

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joshua Albani	:	
	:	
v.	:	C-2016-2551149
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

This initial decision grants an oral motion to dismiss the complaint with prejudice for failure to appear and prosecute.

HISTORY OF THE PROCEEDING

On or about June 10, 2016, Joshua Albani, (complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (“respondent” or “PPL”), at Docket Number C-2016-2551149. The Complaint was e-served on respondent on June 15, 2016. The complainant averred that there were incorrect charges on his bill. PPL timely filed an Answer and New Matter on July 5, 2016.

On July 28, 2016, by a Telephonic Hearing Notice, the case was assigned to me and a telephonic hearing was scheduled to be held on August 30, 2016. A Prehearing Order dated August 3, 2016, was issued in this case. The Prehearing Order advised the parties with respect to Commission procedure, requests for continuances, required numbers and marking of proposed exhibits, the need for attorney representation, subpoena procedures, discovery, the responsibility of providing a telephone number for the hearing, and the Commission’s policy favoring

settlement. Finally, the Prehearing Order reminded the parties of the date and time of the scheduled hearing.

The notice of hearing stated that if the parties have not provided a current telephone number, then they must contact the presiding officer at least 5 days before the actual hearing. Further, the parties were warned that they may lose the case if they do not participate in the hearing. The Telephonic Hearing Notice and the Prehearing Order were both mailed to the complainant at 324 Maury Rd., Jim Thorpe, PA 18229, on July 28, 2016 and August 3, 2016 respectively. The Commission did not receive any returned mail.

The address at 324 Maury Rd., Jim Thorpe, PA 18229, is the same address complainant listed as his mailing address on the Complaint form. In accordance with the terms of the Prehearing Order, under cover letters dated August 23 and 25, 2016, respondent served proposed Exhibits 1 through 4 for possible use at the hearing. The hearing convened at 1:30 p.m., as scheduled, on August 30, 2016. Respondent's attorney, Graig Schultz, Esquire telephoned into the conference call number provided on the hearing notice. Respondent was prepared to proceed with witness, Donna Scotchlas, Senior Customer Service Representative of PPL. An attempt to contact the complainant at the mobile telephone number provided to me by Complainant resulted in reaching a recorded message stating the line was no longer in service. Respondent did not have any other alternative phone numbers for complainant. Respondent's counsel made an oral motion to dismiss complaint with prejudice. I took the motion under advisement. The record was closed on August 30, 2016. The Motion to Dismiss is ripe for a decision.

FINDINGS OF FACT

1. Complainant is Joshua Albani.
2. Respondent is PPL Electric Utilities Corporation, an electric distribution company operating in the Commonwealth of Pennsylvania.
3. By Telephonic Hearing Notice dated July 28, 2016, a Telephonic Hearing was scheduled for 1:30 p.m. on August 30, 2016.

4. A prehearing order dated August 3, 2016, had been issued in this case.
5. The Telephonic Hearing Notice and the Prehearing Order were both mailed to the complainant at 324 Maury Road, Jim Thorpe, PA 18229.
6. The Telephonic Hearing Notice and Prehearing Order were not returned by the United States Postal Service.
7. The address at 324 Maury Road, Jim Thorpe, PA 18229 is the same address complainant listed as the mailing address on the Complaint form.
8. The Initial Telephonic Hearing convened at 1:30 p.m., as scheduled, on August 30, 2016.
9. Respondent appeared at the scheduled time represented by legal counsel with one potential witness and was prepared to proceed.
10. When the presiding officer telephoned Complainant's mobile phone number as provided by Complainant on the complaint, the presiding officer received a recorded message stating that the phone number was no longer in service.
11. Complainant did not appear at the telephonic hearing per instructions on either the notice or prehearing order at 1:30 p.m. on August 30, 2016.
12. Respondent's counsel made a motion to dismiss the Complaint with prejudice for failure to prosecute, and notified the ALJ that he had also attempted to contact Complainant, but was unsuccessful.
13. Complainant was advised of the date and time of the scheduled Initial Telephonic Hearing by the Telephonic Hearing Notice, and the Prehearing Order.

14. Complainant was advised of the procedures for requesting a continuance of a scheduled hearing by the Prehearing Order.

15. Complainant was advised that “[y]ou may lose this case if you do not take part in the hearing and present evidence on the issues raised” by the Prehearing Order.

16. Complainant neither settled nor withdrew the Complaint and he did not receive a continuance prior to the scheduled Telephonic Hearing on August 30, 2016.

DISCUSSION

As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa.Cmwlth. 1990), app. denied, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm’n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm’n*, 623 A.2d 6 (Pa. Cmwlth. 1993), 2 Pa.C.S. §704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen’s Compensation Appeal Bd.*, 612 A.2d 434 (Pa. 1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep’t. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

By not appearing for the scheduled Telephone Hearing, Complainant failed to bear the burden of proof. Consequently, the Complaint must be dismissed.

Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Auth. v. Allegheny Cty. Bd. of Property Assessment Appeals and Review*, 165 Pa.Cmwlth. 671, 645 A.2d 944 (1994), app. denied, 539 Pa. 696, 653 A.2d 1234 (1994); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *John D. Stewart, Jr. v. Columbia Gas of Pennsylvania, Inc.*, Docket Number C-00957041, (Opinion and Order entered May 10, 1996). Mere assertion that the document was not received, without corroboration, is insufficient to overcome the presumption of receipt. *Donegal Mutual Ins. Co. v. Insurance Dep't*, 719 A.2d 825 (Pa.Cmwlth. 1998); *Geise v. Nationwide Life and Annuity Co.*, 939 A.2d 409 (Pa.Super. 2007).

Due to the waste of the Commission's and the respondent's time, money, and energy occasioned by complainant's failure to appear at a hearing of which Complainant had notice, the dismissal will be with prejudice. *Martin W. Jefferson v. UGI Utilities, Inc.*, Docket Number Z-00269892, (Opinion and Order adopted October 26, 1995, entered December 26, 1995); *Maurice Jones v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket Number C-20054885, (Opinion and Order entered February 14, 2006). *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to, and the subject matter of, this proceeding. 66 Pa. C.S. § 701.
2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon the complainant.
3. Notice properly mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial*

Development Auth. v. Allegheny Cty. Bd. of Property Assessment Appeals and Review, 645 A.2d 944 (Pa. Cmwlth. 1994), app. denied, 653 A.2d 1234 (Pa. 1994); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *John D. Stewart, Jr. v. Columbia Gas of Pennsylvania, Inc.*, Docket Number C-00957041, (Opinion and Order entered May 10, 1996).

4. By failing to appear at the scheduled telephonic hearing, complainant has failed to satisfy the burden of proof. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

5. Failure by a complainant to appear for a scheduled hearing of which the complainant had notice warrants dismissal of the Complaint with prejudice. *Martin W. Jefferson v. UGI Utilities, Inc.*, Docket Number Z-00269892, (Opinion and Order entered December 26, 1995); *Maurice Jones v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket Number C-20054885, (Opinion and Order entered February 14, 2006).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PPL Electric Utilities Corporation's oral Motion to Dismiss is granted.
2. That the Complaint of Joshua Albani against PPL Electric Utilities Corporation at Docket Number C-2016-2551149 is dismissed, with prejudice.
3. That the record at Docket Number C-2016-2551149 be marked closed.

Date: September 9, 2016

/s/
Elizabeth H. Barnes
Administrative Law Judge