

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Scott V. Carter, Sr.

v.

PECO Energy Company

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C-2022-3030542

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On January 19, 2022, Scott V. Carter, Sr. (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission against PECO Energy Company (PECO or Respondent). On the Complaint form, Mr. Carter states that he is an electric customer of PECO, that there are incorrect charges on his bill and that the utility is threatening to shut off his service.

On February 14, 2022, Respondent filed its Answer, denying the material averments of the Complaint and stating that the bills sent to the Complainant are correct.

On February 23, 2022, a Hearing Notice was served on all parties, setting an Initial Telephonic Hearing for March 31, 2022.

On February 24, 2022, a Pre-hearing Order was served. The Pre-hearing Order advised the Complainant of the procedures and also stated the date and time of the hearing.

The hearing was not held on March 31, 2022 due to my understanding that a Certificate of Satisfaction had been filed.¹ On March 31, 2022, a Telephonic Hearing Cancellation/Reschedule Notice was issued and served upon the parties setting a hearing for April 6, 2022, PECO requesting that the matter be reset for hearing as soon as possible.

The Complainant was served a copy of the April 6, 2022 hearing notice by the Secretary's Bureau. Additionally, on March 31, 2022, my Legal Assistant emailed a copy of the hearing notice to the Complainant. In the email with the hearing notice, Mr. Carter was advised that should he require a continuance, he should make the request in writing no later than April 5, 2022. No request for continuance was submitted or emailed.

The hearing began as scheduled on April 6, 2022, at 10:00 a.m. Khadijah Scott, Esquire, represented PECO. The Complainant did not call in for the hearing and PECO moved that the matter be dismissed for failure to prosecute. That motion was taken under advisement.

Following receipt and review of the April 6, 2022 hearing transcript, given the short notice on March 31, 2022 for an April 6, 2022 hearing, I determined that Mr. Carter should have another opportunity to be heard. On May 9, 2022, a Further Telephonic Hearing Notice was issued that scheduled a hearing for June 9, 2022 at 10:00 a.m.

¹ PECO contacted my office to determine the status of the case shortly after 10:00 a.m. on March 31, 2022. PECO had called in using the provided dial-in number on the date and time originally set for the hearing. The Complainant did not call in on that morning or otherwise contact the Commission regarding the March 31, 2022 hearing date. The Complainant also did not answer a call that I made to him on the morning of March 31, 2022.

The June 9, 2022 hearing convened as scheduled. Attorney Scott represented PECO. The Complainant did not call in to the hearing. PECO moved that the Complaint be dismissed for failure to prosecute.

The record closed as of June 22, 2022.

FINDINGS OF FACT

1. The Complainant is Scott V. Carter, Sr., who is a PECO Energy Company electric customer in Westchester, Pennsylvania.
2. PECO Energy Company is the Respondent.
3. On January 19, 2022, the Complainant filed this action.
4. The Respondent filed an Answer on February 14, 2022.
5. On February 23, 2022, a Hearing Notice was served to all parties, setting an Initial Telephonic Hearing for March 31, 2022.
6. On February 24, 2022, a Pre-hearing Order was issued and served on the Complainant advising him of the procedures and the date and time of the hearing and also stated:

[f]AILURE 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.
7. On March 31, 2022, a Telephonic Hearing Cancellation/Reschedule Notice was served upon the parties setting a hearing for April 6, 2022.

8. All hearing notices issued to the Complainant advised:

[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.

9. The Secretary’s Bureau served the Complainant a copy of the notice for the April 6, 2022 hearing and a copy was also emailed to the Complainant by my Legal Assistant.

10. The email containing the copy of the April 6, 2022 hearing notice also advised the Complainant that if he required a continuance of the hearing, he should submit a request in writing no later than April 5, 2022.

11. The Complainant did not submit a request to continue the April 6, 2022 hearing.

12. The hearing began as scheduled on April 6, 2022, at 10:00 a.m. and PECO was represented by counsel.

13. The Complainant did not call in for the April 6, 2022 hearing.

14. On May 9, 2022, a Further Telephonic Hearing Notice was served scheduling a hearing for June 9, 2022 at 10:00 a.m.

15. The Further Telephonic Hearing Notice also advised the Complainant that failure to take part in the hearing may result in dismissal of the case.

16. The June 9, 2022 hearing convened as scheduled and PECO was represented by counsel.

17. The Complainant did not call in to the June 9, 2022 hearing.

18. Because the Complainant was not present when the June 9, 2022 hearing began, a ten-minute recess was taken to allow the Complainant time to call in to the hearing.

19. The Complainant did not call into the hearing following the recess.

20. The Hearing Notices and Prehearing Order were served electronically on the parties to the email addresses provided by the parties in the pleadings.

21. None of the documents served to the parties were returned as undeliverable to the Office of Administrative Law Judge (OALJ).

22. The Complainant did not request a continuance or provide a statement of "good cause" for his absence regarding the scheduled hearing.

DISCUSSION

As the party seeking affirmative relief from the Commission, the burden of proof is on the Complainant. 66 Pa.C.S. § 332(a).

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). Further, electronic service not indicated undeliverable is presumed to be received by the parties. *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016) (*Morella*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

Several Hearing Notices and a Prehearing Order were sent to the Complainant. The Hearing Notices contained information regarding the date, time and call-in information for the hearings. These documents were served upon the Complainant and none were returned as undeliverable. It is therefore deemed that the Complainant received these documents and had notice of the date and time of the scheduled hearings. *Morella*.

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 did not appear. To date, the Complainant has not contacted the Commission or my office 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 with prejudice. *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 parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. As the Complainant, Mr. Carter had the burden of proof and failed to carry that burden. 66 Pa.C.S. § 332(a).

3. The Complainant received notice of the hearing. *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

4. 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).

5. By failing to appear and be heard on this Complaint, Complainant waived the opportunity to participate in the hearing. 52 Pa. Code § 5.245(a); *Moon v. UGI Utils., Inc.*, 1995 Pa. PUC LEXIS 159.

6. Mr. Carter has failed to meet his burden of proving that he is entitled to the relief sought from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the June 9, 2022 Motion of PECO Energy Company to dismiss the formal Complaint of Scott V. Carter, Sr. at Docket No. C-2022-3030542 is granted.

2. That the formal Complaint filed by Scott V. Carter, Sr. against PECO Energy Company at Docket No. C-2022-3030542 is dismissed with prejudice for failure to prosecute.

3. That the Secretary's Bureau should mark this matter closed.

Date: July 26, 2022

_____/s/_____
Darlene Heep
Administrative Law Judge