

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Colin Brown	:	
	:	
v.	:	C-2021-3027779
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

The Complainant refused to participate in the hearing and the formal complaint is dismissed for failure to prosecute.

**HISTORY OF THE PROCEEDING**

On August 9, 2021, Colin Brown (Complainant) filed a formal complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company or Respondent). On the Complaint form, the Complainant states that there are incorrect charges on his bills, and that the utility is threatening or had already shut off his service.

PECO filed an Answer on August 19, 2021.<sup>1</sup> PECO denied all material allegations of fact.

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<sup>1</sup> The Formal Complaint was served on PECO by the Secretary's Bureau on August 11, 2021.

On September 7, 2021, the Complainant filed a reply to the Answer.

On September 10, 2021, an Initial Call-In Telephonic Hearing Notice was served upon all parties, setting an Initial Telephonic Hearing for November 2, 2021, at 10:00 a.m. and the matter was assigned to me. The Hearing Notice indicated the following:

[y]ou 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 upon all parties on September 10, 2021, again informing the Complainant of the date and time of the hearing and providing procedural information. 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 25, 2021, the Complainant sent an electronic message, requesting a continuance of the hearing in the matter due to a conflict in the schedule because his wife is a witness in the case and has an obligation to the Board of Elections on November 2, 2021. The Respondent did not oppose the continuance request and I granted the continuance via an Order dated October 29, 2021.

On October 29, 2021, a Cancellation Notice was issued for the November 2, 2021 hearing date.

On November 15, 2021, a new Initial Telephonic Hearing Notice was issued and served on the parties and indicated that the initial hearing was rescheduled for December 16, 2021, at 10:00 a.m.

On December 13, 2021, the Complainant faxed a continuance request to the Respondent<sup>2</sup> and requested that the December 16, 2021 hearing be rescheduled because his wife was undergoing a medical procedure and would not be able to attend the hearing. The Respondent did not oppose the request. I subsequently granted the request.

By Cancellation Reschedule Notice<sup>3</sup> served on December 15, 2021, the December 16, 2021 telephonic hearing was cancelled and rescheduled for February 1, 2022, at 10:00 a.m.

The hearing began on February 1, 2022 as scheduled. The Complainant and his wife, Vanessa James Brown, called-in for the hearing. Khadijah Scott, Esquire, called in on behalf of PECO.

At the time of the hearing, the Complainant and his wife requested another continuance of the matter so they could obtain counsel. Tr. 4. Counsel for PECO objected to the request, indicating that the matter had already been continued twice at the Complainant's request and that PECO had its witnesses present and ready to move forward with the hearing. Tr. 5. PECO's counsel also stated that the Complainant had ample time to find an attorney and have them enter an appearance on their behalf and did not have good cause for requesting a continuance on the day of the hearing. Tr. 5. I noted that the hearing notice was sent to the parties on December 15, 2021 and the Complainant had ample time to obtain counsel in this matter as the formal complaint was filed in August 2021. Tr. 6. The Complainant and his wife indicated that they were focusing on health issues and did not provide an explanation as to why they failed to request a continuance prior to the hearing as they had done previously. Tr. 5. I denied the request for a further continuance at that time and explained that the hearing would move forward. Tr. 6. I explained that the Complainant and his wife could present testimony at

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<sup>2</sup> Respondent forwarded the correspondence to my office on the same date.

<sup>3</sup> The Notice contained the following information:

**REPRESENTATION.** If you are an individual, you may represent yourself or you may have an attorney represent you. All others, including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented by an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*. Only an attorney may represent someone else.

Language to this effect was also contained in the prior hearing notices and the Prehearing Order.

the hearing and cross-examine PECO's witnesses. Tr. 9. The Complainant and his wife indicated that they would not participate in the hearing but would stay on the line to listen. Tr. 13-14.

Counsel for PECO requested that they be allowed to present their witnesses and exhibits since the witnesses were present and prepared to testify. I allowed Counsel to do so and provided the Complainant with an opportunity to cross-examine the witnesses. PECO presented the testimony of James Jones, who works for Grid One Solutions as a meter technician; Richard King, a Billing Manager; and Deda Ather, a Regulatory Assessor; and submitted eight exhibits which were entered into the record.

The record closed on February 14, 2022, upon the filing of the transcript with the Secretary's Bureau.

#### FINDINGS OF FACT

1. The Complainant is Colin Brown.
2. The Respondent is PECO Energy Company.
3. On August 9, 2021, the Complainant filed this action.
4. The Respondent filed an Answer on August 19, 2021.
5. On September 10, 2021, an Initial Call-In Telephonic Hearing Notice was served upon all parties, setting an Initial Telephonic Hearing for November 2, 2021, at 10:00 a.m. and the matter was assigned to me.
6. A Prehearing Order was served upon all parties on September 10, 2021, again informing the Complainant of the date and time of the hearing and providing procedural information.

7. On October 25, 2021, the Complainant sent an electronic message, requesting a continuance of the hearing in the matter due to a conflict in the schedule because his wife is a witness in the case and has an obligation to the Board of Elections on November 2, 2021.

8. The Respondent did not oppose the continuance request and I granted the continuance via an Order dated October 29, 2021.

9. On November 15, 2021, a new Initial Telephonic Hearing Notice was issued and served on the parties and indicated that the initial hearing was rescheduled for December 16, 2021, at 10:00 a.m.

10. On December 13, 2021, the Complainant faxed a continuance request to the Respondent<sup>4</sup> and requested that the December 16, 2021 hearing be rescheduled because his wife was undergoing a medical procedure and would not be able to attend the hearing.

11. The Respondent did not oppose the second request for a continuance and I subsequently granted the request.

12. On December 15, 2022, a Cancellation/Reschedule Notice was issued and served on the parties which indicated that a new hearing date was set for February 1, 2022.

13. The Hearing Notices and Prehearing Order contained language that indicated that, as an individual, the Complainant could represent himself or that he may have an attorney represent him at the hearing.

14. On the day of the hearing, PECO was present and represented by counsel.

15. On the day of the hearing, PECO had three witnesses present and was prepared to move forward with the hearing.

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<sup>4</sup> Respondent forwarded the correspondence to my office on the same date.

16. On the day of the hearing, the Complainant requested a further continuance to obtain counsel. Tr. 4.

17. The Complainant made two prior continuance requests which were granted in this matter.

18. PECO objected to the Complainant's further continuance request. Tr. 5.

19. The Complainant and his wife indicated that they were focusing on health issues and did not provide an explanation as to why they failed to request a continuance prior to the date of the hearing as they had done previously. Tr. 5.

20. I denied the request for a further continuance at that time and explained that the hearing would move forward. Tr. 6.

21. I explained that the Complainant and his wife could present testimony at the hearing and cross-examine PECO's witnesses. Tr. 9.

22. The Complainant and his wife indicated that they would not participate in the hearing but would stay on the line to listen. Tr. 13-14.

### DISCUSSION

The Commission's Rule of Administrative Practice and Procedure at 52 Pa. Code § 1.15(b) states that, "Only for good cause shown will requests for continuance be considered." According to the Prehearing Order issued on September 13, 2021, to request a continuance, a party must submit a written request (a "motion") at least five (5) days before the hearing.

On the day of the hearing, the Complainant requested a further continuance to obtain counsel. The Complainant made two prior continuance requests which were granted in this matter. PECO objected to the Complainant's further continuance request. Tr. 5. The Complainant and his wife indicated that they were focusing on health issues and did not provide

an explanation as to why they failed to request a continuance prior to the date of the hearing as they had done previously. Tr. 5.

The Complainant filed his formal complaint on August 9, 2021. An initial hearing notice was served on September 10, 2021 for a hearing on November 2, 2021. The Complainant made a request for a continuance of that hearing prior to the hearing and that request was granted and the matter was postponed until December 16, 2021. Again, the Complainant requested a continuance prior to the December 16, 2021 hearing date and that request was granted and the matter was again postponed until February 1, 2022. The Complainant waited until the day of the hearing to make a third continuance request to obtain counsel. The Complainant had been aware that the hearing was scheduled to take place on February 1, 2022 since December 15, 2021. Further, the Complainant was aware that a hearing was to be held in this case since the initial hearing notice was served on September 10, 2021. The Complainant made no indication that he wished to obtain counsel prior to the hearing on February 1, 2022. Further, he was aware of the proper procedure to request a continuance as he had done so twice before. The Complainant provided no explanation beyond the vague statement that he and his wife were focused on health issues and did not explain why they did not request a continuance prior to the hearing date. PECO was present for the hearing and prepared their witnesses to testify. As such, I determined that there was not good cause for the continuance request and I denied the request for a further continuance at that time. Tr. 6.

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).

As the Commission noted in *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2633043, 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 called in for the hearing. After I denied the continuance request, I explained that the hearing would move forward and explained the process. Tr. 6. I stated that the Complainant and his wife could present testimony at the hearing and cross-examine PECO's witnesses. Tr. 9. However, the Complainant refused to participate in the hearing after his continuance was denied. Tr. 13-14.

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 appearing for the hearing and refusing to proffer any evidence to support the Complaint, the Complainant has failed to meet his 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 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).
3. 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 refused to participate in the hearing and refused to 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 Complaint of Colin Brown against PECO Energy Company at Docket No. C-2021-3027779 is dismissed.
2. That Docket No. C-2021-3027779 be marked closed.

Date: May 11, 2022

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/s/  
Marta Guhl  
Administrative Law Judge