

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jerome Brown	:	
	:	
v.	:	C-2016-2574714
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

This Initial Decision dismisses the formal complaint filed by Jerome Brown (Complainant) because he failed to appear for the initial call-in telephone hearing to prosecute his complaint and failed to satisfy his burden of proof.

HISTORY OF THE PROCEEDING

On November 3, 2016, Complainant filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent or PPL), at Docket No. C-2016-2574714. Complainant alleged that he was incarcerated on January 28, 2016 and that he was presently incarcerated. Complainant further alleged that he requested that his electric service be shut off by PPL but it remained on. As relief, Complainant requested that the bill balance be removed from his account. PPL filed an answer on November 28, 2016, denying that Complainant contacted PPL to disconnect service in his name and averring that Complainant is responsible for the charges on his account up until the date service was disconnected on May 13, 2016. PPL requested that the complaint be denied.

A Telephone Hearing was scheduled for February 17, 2017. A Prehearing Order was issued on January 10, 2017. The scheduled hearing was continued because I was informed via a letter facsimile from Saniyyah Brown “for Jerome B. Brown” two days before the scheduled hearing that Mr. Brown was still incarcerated and was unavailable for the scheduled hearing. Although Mr. Brown did not have a representative, under the circumstances I continued the hearing and directed counsel for the Respondent, Kimberly G. Krupka, Esquire, to contact the prison to set up a telephone conference with Mr. Brown to discuss the complaint and the possibility of settlement. Counsel followed my directive, contacted the prison, which is located in New Jersey, and attempted to set up a telephone conference with Mr. Brown. Counsel could not set up a conference with the prison because of the prison’s policies.

No communications were received after February 17, 2017 from Mr. Brown or from a representative on his behalf.

On April 5, 2018, a Call-In Telephone Hearing Notice was sent to Mr. Brown at both the mailing address he listed on his formal complaint and the service address listed on the complaint, scheduling an initial call-in telephone hearing for Wednesday, May 2, 2018, at 10:00 a.m. The Notice included the telephone number and PIN for calling into the hearing on the scheduled day. A Second Prehearing Order was issued by me on April 17, 2018, setting forth the date and time of the initial call-in telephone hearing as well as the telephone number and PIN for calling into the scheduled hearing. The Prehearing Order further advised the parties, *inter alia*, that “[y]ou may lose this case, if you do not take part in this hearing and present evidence on the issues raised. 52 Pa.Code § 5.245.” Prehearing Order, p. 3.

On May 2, 2018, I convened the call-in telephone hearing. Counsel for Respondent, Graig M. Schultz, Esquire, was present and ready to proceed. Complainant was not present at the scheduled time for the hearing to begin. A recess was taken to permit Mr. Brown to call in to the hearing. The hearing reconvened at 10:15 a.m. and Complainant was not present and ready to proceed. The hearing proceeded in Complainant’s absence.

On the hearing record, counsel for Respondent made a motion to dismiss the complaint for failure of Complainant to appear and prosecute his complaint. Tr. 12. I informed counsel that I would take his motion under advisement. The record consists of a 14-page hearing transcript of the initial call-in telephonic hearing held on May 2, 2018. The record was closed by Interim Order dated May 14, 2018.

FINDINGS OF FACT

1. Complainant is Jerome Brown and Respondent is PPL Electric Utilities Corporation, a jurisdictional public utility.
2. A Call-In Telephone Hearing Notice was mailed to the parties on April 5, 2018, scheduling the initial call-in telephone hearing for Wednesday, May 2, 2018, at 10:00 a.m.
3. A Second Prehearing Order was issued on April 17, 2018.
4. The Call-In Telephone Hearing Notice and Second Prehearing Order were mailed to Complainant at the address provided on the complaint and to the service address. The documents sent to the mailing address listed on the formal complaint were not returned to the Commission by the United States Postal Service as undeliverable but the Prehearing Order sent to the service address was returned attempted-not known, unable to forward.
5. Complainant was not present for the scheduled initial call-in telephone hearing on May 2, 2018.
6. No representative appeared on behalf of Complainant at the scheduled hearing or entered a notice of appearance in this proceeding.
7. Complainant did not file a petition to withdraw his complaint and no certificate of satisfaction has been filed with the Commission.

8. Complainant did not request a continuance of the May 2, 2018, initial call-in telephone 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 parties are accorded notice and the opportunity to appear and be heard. *Id.*

Notice of the scheduled initial call-in telephone hearing in this case was sent to Complainant on April 5, 2018, by regular first-class mail to the address stated in the complaint. This piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge in Harrisburg. In addition, I issued a Second Prehearing Order on April 17, 2018, that advised the parties, *inter alia*, that “[y]ou may lose this case, if you do not take part in this hearing and present evidence on the issues raised.” Prehearing Order, p. 3. This Order, which was also mailed to Complainant at the address stated on the complaint, was never returned. Accordingly, one must presume this mail, which was sent in the ordinary course of business, was received by the addressee. 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.Super. 1997); and Judge v. Celina Mutual Insurance Co., 303 Pa.Super. 221, 444 A.2d 658 (1982).

Section 1.53(d) of the Commission’s regulations requires a complainant seeking relief from the Commission to apprise the Commission of any changes to the party’s current address.¹ This requirement is also set forth prominently on the formal complaint form which was initially filed by the Complainant. Section 1.24 of the Commission’s regulations also requires that a change in address which occurs during the course of the proceeding must be reported to the Secretary promptly. 52 Pa.Code § 1.24(a).

¹ 52 Pa.Code § 1.53(d)(“It is the duty of a party to apprise the Commission promptly of changes to the party’s current address.”).

Neither Complainant nor a representative appeared for the scheduled call-in initial telephone hearing on May 2, 2018. Complainant's absence is unexplained. Complainant did not request a continuance of the hearing. Under these circumstances, it appears Complainant had ample opportunity to appear and be heard in this proceeding but failed to appear for the scheduled hearing. Therefore, the due process rights of Complainant have been fully protected. El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); and 52 Pa.Code § 5.245(a).

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a). By failing to appear and proffer any evidence to support his complaint, Complainant has failed to meet this burden. Complainant's failure to appear is unexcused. Complainant has waived the opportunity to participate in the hearing and this case may be dismissed with prejudice. 52 Pa.Code § 5.245(a); Jefferson v. UGI Utilities, Inc., (Opinion and Order entered December 26, 1995 at Docket No. Z-00269892). However, in light of the circumstances presented here, specifically the fact that Complainant was incarcerated in another state when he filed the complaint, the complaint will be dismissed without prejudice to Complainant's ability to refile. *See*, Vertis Dillon v. UGI Penn Natural Gas, Inc., (Opinion and Order entered May 22, 2018 at Docket No. C-2017-2583960). Complainant chose a mailing address for the complaint proceeding other than the correctional facility where he was located at the time of filing and never changed his address with the Commission.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. 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 Authority v. Allegheny County Board of Property Assessment Appeals and Review, 645 A.2d 944 (Pa.Cmwlth. 1994).

3. The due process rights of Complainant have been fully protected in this proceeding.

4. By failing to appear and proffer any evidence to support his complaint, Complainant has failed to meet his burden of proving that he is entitled to the relief 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 of Jerome Brown at Docket No. C-2016-2574714, made at the initial call-in telephone hearing on May 2, 2018, is granted.

2. That the complaint filed by Jerome Brown against PPL Electric Utilities Corporation at Docket No. C-2016-2574714 is dismissed without prejudice.

3. That the Docket in this proceeding, at Docket No. C-2016-2574714, be marked closed.

Date: July 9, 2018

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge