

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Paul Sablich

v.

PECO Energy Company

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C-2022-3033148

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision grants the Respondent’s motion to dismiss the Formal Complaint for failure to prosecute because the Complainant failed to appear for the hearing.

HISTORY OF THE PROCEEDING

On June 6, 2022, Paul Sablich (Mr. Sablich or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission against PECO Energy Company (PECO). In his complaint, Mr. Sablich asserted that there was “Discrimination of service based on placement of electric transformers on neighbors [sic] property and not for our home.” Complaint p. 2.

On July 7, 2022, PECO filed an answer to the Complaint. In its answer, PECO admitted or denied the various averments made by Mr. Sablich. Specifically, PECO stated that the Complainant was seeking that a transformer be installed in a “non-standard location.”

An Interim Order Setting Resolution Conference was issued on July 7, 2022. A Telephonic Mediation Notice was issued on July 19, 2022, setting a mediation session for August 12, 2022.

The matter was not resolved and on August 15, 2022, an Initial Call-In Telephone Hearing Notice was issued for the hearing to be held on October 6, 2022 beginning at 10:00 a.m. A Prehearing Order was also issued on August 15, 2022.

The hearing convened on October 6, 2022, as scheduled. Khadijah Scott, Esquire, along with three witnesses available to testify, appeared on behalf of PECO. No one appeared on behalf of Mr. Sablich.

The record in this case consists of the hearing transcript of 9 pages. The record closed in this proceeding when the transcript was filed with the Commission on October 12, 2022. This Initial Decision grants the motion PECO made at the conclusion of the hearing to dismiss the Complaint for failure to prosecute.

FINDINGS OF FACT

1. The Complainant in this case is Paul Sablich.
2. The Respondent in this case is PECO Energy Company.
3. On June 6, 2022, Paul Sablich filed a Complaint with the Pennsylvania Public Utility Commission against PECO.
4. On July 6, 2022, PECO filed an answer to the Complaint.
5. On August 15, 2022, an Initial Call-In Telephone Hearing Notice was issued for a hearing to be held on October 6, 2022 beginning at 10:00 a.m.
6. A Prehearing Order was also issued on August 15, 2022.

7. Both the hearing notice and the prehearing order stated that the hearing is to begin at 10:00 a.m., provided the dial-in information and indicated that a party may lose the case if the party does not appear and take part in the hearing.

8. Both the hearing notice and the prehearing order were served upon the parties at the email address provided by the parties to the Commission.

9. Neither the hearing notice nor the prehearing order served upon the complainant were returned to the Commission as undeliverable.

10. No one called in to the hearing on behalf of Mr. Sablich at the designated date and time as instructed on the hearing notice. Tr. 4.

11. A recess was taken to allow Mr. Sablich or a representative an opportunity to call-in and he nor a representative had called into the hearing by the time that the hearing adjourned at 10:22 a.m. Tr. 7-8.

12. The Complainant has not contacted the Commission to explain why his failure to appear at the hearing was unavoidable.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

In this proceeding, the Complainant challenged where PECO placed transformers on his property and the property of his neighbors. Mr. Sablich, therefore, has the burden of proof in this proceeding.

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 when the parties are accorded notice and the opportunity to be heard. *Id.*; *see also, J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016).

The prehearing order and hearing notice were both sent to Mr. Sablich at the email address provided by him and neither was returned to the Commission as undeliverable. Notice electronically served to a party with no notification that service has failed is presumed received. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017). Accordingly, it must be presumed that these documents sent to Mr. Sablich in the ordinary course of business were received by him. *Id.*; *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016). Further, the hearing notices and the prehearing order stated that if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

No one appeared on behalf of Mr. Sablich at the time of the hearing, nor did anyone ever request a postponement or continuance of the hearing. As such, Mr. Sablich had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Mr. Sablich's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); *see also, 52 Pa. Code § 5.245(a)*.

During the hearing, counsel for PECO moved to have the complaint dismissed for lack of prosecution. Tr. 7. By failing to appear and present any evidence in support of his complaint, Mr. Sablich has failed to carry his burden. Once 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. *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2633043 (Opinion and Order entered July 18, 2018).

Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

- (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
- (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a). Therefore, it is appropriate to dismiss this Complaint. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Order entered Dec. 26, 1995).

Accordingly, the merits of the complaint will not be addressed in this Initial Decision. Furthermore, there are no facts in the record that would allow the Commission to reach the conclusion that Complainant's failure to attend the hearing was unavoidable. Accordingly, the Complaint is dismissed, with prejudice. *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

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 party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

5. After being notified, a party who fails to be represented at a scheduled hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the hearing; 2) not be permitted thereafter to reopen the disposition of a matter accomplished at the hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

6. The Complainant's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); 52 Pa. Code § 5.245(a).

7. The Complainant failed to appear and failed to carry his burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PECO Energy Company to dismiss the Formal Complaint of Paul Sablich v. PECO Energy Company at docket number C-2022-3033148 for failure to prosecute is granted.

