

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Charles J. Schoefer	:	
	:	
v.	:	F-2021-3029795
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Charles J. Schoefer against PECO Energy Company because the Complainant failed to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On November 24, 2021, Charles J. Schoefer (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility is threatening to shut off his electric service, and that there are incorrect charges on his bill.¹ As relief, the Complainant requests that the Commission order PECO to reopen to the public its office at 3301 Market Street in Philadelphia or remove from its bills any instructions that direct customers to make in-person payments at that address.

¹ This complaint is an appeal of a Commission Bureau of Consumer Services (BCS) informal complaint at BCS No. 3796477.

On December 17, 2021, PECO filed an Answer denying the material allegations of the Complaint.

By Initial Call-In Telephonic Hearing Notice dated December 20, 2021, a telephonic hearing was scheduled for February 10, 2022, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in bold capital letters: “**FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.**”

On January 18, 2022, I issued a Prehearing Order directing the parties to comply with various procedural requirements. The Prehearing Order warned in bold and capital type: “**FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**”

The Hearing Notice and the Prehearing Order were served on the Complainant by electronic mail at the email address listed in the Complaint, pursuant to Commission orders related to the COVID-19 pandemic.² None of the emails sent by the Commission to the Complainant were returned as undeliverable.

The initial hearing began on February 10, 2022, as scheduled. Counsel for the Respondent called-in with a witness available to testify. The Complainant failed to call-in. The Complainant was given an additional ten minutes to call-in but failed to do so. During the recess, it came to light that a note in the electronic file for this case instructed the parties and the

² The Commission issued an Order on March 20, 2020, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. *See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262, at 4 (March 20, 2020). By Order entered September 15, 2021, the Commission used its general regulatory authority to waive the service requirements set forth in the Commission’s regulations at 52 Pa Code §§ 1.53 and 1.54 thereby continuing to permit electronic service by the Commission on all parties, regardless of whether a particular party has agreed to electronic service. *See, Waiver of Regulations Regarding Service Requirements*, M-2021-3028321, at 7 (September 15, 2021). By Order entered March 10, 2022, the Commission extended the waiver of service requirements to October 1, 2022. *See, Waiver of Regulations Regarding Service Requirements*, M-2021-3028321, at 4 (March 10, 2022).

Commission to serve Mr. Schoefer via regular mail only because he was unable to access electronic documents. I informed PECO's counsel of this development and scheduled a new hearing date.

By Further Call-In Telephonic Hearing Notice issued on February 10, 2022, a new telephonic hearing was scheduled for February 25, 2022, at 10:00 a.m. The Further Call-In Telephonic Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in bold capital letters: "**FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.**"

Also on February 10, 2022, I issued a second Prehearing Order directing the parties to comply with various procedural requirements. The Prehearing Order warned in bold and capital type: "**FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**" Both of these documents were served on Mr. Schoefer via regular first-class mail at the address he listed in his formal Complaint. Neither of these documents were returned to sender as undeliverable.

The further hearing began on February 25, 2022, as scheduled. Counsel for the Respondent called-in with a witness available to testify. The Complainant failed to call-in. The hearing reconvened at approximately 10:13 a.m. after I confirmed that the Complainant had not called or otherwise shown good cause not to appear at the scheduled hearing. 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. That Motion is granted pursuant to the ordering paragraphs below.

The record closed on March 15, 2021, upon receipt of the further hearing transcript.

FINDINGS OF FACT

1. The Complainant is Charles J. Schoefer, whose mailing address is 327 Winona Street, Philadelphia, PA 19144 (service address).
2. The Respondent is PECO Energy Company.
3. On November 24, 2021, the Complainant filed a Complaint with the Commission against the Respondent.
4. On December 17, 2021, the Respondent filed an Answer to the Complaint.
5. By Initial Call-In Telephonic Hearing Notice dated December 20, 2021, a telephonic hearing was scheduled for February 10, 2022, at 10:00 a.m.
6. By Prehearing Order dated January 18, 2022, the parties were directed to comply with various procedural requirements.
7. The Hearing Notice and the Prehearing Order were served on the Complainant by electronic mail at the email address listed in the Complaint, pursuant to Commission orders related to the COVID-19 pandemic.
8. The Complainant failed to appear at the February 20, 2022 hearing.
9. By Further Call-in Hearing Notice issued on February 10, 2022, a new telephonic hearing was scheduled for February 25, 2022, at 10:00 a.m.
10. The Further Call-in Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in bold capital letters: “**FAILURE TO APPEAR:** You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

11. A Second Prehearing Order was issued on February 10, 2022, directing the parties to comply with various procedural requirements.

12. The Second Prehearing Order warned in bold and capital type: **“FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”**

13. The Further Call-in Telephonic Hearing Notice and the Second Prehearing Order were served on Mr. Schoefer via regular first-class mail at the address he listed in his formal Complaint.

14. Neither the Further Call-in Telephonic Hearing Notice nor the Second Prehearing Order were returned as undeliverable.

15. The Complainant failed to appear at the February 25, 2022 hearing.

16. The Complainant did not request a continuance or withdraw the Complaint.

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). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the 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. *See Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Chartiers Indus. & Com. Dev. Authority v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & Review*, 645 A.2d 944 (Pa. Cmwlth. 1994), *appeal denied*, 653 A.2d 1234 (1994); *Geary v. Verizon Pa. Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered September 16, 2010).

By Initial Call-In Telephonic Hearing Notice dated December 20, 2021, a telephonic hearing was scheduled for February 10, 2022, at 10:00 a.m., and the matter was assigned to me. A Prehearing Order was issued on January 18, 2022, directing the parties to comply with various procedural requirements. The Hearing Notice and the Prehearing Order were served on the Complainant by electronic mail at the email address listed in the Complaint.

After it came to light that Mr. Schoefer had requested to be served via regular mail only due to difficulties with electronic mail, a new hearing date was scheduled to accommodate Mr. Schoefer's request.

By Further Call-In Telephonic Hearing Notice issued on February 10, 2022, the telephonic hearing was scheduled for February 25, 2022, at 10:00 a.m. The Further Call-In Telephonic Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in bold capital letters: "**FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.**"

Also on February 10, 2022, I issued a second Prehearing Order directing the parties to comply with various procedural requirements. The Prehearing Order warned in bold and capital type: "**FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**" Both of these documents were served on Mr. Schoefer via regular mail at the address he listed in his formal Complaint. Neither document was returned to the Commission as undeliverable by the post office. It is therefore deemed that the Complainant had notice of the date and time and participation information for the February 25, 2022 further hearing. *See Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Chartiers Indus. & Com. Dev. Authority v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & Review*, 645 A.2d 944 (Pa. Cmwlth. 1994), *appeal denied*, 653 A.2d 1234 (1994); *Geary v. Verizon Pa. Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered September 16, 2010). Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the hearing. To date, the Complainant provided no further information regarding why he did not appear at the February 25, 2022 hearing.

As the Commission noted in *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2633043 (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." *Id.*, at 6 (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 for the hearing. Additionally, the February 10, 2022, Further Hearing Notice and Second Prehearing Order advised the Complainant that the case could be dismissed for failure to call-in and participate in the hearing. Thus, 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. 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 on this basis as well. *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 of 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 participate in the hearing, failed to appear for the hearing, did not present any evidence and, therefore, failed to meet the Complainant's burden of proving eligibility 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 formal Complaint filed by Charles J. Schoefer at Docket No. F-2021-3029795 is granted.

2. That the formal Complaint of Charles J. Schoefer against PECO Energy Company at Docket No. F-2021-3029795 is dismissed with prejudice.

3. That Docket No. F-2021-3029795 is marked closed.

Date: June 9, 2022

/s/
Eranda Vero
Administrative Law Judge