

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Julian Nix	:	
	:	
v.	:	C-2021-3029791
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Julian Nix against PECO Energy Company with prejudice because the Complainant failed to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On November 19, 2021, Julian Nix (Complainant) 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 checkmarks in the boxes indicating: “The utility is threatening to shut off my service or has already shut off my service;” and “Incorrect charges are on my bill.”

On December 15, 2021, PECO filed an Answer to the Complaint. In its Answer, PECO either admitted or denied the various averments of the Complaint and requested that the Complaint be dismissed.

By Initial Call-In Telephonic Hearing Notice dated December 16, 2021, a telephonic hearing was scheduled for January 27, 2022, at 10:00 a.m., and the matter was assigned to me. The Notice advised that the Complainant could lose the case for failure to participate in the hearing or present facts on the issues raised.

I issued a Prehearing Order on December 21, 2021. The Prehearing Order reminded the parties of the date and time of the hearing, directed the parties to comply with various procedural requirements, and advised that the Complainant could lose the case for failure to participate in the hearing or present facts on the issues raised.

The hearing began on January 27, 2022, at 10:00 a.m., as scheduled. Counsel for the Respondent called in with a witness available to testify. The Complainant failed to call in to the hearing. The Complainant was given an additional ten minutes to call and participate in the hearing 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 February 9, 2022, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Julian Nix.
2. The Respondent is PECO Energy Company.
3. On November 19, 2021, the Complainant filed a Complaint with the Commission against the Respondent.

4. On December 15, 2021, the Respondent filed an Answer to the Complaint.
5. By Initial Call-In Telephonic Hearing Notice dated December 16, 2021, a telephonic hearing was scheduled for January 27, 2022, at 10:00 a.m.
6. On December 21, 2021, I issued a Prehearing Order reminding the parties of the date and time of the scheduled hearing.
7. The Hearing Notice and Prehearing Order were served on 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.
8. The Hearing Notice and Prehearing Order were not returned as undeliverable to the Complainant.
9. 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.
10. The telephonic hearing began on January 27, 2022, at 10:00 a.m., as scheduled.
11. The Complainant did not call in to the January 27, 2022, hearing.
12. Counsel for PECO was present at the January 27, 2022, 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. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017).

The Notice and Prehearing Order for the January 27, 2022, hearing were served on the Complainant at the address that the Complainant provided to the Commission. The 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 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 (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 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 nor 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 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. 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 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. & Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & 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 appear and participate in 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 Julian Nix against PECO Energy Company at Docket Number C-2021-3029791, is granted.
2. That the Complaint of Julian Nix against PECO Energy Company at Docket Number C-2021-3029791, is dismissed with prejudice.
3. That Docket Number C-2021-3029791 be marked closed.

Date: March 28, 2022

/s/
F. Joseph Brady
Administrative Law Judge