

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Justin Yadlosky	:	
	:	
v.	:	C-2019-3008600
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses a formal Complaint due to the Complainant's failure to appear at the initial hearing and prosecute his Complaint.

**HISTORY OF THE PROCEEDING**

On or around March 18, 2019, Justin Yadlosky (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Company) at Docket No. C-2019-3008600. The Complaint was dated March 18, 2019, but it was not e-filed or time-stamped upon receipt by the Commission. Complainant alleged misbilling by PPL.

On April 8, 2019, PPL filed an Answer to the Complaint. In its Answer, PPL denied that Complainant had been misbilled and asked that the Complaint be dismissed.

On April 10, 2019, a hearing Notice was issued setting May 13, 2019 as the date for a telephonic hearing. On May 6, 2019, I issued a prehearing Order in which I set forth certain procedural requirements pertaining to the hearing. The prehearing Order also provided the date and time of the hearing. The prehearing Order stated, “You may lose this case if you do not take part in this hearing and present evidence on the issues raised.” Both the hearing notice and the prehearing Order were sent to Complainant at the address listed by him on his Complaint form by U. S. Mail.

Neither the hearing Notice nor the prehearing Order was returned to the Commission as undelivered.

The hearing convened, as scheduled, at 10:00 a.m. on May 13, 2019. Kimberly G. Krupka, Esquire, appeared on behalf of PPL. Complainant did not appear by 10:15 a.m. nor during the course of the hearing. I checked with the Office of Administrative Law Judge, as well as my e-mail and phone messages. Neither I nor the Commission received any contacts from the Complainant prior to the hearing about his availability nor did Complainant call in for the hearing. Accordingly, the hearing proceeded in his absence. PPL’s counsel moved to dismiss the Complaint due to the Complainant’s failure to appear at the hearing and prosecute his case.

The hearing concluded and a transcript of six pages was filed on May 23, 2019. The record closed on that date. This Initial Decision grants PPL’s Motion to Dismiss the Complaint for failure of the Complainant to appear and prosecute his case.

#### FINDINGS OF FACT

1. The Complainant in this proceeding is Justin Yadlosky.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. On March 18, 2019, the Complainant filed a formal Complaint against PPL.

4. On April 8, 2019, PPL filed an Answer in which it denied the allegations in the Complainant.

5. On April 10, 2019, a telephonic hearing notice was sent to the parties which scheduled an initial telephonic hearing for May 13, 2019, at 10:00 a.m.

6. On May 6, 2019, a prehearing Order was sent to the parties which set forth certain procedural requirements associated with the initial hearing.

7. Both the prehearing Order and the hearing notice warned the parties that they may lose the case if they did not take part in the hearing and present evidence on the issues raised.

8. The hearing notice and the prehearing Order were sent to Complainant by first class mail to the address provided by him on his Complaint.

9. The hearing notice and prehearing Order sent to Complainant were not returned to the Commission as undeliverable.

10. The Complainant failed to appear at the scheduled date and time for the hearing.

### DISCUSSION

In his Complaint, Mr. Yadlosky asserted that he had been misbilled by PPL in the amount of \$10.28 for service at a property that he no longer owns. In his request for relief, Mr. Yadlosky did not request a hearing. He requested a Commission investigation into the matter.<sup>1</sup>

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by

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<sup>1</sup> This may account for his non-appearance at the hearing on May 13, 2019.

even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). As the party seeking relief from the Commission, Mr. Yadlosky bears the burden of proof.

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 when the parties are provided with notice and an opportunity to be heard. *Id.*

No one appeared on behalf of Mr. Yadlosky at the date and time set for the hearing in his case, despite notice of the hearing having been sent to him at the only address provided by him.

Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

**§ 5.245. Failure to appear, proceed or maintain order in proceedings.**

- (a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:
  - (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
  - (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
  - (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa.Code § 5.245(a).

The hearing notice and the prehearing Order were sent to Mr. Yadlosky by first class mail to the address provided by him on his Complaint. Neither the hearing notice nor

prehearing Order was not returned to the Commission as undeliverable. Accordingly, it must be presumed that the documents sent to the Complainant in the ordinary course of business were received by him. *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); *Judge v. Celina Mutual Insurance Co.*, 303 Pa.Super. 221, 449 A.2d 658 (1982). As noted above, the prehearing Order stated that the parties may lose the case if they fail to appear and present evidence on the issues raised.

No request for a postponement or continuance of the hearing was received by my office. Mr. Yadlosky had notice of the hearing and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, the Complainant's due process rights have been fully protected. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, counsel for Met-Ed moved for dismissal of the Complaint for lack of prosecution. By failing to appear and present any evidence in support of his Complaint, Mr. Yadlosky failed to carry his burden. Thus, the Complaint will be dismissed.

I would note that the Office of Administrative Law Judge only has an investigative function when it is specifically directed to do so by the Commission. The filing of a formal Complaint gives rise to a contested proceeding at which a Complainant states his or her case and the utility responds. Complainant may wish to contact the Office of the Secretary of the Commission to ascertain what steps are necessary to request a Commission investigation.

#### 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. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

4. 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 when the parties are provided with notice and an opportunity to be heard. *Id.*

5. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa.Code § 5.245(a).

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

7. Mr. Yadlosky's due process rights have been fully protected. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

8. Mr. Yadlosky failed to carry his burden of proof in this proceeding.

