

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jerome Ward	:	
	:	
v.	:	C-2022-3032111
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Jerome Ward against PECO Energy Company with prejudice because he failed to prosecute his Complaint.

HISTORY OF THE PROCEEDING

On April 15, 2022, Jerome Ward (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 “I would like a payment agreement,” “I am having a reliability, safety or quality problem with my utility service,” and “[o]ther.” The Complainant also alleged in an attachment that PECO did not provide him with bills for several months, and that he was fraudulently enrolled with Synergy, an electric generation supplier (EGS). Under the “requested relief” section of his Complaint, the Complainant requested to have a Low-Income Home Energy Assistance Program (LIHEAP) applied towards his account.

On May 9, 2022, the Respondent filed an Answer to the Complaint.

By Initial Telephonic Hearing Notice dated May 11, 2022, an initial call-in telephonic hearing was scheduled for June 30, 2022 at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing and warned of the following:

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. 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.

I issued a Prehearing Order on May 17, 2022. The Prehearing Order also advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing. Additionally, the Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. It also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on June 30, 2022. Counsel for PECO called in for the telephonic hearing with a witness and was prepared to proceed. Mr. Ward did not call in for the telephonic hearing, nor had he contacted my office to indicate that he would or would not appear for his scheduled hearing.

Because a customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint,

I deemed Mr. Ward's failure to call in at the date and time of the scheduled telephonic hearing as evidence that he did not wish to participate in the hearing.

No witnesses were presented and no exhibits were introduced into the record. Respondent's counsel moved that the Complaint be dismissed with prejudice 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 July 14, 2022, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Jerome Ward.
2. The Respondent is PECO Energy Company.
3. By Initial Telephonic Hearing Notice issued on May 11, 2022, a call-in telephonic hearing was scheduled for June 30, 2022, at 10:00 a.m.
4. On May 17, 2022, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.
5. The Hearing Notice and the Prehearing Order were served upon the Complainant at the email address he provided on his formal Complaint.
6. Neither the Hearing Notice nor the Prehearing Order served upon the Complainant were returned as undeliverable.
7. The Complainant failed to call in for the June 30, 2022 hearing.

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). However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard. *Id.* The Complainant had adequate notice of the time and date of the hearing, yet he failed to call in for, or explain why he could not attend, the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

The Commission emailed notice of the June 30, 2022 hearing in this case to the Complainant on May 11, 2022. This notice informed the parties of the date and time of the hearing, as well as how to call in for the hearing. To my knowledge, this notice was never returned to the sender or the scheduling staff for the Office of Administrative Law Judge (OALJ).

In addition, I issued a prehearing order dated May 17, 2022, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. The prehearing order, which was also emailed to the Complainant, was never returned as undeliverable. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. *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).

The Complainant did not call in for the scheduled hearing. Under the circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

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 his requested relief. By failing to participate and proffer any evidence to support his Complaint, the Complainant has failed to meet his burden. Under these circumstances, the Complaint should be dismissed. *Little v. PWSA*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *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 subject matter of the dispute. 66 Pa.C.S. § 701.

2. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

3. By failing to appear for the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet his burden of proving that he is entitled to the relief that he seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Jerome Ward against PECO Energy Company at Docket C-2022-3032111, is dismissed with prejudice.
2. That the Secretary mark this docket closed.

Date: August 10, 2022

_____/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge