311 is granted.
2. That the Complaint of Kaillup Dmayo against PECO Energy Company at Docket No F-2021-3028311 is dismissed with prejudice.
3. That Docket No. F-2021-3028311 be marked closed.

Date: March 21, 2022

_____/s/
Marta Guhl
Administrative Law Judge