

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROBERT STRYDIO,

Complainant,

v.

PPL ELECTRIC UTILITIES CORP.,

Respondent.

No. C-2018-3005545

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION TO
COMPLAINANT’S PETITION FOR RESCISSION**

On July 8, 2019, Complainant filed a Petition for Rescission with the Public Utility Commission, which Complainant did not serve upon Respondent, PPL Electric Utilities Corporation (hereinafter “PPL Electric”). The Commission then served PPL Electric with the Petition on April 22, 2020. PPL Electric files this response in accordance with 52 Pa. Code 5.572 (d). However, whereas Complainant’s Petition is not in numbered paragraphs and does not specify the Findings of Fact or Orders involved, Respondent PPL Electric will respond to those issues that appear to have been raised by Complainant. Failure to address an issue set forth in Complainant’s narrative filing should not be deemed a waiver or Agreement by PPL Electric.

I. Procedural History and Background:

On October 22, 2018, Complainant filed a Complaint with the Public Utility Commission (hereinafter “PUC”) alleging improper application of payments to his electric service account. By hearing Notice dated November 26, 2018, and duly served on all

parties by the PUC, an initial telephonic hearing was scheduled for January 21, 2019 to commence at 10:00 a.m. Less than two weeks later, the PUC issued a second Hearing Notice rescheduling the hearing for January 23, 2019, commencing at 10:00 a.m. This hearing notice was likewise duly served on all parties by the PUC. The certificate of service notes that Mr. Strydio was served with the Notice at 130 Georgellen Ave., East Stroudsburg, PA 18301, the same address he noted on his Complaint. The Order further notes that the ALJ would contact the Complainant at the same telephone number set forth in his Complaint, and that any request for an alternative telephone number was to be made at least seven (7) days prior to the hearing. As noted by the ALJ in the initial decision, this Notice of Hearing was never returned.

On January 23, 2019, ALJ Buckley attempted to contact both parties in order to conduct the hearing. PPL Electric participated through its counsel, Kimberly G. Krupka, Esquire. On that date, Complainant did not answer at the telephone number set forth in his Complaint and noted in the Notice of Hearing. After waiting the appropriate time and there being no contact from the Complainant, the hearing proceeded in Complainant's absence at which time Counsel for PPL Electric made a Motion to Dismiss.

On April 8, 2019, ALJ Buckley issued an Initial Decision dismissing the Complaint based on Complainant's failure to participate, as permitted by *Sentner v. Bell Telephone Company of Pennsylvania*, Docket F-00161106; 52 Pa. Code. § 5.245(a). This decision was sent to all parties under cover of a letter from the Secretary of the Commission advising of the right to file Exceptions within 20 days of the date of the letter. No Exceptions were filed.

On May 15, 2019, a Final Order of the Commission was issued dismissing with prejudice the formal Complaint filed by Complainant. No action was taken on this Final Order until Complainant filed his Petition for Rescission on July 8, 2019. This request was not made until one hundred sixty seven (167) days after the Initial Hearing, ninety one (91) days after the Initial Decision, and fifty four (54) days after the Final Decision of the Commission.

Following a thorough review of Complainant's sixteen page petition, it remains unclear whether he is requesting (1) another hearing or (2) that the Commission rescind its final order and enter a different Order. Accordingly, PPL Electric will respond to both possibilities in this response.

II. Response to Petition:

A. Request for Rehearing:

Complainant's original Complaint was dismissed for his failure to attend the hearing and present any evidence to support his claims. As Complainant did not attend the hearing, there exists no record upon which a finding could be rendered in his favor. Where his Petition is not "evidence," it appears that if Complainant is seeking a different result (other than dismissal), he must be requesting a new hearing. "A petition for rehearing presupposed the offering of additional testimony of some sort." *Pennsylvania Public Utility Comm'n v. Reading Co.*, 345 A.2d 311 (Pa. 1975). A fair reading of the Petition filed by Complainant is that he seeks a hearing at which time he could present evidence of application of payments to his electric service account. However, if rehearing is what the Complainant is seeking, the time period for such request has long expired.

Pennsylvania Statutory Law is clear – “After an order has been made by the commission, any party to the proceedings may, **within 15 days after the service of the order**, apply for a rehearing in respect of any matters determined in such proceedings and specified in the application for rehearing, and the commission may grant and hold such rehearing on such matters. No application for a rehearing shall in anywise operate as a supersedeas, or in any manner stay or postpone the enforcement of any existing order, except as the commission may, by order, direct. If the application be granted, the commission may affirm, rescind, or modify its original order.” 66 Pa. C.S.A. § 703. See also *Colombo v. Pennsylvania Public Utility Comm’n.*, 48 A.2d 59 (Pa. Super. 1946). The Orders are clear that Complainant took no action within the fifteen days after service of the Commission’s May 15, 2019 Order. Accordingly, the Petition, to the extent it seeks rehearing, must be denied as untimely.

B. Petition for Rescission:

To the extent Complainant does not seek another hearing, but rather seeks a different Order (rescission), such should be denied for various reasons. First, Complainant has provided no good faith explanation for failure to attend the January 23, 2019 hearing. Second, Complainant has been provided due process and failed to appear for the Initial Hearing, failed to file Exceptions following the Initial Decision, and failed to act for more than fifty (50) days after the issuance of the Commission’s Final Order. Third, the relief sought, if provided, would not provide Complainant with any relief as there is no record at all upon which relief could be granted in favor of Complainant and the time for rehearing has long passed.

Pennsylvania law permits that “[t]he commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or Municipal Corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders. 66 Pa.C.S.A. § 703. However, this review and rescission is not warranted in the instant case.

Complainant has provided no good faith explanation for his failure to telephonically attend the January 23, 2019 hearing. While Complainant argues that Respondent, PPL Electric’s exhibits and cover letter enclosing the exhibits was not timely provided to him, such documents are irrelevant for two reasons. First, the cover letter and exhibits from PPL Electric were not the Notice of Hearing. As the docket notes, a Notice of Hearing was mailed to all parties, to the addresses provided by the parties, on December 4, 2018 clearly notifying all parties of the January 23, 2019 date of hearing. Complainant was provided with seven (7) weeks’ notice of the hearing. To the extent Complainant contends he was not living in Pennsylvania during the months of December and January, this would not preclude proper service. First, Complainant could have notified the PUC of an alternative address, but elected not to do so. Second, if Complainant had a mail forwarding request placed with the post office, his mail would have been forwarded within the seven (7) week time frame, this providing him with the Hearing Notice in time for the Initial Hearing. Third, knowing that he would be away from his main home for a substantial period of time, Complainant could have elected e-service from the PUC. Complainant failed to avail himself of any of these options. Accordingly, any lack of notice is due to Complainant’s

own actions and inactions. Being out of state for four to six months and not taking proper actions to receive mail is not a valid reason for a new hearing or rescission.

In addition, any claim that PPL Electric's cover letter for exhibits was misleading is irrelevant.¹ As Complainant notes, the cover letter and exhibits were served by Federal Express and left at his doorstep in Pennsylvania. Complainant alleges he did not receive the same until he returned from Florida months later in March 2019. Specifically, Complainant contends "When I arrived home in March the envelope [PPL Electric's Federal Express with cover letter and exhibits] was still on the steps – showing evidence of having been in the weather – and was retrieved. (Complainant's Petition at line 255-56). Accordingly, it would be impossible for Complainant to be confused or misled on January 23, 2019 (the date of the hearing) by correspondence he had not yet reviewed. Rather, the Notice of Hearing served on December 4, 2018 was the formal notice and all service was appropriate.

Complainant has been provided due process and failed to appear for the Initial Hearing, failed to file Exceptions following the Initial Decision, and failed to act for more than fifty (50) days after the issuance of the Commission's Final Order. Not only did Complainant not appear for the initial hearing, he failed to take any action for almost six (6) months after the hearing. Even if Complainant for some reason did not receive the December 4, 2018 Notice of Hearing, he alleges in the Petition that he spoke with Counsel for PPL Electric on January 17, 2019. (Complainant's Petition at line 229). Complainant alleges this was 2 days after the hearing, but was actually six days prior to the hearing. (Complainant's Petition at line 229). Complainant acknowledges that PPL Electric

¹ PPL Electric denies that such correspondence was misleading or untimely, for reasons discussed below.

contacted him to confirm receipt of the exhibits and to discuss the case (as the Prehearing Order directed the utility to contact the Complainant one week prior to the hearing date). At this point, Complainant was clearly on notice concerning exhibits that were sent to him, and even then he made no contact with the PUC or ALJ.

Thereafter, an Initial Decision was issued and mailed on April 8, 2019. Complainant contends that he returned from Florida in March 2019 (Complainant's Petition line 255) and accordingly, he would have received this Initial Decision, which clearly notified him of the manner in which to file Exceptions. Complainant elected not to file Exceptions and provides no explanation for the inaction. Thereafter, on May 15, 2019, the Commission entered its Final Order. Again, Complainant alleges he was residing in Pennsylvania during this time, and would therefore have been receiving his mail. Again, he took no action for fifty four (54) days. Complainant has provided no explanation for such inaction. Moreover, in filing the Petition, Complainant failed to serve PPL Electric, thus delaying any possible response. The case has been final for more than eleven months, and with no good faith reason for failing to (1) attend the initial hearing, (2) contact the PUC after learning of the hearing, (3) file Exceptions, or (4) take immediate action on the Final Order. Accordingly, the Petition should be denied.

Third, the relief sought, even if provided, would not provide Complainant with any relief as there is no record at all upon which relief could be granted in favor of Complainant and the time for rehearing has long passed. As indicated above, if Complainant is seeking rehearing, such was required to be requested within fifteen (15) days of the Commission Order. As Complainant had not made such a request, any request now for rehearing should be deemed waiver. (Complainant should not be permitted to obtain the waived relief of

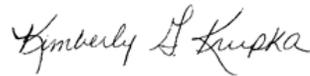
rehearing by titling his Petition as one for Rescission.) To the extent he is asking for the Commission Order to be rescinded and a different Order be entered, there is no basis upon which to enter such an Order. Complainant bears the burden of proof and has presented no evidence. His Petition is not evidence in the case. Accordingly, there is no alternative Order which could be granted other than a Dismissal.

III. **Conclusion:**

For the foregoing reasons, PPL Electric respectfully requests that Complainant's Petition for Rescission be denied.

Dated: April 27, 2020

Respectfully submitted,



By:

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COMPLAINT DOCKET

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CERTIFICATE OF SERVICE

This is to certify that the ANSWER TO PETITION FOR RECISSION on behalf of PPL ELECTRIC UTILITIES CORPORATION was mailed to counsel/complainant of record on behalf of Respondents by first class United States mail, postage on this the 27th day of April, 2020.

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