

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jameel Jones	:	
	:	
v.	:	C-2022-3036171
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Jameel Jones against PECO Energy Company because he failed to appear for the scheduled hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On October 14, 2022, Jameel Jones (the Complainant or Mr. Jones) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or the Respondent) with the Pennsylvania Public Utility Commission (Commission). On the Complaint form, the Complainant checked boxes indicating that the utility is threatening to shut off or had already shut off his electric service and that he would like a payment agreement.

On November 7, 2022, the Respondent filed an Answer denying all material allegations of fact in the Complaint. PECO averred that the Complainant has a delinquent balance on his account, for which PECO may terminate service under Section 1406 of the Public Utility

Code.¹ The Respondent also averred that the Complainant had defaulted on two payment agreements with PECO, that he defaulted on the Commission-issued payment agreement granted on August 23, 2022, and that he is not entitled to another Commission-issued payment agreement under the Code.² Furthermore, the Respondent averred that the bills and balance on the Complainant's account are correct.

By Hearing Notice dated December 27, 2022, a call-in telephonic hearing was scheduled for February 28, 2023, 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 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 January 3, 2023. 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,³ or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

¹ 66 Pa.C.S. § 1406.

² Citing 66 Pa.C.S. §1405 (d).

³ Public Utility Code (Code), 66 Pa.C.S. §§ 101–3316.

The Hearing Notice and Prehearing Order were electronically served to the Complainant in the ordinary course of the Commission's business to the email address he provided to the Commission on the Complaint form. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

The hearing convened as scheduled on February 28, 2023. Counsel for PECO was present with one witness and was prepared to proceed. Mr. Jones was not present. In light of the Complainant's absence, the hearing was recessed for approximately 10 minutes to allow the Complainant additional time to appear. When the hearing reconvened at 10:16 a.m., the Complainant still had not appeared for the hearing nor had he contacted my office to indicate that he would or would not appear.

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 Respondent's Motion.

The record closed on February 28, 2023, after the conclusion of the hearing.⁴

FINDINGS OF FACT

1. The Complainant is Jameel Jones.
2. The Respondent is PECO Energy Company.
3. On October 14, 2022, Mr. Jones filed a Formal Complaint with the Commission against PECO Energy Company.
4. On November 7, 2022, Respondent timely filed an Answer to the Complaint.

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The transcript for the hearing was received on March 24, 2023.

5. By Initial Telephonic Hearing Notice dated December 27, 2022, a call-in telephonic hearing was scheduled for February 28, 2023, at 10:00 a.m.

6. On January 3, 2023, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.

7. The Hearing Notice and the Prehearing Order were electronically served upon the Complainant at the email address provided by the Complainant.

8. Neither the Hearing Notice nor the Prehearing Order served upon the Complainant was returned to the Commission as undeliverable.

9. On February 28, 2023, counsel for PECO and a witness appeared and were prepared to proceed with the scheduled hearing in this matter.

10. The Complainant did not call in to the hearing at the designated date and time as instructed on the Hearing Notice and the Prehearing Order.

11. A recess was taken to allow Mr. Jones or his representative an opportunity to call-in.

12. The hearing reconvened at 10:16 a.m.; however, neither the Complainant nor a representative called into the hearing by the time the hearing adjourned at 10:19 a.m.

13. The Complainant has not contacted the Commission to explain why his failure to attend the hearing was unavoidable.

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 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 appear or explain why he could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

On December 27, 2022, the Commission electronically served notice of the February 28, 2023, hearing in this case to the Complainant, to the email address he provided in his Complaint. The notice informed the parties of the date and time of the hearing, as well as how to call in for the hearing. The notice was not returned as undeliverable.

In addition, I issued a Prehearing Order dated January 3, 2023, 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 served on the Complainant electronically, was not returned as undeliverable. The Notice of Hearing and Prehearing Order were sent to the Complainant at the email address provided to the Commission by him.⁵ Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *See 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 Jan. 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016).

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. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 28, 2002); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). The Complainant did not call in for the scheduled hearing on February 28, 2023.

⁵ Service was made in accordance with *Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered Sept. 15, 2022) (This Order extended the waiver of service requirements first adopted in September 2021 and extended in March 2022. These Orders permitted electronic service by the Commission on all parties, regardless of whether a particular party had agreed to electronic service) (*September 2022 Order*); *See Waiver of Regulations Regarding Service Requirements*, M-2021-3028321 (Order entered Sept. 15, 2021); *See also Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered March 10, 2021).

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).

By failing to participate and proffer any evidence to support his Complaint, the Complainant has failed to meet his burden. 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 preserved. *Sentner v. Bell Tel. Co. of Pa.* Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

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. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The Complainant did not appear for the hearing scheduled for February 28, 2023. Thus, by his failure to appear, Complainant did not meet his burden of proof.

As the Commission has explained, where the complainant fails to appear for a scheduled hearing without good cause, the public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources. *See, e.g., Elliott v. Pa. Elec. Co.*, F-2018-

3003502 (Opinion and Order entered Feb. 6, 2020). Consequently, it is appropriate to grant PECO's motion to dismiss Mr. Jones's Complaint, with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered Mar. 14, 2019) (citing *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995)).⁶ Consequently, while PECO's motion to dismiss Ms. Jones's Complaint will be granted, the Complaint will be dismissed without prejudice.⁷

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 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. The Commission is required to provide due process to the parties appearing before it. This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

⁶ Notwithstanding the aforementioned and the *September 2022 Order*, on April 20, 2023, the Commission adopted an order that determined it is inconsistent with due process to dismiss a formal complaint with prejudice in which a *pro se* complainant fails to appear at a hearing when complainant has not affirmatively agreed to accept service via email. *Hoyt v. Columbia Gas of Pa., Inc.*, Docket No. F-2022-3032680 (Order adopted Apr. 20, 2023) (*Hoyt*).

⁷ *See Hoyt*.

5. The due process rights of the Complainant have been fully preserved. *Sentner v. Bell Tel. Co. of Pa.* Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

6. After being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. 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).

8. The Respondent's Motion that the Complaint be dismissed for lack of prosecution may be granted. 52 Pa. Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Complaint of Jameel Jones at Docket No. C-2022-3036171, for lack of prosecution, is granted.

2. That the Complaint of Jameel Jones at Jameel Jones v. PECO Energy Company at Docket C-2022-3036171, is dismissed, without prejudice.

