



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

ISSUED: February 16, 2006

C-20054946  
C-20055151

MOTORSPORTS-MARKETING.COM  
RR2 BOX 2010  
BEACH LAKE PA 18405

MotorSports Marketing.com v. PPL Electric Utilities Corporation

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Ember S. Jandebour. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2<sup>ND</sup> FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McNulty  
Secretary

**DOCUMENT  
FOLDER**

Encls.  
Certified Mail  
Receipt Requested  
JS

KIMBERLY A SPOTTS-KIMMEL ESQUIRE  
KIMBERLY G KRUPKA ESQUIRE  
GROSS MCGINLEY LABARRE & EATON LLP  
33 SOUTH SEVENTH STREET  
PO BOX 4060  
ALLENTOWN PA 18105-4060

C-20054946 MOTORSPORTS-MARKETING.COM, INC. v. PPL ELECTRIC  
UTILITIES CORPORATION

MOTORSPORTS-MARKETING.COM INC  
RR 2 BOX 2019  
BEACH LAKE PA 18405  
570-729-0748

KIMBERLY A SPOTTS-KIMMEL ESQUIRE  
GROSS MCGINLEY LABARRE & EATON LLP  
33 SOUTH SEVENTH STREET  
P O BOX 4060  
ALLENTOWN PA 18105-4060  
610-871-1325

*DO 20/10*

FEB 02 2006

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MotorSports Marketing.com

v.

PPL Electric Utilities Corporation

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:  
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:

C-20054946

C-20055151

**DOCKETED**  
FEB 17 2006

INITIAL DECISION

**DOCUMENT  
FOLDER**

Before  
Ember S. Jandebour  
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On or about July 14, 2005, Michael C. Morris, President of MotorSports Marketing, Inc. (Complainant) filed two Formal Complaints (Complaints) with the Public Utility Commission (PUC). Docket C-20054946 alleged that PPL Electric Utilities Corporation (Respondent) was conducting accounting irregularities. Docket C-20055151 alleged the Complainant requested two meters from the Respondent and they failed to install them.

On or about September 12, and September 22, 2005, the Respondent filed Answers to both Dockets. The Respondent also filed New Matter in Docket C-20055151 noting that the Complaint was not filed by an attorney despite the requirement that corporations be represented by counsel. The Respondent requested both Complaints be denied.

On or about December 15, 2005, the PUC Office of the Administrative Law Judge (OALJ) sent Hearing Notices scheduling an in person hearing for both Dockets for Monday January 30, 2006 at 10:00 a.m.

On Monday January 30, 2006, a hearing in the matter was held in the Public Utility Commission (PUC) Scranton office. The Respondent appeared represented by counsel and was prepared to proceed. The Complainant did not appear. Counsel for the Respondent moved for dismissal of both Complaints on the basis that the Complainant bears the burden of proof, and without the Complainant, the burden cannot be met. The Motion was granted and both Complaints were orally dismissed.

#### FINDINGS OF FACT

1. The Complainant is a current customer of the Respondent.
2. Notices of Hearing in the above referenced Dockets were mailed to the Complainant on December 15, 2005, to the address provided by the Complainant in his Complaint.
3. The Notices were not returned as undeliverable by the U.S. Postal Service.
4. The Respondent appeared and was ready to proceed at the scheduled time.
5. The Complainant failed to be available for the scheduled hearing and failed to request a continuance or provide a valid reason for his failure to be available.

#### DISCUSSION

The Complainant filed two Formal Complaints with the Public Utility Commission (PUC). Because of his filings, a hearing was scheduled to allow him to present his Complaints, supporting evidence and to explain what relief he wanted from the PUC. On the scheduled date, the Respondent appeared as required, but the Complainant did not. The Complainant made no contact with the undersigned ALJ regarding his failure to appear.

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. Schneider v. Pa. P.U.C., 479 A.2d 10 (Pa. Cmwlth.

1984). This due process requirement is satisfied when the parties are accorded notice and the opportunity to appear and be heard. *Id.*

Notice of the January 30, 2006, hearing in this case was sent to the Complainant on December 15, 2005, by regular first-class prepaid mail to the address stated on the Complaints. The Notices were never returned to the undersigned ALJ or the scheduling staff for the OALJ in Harrisburg. Therefore, it is deemed received. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Superior Ct. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Superior Ct. 221, 444 A.2d 658 (1982).

The Complainant did not appear for the scheduled hearing. The Complaint did not request a continuance. The Complainant had the opportunity to appear and be heard in these Complaints, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected.

A participant, who fails to appear at a scheduled hearing after receiving notice, is deemed to have waived the opportunity to participate in that hearing. That person cannot reopen any matter accomplished at that hearing. Failure to appear and participate in a properly noticed and scheduled hearing is against the public interest, warranting dismissal of the complaint. *See*, 52 Pa. Code §5.245.

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/she is entitled to relief. By failing to appear and present any evidence in support of the Complaints, the Complainant has failed to meet his burden. Under these circumstances, the Complaints must be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of these two Complaints.
2. The Complainant bears the burden of proof in both. 66 Pa. C.S. §332(a)
3. The Complainant failed to meet his burden in both Complaints.


ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaints of MotorSports Marketing.com v. PPL Electric Utilities Corporation at Dockets C-20054946 and C-20055151 are dismissed with prejudice.

Date: January 30, 2006

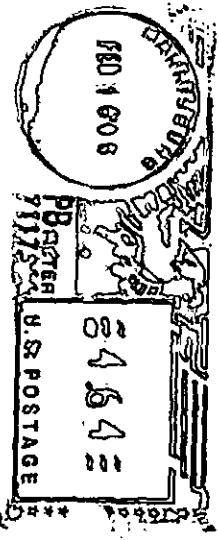
  
\_\_\_\_\_  
Ember S. Jandebour  
Administrative Law Judge

**RTS**  
RETURN TO SENDER

- A INSUFFICIENT ADDRESS
- C ATTEMPTED NOT KNOWN
- S NO SUCH NUMBER/STREET
- NOT DELIVERABLE AS ADDRESSED
- UNABLE TO FORWARD

LOOK ON BACK!

UNCLAIMED



7160 3901 9843 1136 0552  
Return Receipt Requested



**CERTIFIED MAIL**<sup>TM</sup>

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

FORM UCGD-12-A 8M (Rev. 08/04)  
COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
P.O. BOX 3265  
HARRISBURG, PA 17105-3265

To insure delivery in delivery to  
current Street and Number  
Have your mail addressed to  
Number, P.O. Box or  
Zip Code.  
General Delivery

*Handwritten initials and numbers: W, 2/1/08, 3/5*

2. Article Number



7160 3901 9843 1136 0576

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee)  Yes

1. Article Addressed to:

KIMBERLY A SPOTTS-KIMMEL ESQUIRE  
KIMBERLY G KRUPKA ESQUIRE  
GROSS MCGINLEY LABARRE & EATON  
33 SOUTH SEVENTH STREET  
PO BOX 4060  
ALLENTOWN PA 18105-4060  
C-20054946 C-20055151 ID

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) *Diane Smith*  
B. Date of Delivery *2-20-08*  
C. Signature *[Signature]*  
D. Is delivery address different from item 1?  Yes  No

Agent Addressed  Yes  No

2. Article Number



7160 3901 9843 1136 0552

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee)  Yes

MOTORSPORTS-MARKETING.COM  
INC  
RR2 BOX 2019  
BEACH LAKE PA 18405

C-20054946 ID

PS Form 3811, March 2005

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) *[Signature]*  
B. Date of Delivery *2/1/08*  
C. Signature *[Signature]*  
D. Is delivery address different from item 1?  Yes  No

Agent Addressed  Yes  No

22 Village Rd

BEACH LAKE PA 18405

Domestic Return Receipt