

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Paul J. Cristini

v.

PPL Electric Utilities Corporation

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C-2017-2628792

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

This decision dismisses a complaint for failure of the customer to appear at the telephonic hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

On September 29, 2017, Paul J. Cristini (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent). The complaint alleges that there are incorrect charges on the Complainant's bill.

According to the complaint, the Respondent tested the Complainant's meter and told the Complainant that the meter was accurately recording his usage. However, after the Respondent replaced the meter, the complaint alleges that the Complainant's electric bills decreased. The complaint requests that the Commission direct the Respondent to refund the charges the Complainant has paid.

The Respondent filed an answer on November 1, 2017. The answer admits that the Respondent provides electric service to the Complainant at the address shown on the complaint. The answer states that the Respondent tested the Complainant's meter, that the meter tested as accurate and that the Respondent sent a copy of the meter test to the Complainant. The answer asserts that the Complainant used space heaters to heat his residence. The answer requests that the Commission deny the Complainant's complaint.

By notice dated December 4, 2017, the Commission scheduled this matter for a telephonic hearing on February 5, 2018, at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated December 6, 2017, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic hearing on February 5, 2018, at 10:00 a.m. The Complainant failed to appear for that hearing. The Complainant failed to call the conference number set forth in the December 4, 2017 hearing notice at 10:00 a.m.

I then verified with the support staff for the Office of Administrative Law Judge (OALJ) in Harrisburg that the Complainant had not contacted that office to indicate that he would be unable to participate in the telephonic hearing. My voice mail and email had no messages from the Complainant stating that he would be unable to participate in the hearing.

After verifying that the Complainant had not contacted OALJ in Harrisburg, I returned to the telephone conference at approximately 10:10 a.m. The Complainant had still failed to call the conference number.

Upon commencement of the hearing, Kimberly G. Krupka, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. N.T. 6. I advised the Respondent that I would take its motion under advisement. N.T. 6.

The record closed on February 22, 2018, the date the transcript was filed with the Secretary's Bureau. This decision grants the Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Paul J. Cristini.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. On September 29, 2017, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on November 1, 2017.
5. By notice dated December 4, 2017, the Commission scheduled this matter for a telephonic hearing on February 5, 2018, 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. The Commission's hearing notice was never returned to the sender.
8. The Complainant failed to appear at the February 5, 2018 telephonic hearing.
9. The Complainant did not settle, withdraw or request a continuance of the matter.

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 December 4, 2017, by regular first-class mail to the Complaint's address. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for OALJ in Harrisburg.

In addition, I issued a prehearing order dated December 6, 2017, which, inter alia, directed the parties to call the conference number shown on the hearing notice at the date and time of the hearing and that if a party failed to call the conference number, the hearing would proceed without that party. This order, which was also mailed to the Complainant at the address stated 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 listed on the telephonic hearing notice. The Complainant never notified me that he would be unable to participate in the hearing. 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 and proffer any evidence to support his complaint, the Complainant has failed to meet this burden. The Complainant's failure to appear has caused the Commission and the Respondent to waste resources. 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 and 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of PPL Electric Utilities Corporation to dismiss the complaint filed by Paul J. Cristini at Docket No. C-2017-2628792 is granted.
2. That the complaint of Paul J. Cristini against PPL Electric Utilities Corporation at Docket No. C-2017-2628792 is dismissed with prejudice for failure to appear and prosecute.
3. That the docket at Docket No. C-2017-2628792 is marked closed.

Date: February 23, 2018

/s/
David A. Salapa
Administrative Law Judge