

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Garrett Hart	:	
	:	
v.	:	C-2022-3034890
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of Garrett Hart against PECO Energy Company because the Complainant failed to appear for the hearing and prosecute the Complaint.

**HISTORY OF THE PROCEEDING**

On September 1, 2022, Garrett Hart (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 in his bills from PECO. As relief, the Complainant requests that the Commission order PECO to remove “the fraudulent charges” from his account. Complaint ¶ 5.

On September 19, 2022, PECO filed an Answer denying the material allegations of the Complaint.

By Initial Call-In Telephonic Hearing Notice dated September 23, 2022, a telephonic hearing was scheduled for November 1, 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 October 19, 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 electronically served on the Complainant at the email address listed in the Complaint.<sup>1</sup> None of the emails sent by the Commission to the Complainant were returned as undeliverable.

The initial hearing convened on November 1, 2022, as scheduled. Counsel for the Respondent called-in with a witness available to testify. The Complainant failed to call-in. A short recess was taken to allow time for the Complainant to appear. The hearing reconvened at approximately 10:17 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 November 18, 2022, upon receipt of the hearing transcript.

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<sup>1</sup> Both parties have selected to enroll in the Commission’s eFile Subscription Service and were served via electronic mail.

## FINDINGS OF FACT

1. The Complainant is Garrett Hart.
2. The Respondent is PECO Energy Company.
3. On September 1, 2022, the Complainant filed a Complaint with the Commission against the Respondent.
4. On September 19, 2022, the Respondent filed an Answer to the Complaint.
5. By Initial Call-In Telephonic Hearing Notice dated September 23, 2022, a telephonic hearing was scheduled for November 1, 2022, at 10:00 a.m.
6. The Initial 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.**”
7. By Prehearing Order dated October 19, 2022, the parties were directed to comply with various procedural requirements, including how to request a continuance of the hearing.
8. 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.**”
9. The Hearing Notice and the Prehearing Order were served electronically on the Complainant at the email address provided by Complainant in the Complaint.

10. Neither the Initial Call-in Telephonic Hearing Notice nor the Prehearing Order were returned as undeliverable.

11. The Complainant failed to appear at the November 1, 2022, hearing.

12. The Complainant did not contact the Commission to request a continuance, withdraw the Complaint, or to explain his failure to appear at the 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). 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 Serv.*, 150 A.3d 173 (Pa. Cmwlth. 2016). Notice electronically served to a party with no notification that service failed is presumed received. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017) (*Morella*).

By Initial Call-In Telephonic Hearing Notice dated September 23, 2022, a telephonic hearing was scheduled for November 1, 2022, at 10:00 a.m. The Initial 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.**”

On October 19, 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 electronically on the Complainant at the email address provided by Complainant in the Complaint. Neither document was returned to the Commission as undeliverable. It is therefore deemed that the Complainant had notice of the date and time and participation information for the November 1, 2022, hearing. *Hu; Zirkel; Morella*. Neither the Complainant nor a representative on behalf of the Complainant licensed to practice law in this Commonwealth appeared at the hearing. To date, Complainant failed to provide any information or reasonable excuse why his failure to appear at the scheduled hearing was unavoidable.

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, "[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." *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2633043 at 6 (Opinion and Order entered July 18, 2018) (citing *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

The Complainant was notified of the scheduled hearing and did not appear for the hearing. Thus, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa. Code § 5.245(a)(1); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995). Further, by failing to appear, the Complainant is not permitted to reopen the disposition of this matter and his Complaint will be dismissed with prejudice. 52 Pa. Code § 5.245(a)(2); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022).

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 seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 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 Dec. 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. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered Dec. 19, 2019).

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 Oct. 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).

6. By failing to appear, the Complainant is not permitted to reopen the disposition of this matter and his Complaint must be dismissed with prejudice. 52 Pa. Code § 5.245(a)(2); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Formal Complaint filed by Garrett Hart at Docket No. C-2022-3034890 is granted.
2. That the Formal Complaint of Garrett Hart at Garrett Hart v. PECO Energy Company, Docket No. C-2022-3034890 is dismissed with prejudice.
3. That Docket No. C-2022-3034890 is marked closed.

Date: February 8, 2023

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Eranda Vero  
Administrative Law Judge