

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael J. Bressi

v.

PPL Electric Utilities Corporation

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F-2016-2582064

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

This decision dismisses the complaint filed in this matter for failure of the complainant to appear for the hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

On December 29, 2016, Michael J. Bressi (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent). The complaint alleges that the utility is threatening to turn off his service and he would like a more affordable payment arrangement.

The Respondent filed an answer on January 19, 2017. The answer admitted that the Respondent provided residential service to the Complainant, but stated that the Complainant had been provided the most advantageous payment arrangement. The answer requested that the Commission deny the complaint.

By notice dated March 10, 2016, the Commission scheduled this matter for a call-in telephonic hearing on March 31, 2017 at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated March 10, 2017, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic hearing on March 31, 2017 at 10:00 a.m. The Complainant failed to appear for that hearing. The Complainant did not call the conference number shown on the March 31, 2017 hearing notice at 10:00 a.m. The hearing was recessed until 10:17 a.m. to permit the Complainant additional time to call into the hearing. The Complainant did not call into the hearing.

Graig M. Schultz, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. I advised the Respondent that I would take its motion under advisement.

The record closed at the conclusion of the hearing. This decision grants the Respondent's motion to dismiss the complaint with prejudice.

FINDINGS OF FACT

1. The Complainant in this case is Michael J. Bressi.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. On December 29, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on January 19, 2017.

5. By notice dated March 10, 2017, the Commission scheduled this matter for an initial telephonic hearing on March 31, 2017 at 10:00 a.m.

6. The Commission sent notice of the telephonic hearing in this case to the Complainant by regular first class mail to the address stated on the complaint or eserved.

7. The Commission's hearing notice was never returned to the sender.

8. The Complainant failed to appear at the March 31, 2017 telephonic 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.

The Commission sent notice of the telephonic hearing in this case to the Complainant on March 10, 2017, by regular first-class mail to the address stated on the complaint. To my knowledge, this piece of mail was never returned to the sender, the scheduling staff for OALJ in Pittsburgh.

In addition, I issued a prehearing order dated March 10, 2107, which, *inter alia*, included instructions for calling into the hearing or requesting a change of the hearing date or time. The prehearing order, which was mailed to the Complainant at the address shown on the complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); Judge v. Celina Mutual Insurance Co., 444 A.2d 658 (Pa.Super. 1982).

The Complainant did not appear for the scheduled hearing because he did not call the conference number shown on the March 10, 2017 hearing notice. Under these 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 protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

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 relief. 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. Under these circumstances, the complaint should be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); El-Ayazra v. West Penn Power Company, 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 due process rights of the Complainant have been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PPL Electric Utilities Corporation to dismiss the complaint filed by Michael J. Bressi at Docket No. F-2016-2582064 is granted.

2. That the complaint of Michael J. Bressi against PPL Electric Utilities Corporation at Docket No. F-2016-2582064 is dismissed with prejudice for failure of the Complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. F-2016-2582064 is marked closed.

Date: April 28, 2017

_____/s/
Mary D. Long
Administrative Law Judge