

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                                    |   |                |
|------------------------------------|---|----------------|
| David Wapensky                     | : |                |
|                                    | : |                |
| v.                                 | : | C-2015-2476806 |
|                                    | : |                |
| PPL Electric Utilities Corporation | : |                |

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

**INTRODUCTION**

This decision grants the Motion of Respondent PPL Electric Utilities Corporation (PPL) to dismiss with prejudice a formal Complaint filed by David Wapensky (Complainant) for failure to prosecute.

**HISTORY OF THE PROCEEDING**

On April 13, 2015, Complainant filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL. The Complaint requested that the Commission order a payment arrangement (PAR).

On April 24, 2015, the Secretary of the Commission served the formal Complaint on PPL.

PPL filed an Answer on June 13, 2015. The Answer admitted that the Respondent provided service to the Complainant at the address stated in the Complaint. The Answer denied

that Complainant was entitled to a PAR as Complainant already has been afforded the most advantageous PAR. The Answer requested that the Commission dismiss the Complaint.

On September 9, 2015, Complainant re-filed his Complaint.

On January 11, 2016, PPL filed an Answer to the re-filed Complaint. Again, The Answer denied that Complainant was entitled to a PAR as Complainant already has been afforded the most advantageous PAR.

By notice dated March 8, 2016, the Commission scheduled this matter for an initial telephonic hearing on April 4, 2016 at 10:00 a.m. I issued a prehearing order dated March 10, 2016, addressing, *inter alia*, requests for continuance, the potential consequences of non-appearance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

On April 4, 2016, I attempted to convene a telephonic hearing, as scheduled. The Complainant appeared for that hearing, but counsel for PPL did not. However, when I advised the Complainant of this, he told me that there was no need for me to attempt to contact counsel as the Complaint had been settled. Complainant then disconnected. Despite Complainant's statement, I contacted Graig M. Schultz, Esquire, who told me that the Complaint had not been resolved. Counsel for Respondent then stated that he would file a Motion to Dismiss the Complaint.<sup>1</sup>

On April 22, 2016, counsel for PPL filed a Motion to Dismiss the formal Complaint for failure on the part of the Complainant to prosecute as well as a material misrepresentation made to the Presiding Officer by the Complainant. To date, Complainant has not filed an Answer or any response to that Motion. As an Answer was due by May 12, 2016, but has not been received, the record in this case is now closed, and this matter is ready for decision.

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<sup>1</sup> A hearing transcript was not prepared as the events described all occurred during the initial telephonic contact phase that precedes a telephonic hearing.

## FINDINGS OF FACT

1. The Complainant in this case is David Wapensky.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. On April 13, 2015, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on June 13, 2015.
5. On September 9, 2015, Complainant re-filed his Complaint.
6. On January 11, 2016, PPL filed an Answer to the re-filed Complaint
7. By notice dated March 8, 2016, the Commission scheduled this matter for an initial telephonic hearing on April 4, 2016 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.
7. Prior to the hearing on April 4, 2016, Complainant told the Presiding Officer that the Complaint had been resolved.
8. Counsel for PPL told the Presiding Officer immediately thereafter that the Complaint had not been resolved.
9. On April 22, 2016, counsel for PPL filed a Motion to Dismiss with prejudice the formal Complaint for failure on the part of the Complainant to prosecute as well as a material misrepresentation made to the Presiding Officer by the Complainant.

10. No Answer to the Motion to Dismiss has been filed by the Complainant.

### 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 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 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

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 proffer any evidence to support his Complaint, the Complainant has failed to meet this burden. Under these circumstances, the Complaint should be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); 52 Pa.Code § 5.245.

In its Motion to Dismiss, PPL states that Complainant told the Presiding Officer on the morning of the hearing that the Complaint had been settled. That is correct. PPL contends that the Complaint was not settled, and argues that Complainant's representation to the Presiding Officer was false, and that Complainant knew it to be false. Motion at ¶¶ 13-15. PPL contends that Complainant's action is part of an ongoing strategy by Complainant to avoid judgement. In support of this contention, PPL asserts that Complainant has filed nine formal Complaints since 2009, and has defaulted on 45 PARs since September, 2002. Motion at ¶¶ 18-20. PPL argues that Complainant's misrepresentation to the Presiding Officer has the same

effect as failure to appear and prosecute his Complaint, and that under the Commission's regulation at 52 Pa.Code § 5.245 the Complaint should be dismissed with prejudice. Motion at ¶¶ 28-30.

It is unnecessary for the purpose of this decision to speculate as to Complainant's motivations in his lack of candor towards the Presiding Officer. By failing to proffer any evidence to support his 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).

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. 702.

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 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to proffer any evidence to support his 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).

4. Under these circumstances, the Complaint should be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); 52 Pa.Code § 5.245.

