

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christopher Foti	:	
	:	
v.	:	C-2020-3015285
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This decision sustains the motion to dismiss the formal complaint filed by Christopher Foti made by PPL Electric Utilities Corporation at the hearing on July 7, 2020. Mr. Foti failed to appear for the hearing and prosecute his complaint.

HISTORY OF THE PROCEEDING

On January 2, 2020, Christopher Foti (Complainant) filed a formal complaint against PPL Electric Utilities Corporation (PPL) with the Pennsylvania Public Utility Commission (Commission) alleging incorrect billing due to a metering issue.

On January 23, 2020, PPL filed an answer to the complaint admitting that there had been an outage and that upon investigating found that there had also been a meter mix-up at the service address. PPL stated that the problem had been corrected and the Complainant properly billed.

On January 27, 2020, a hearing Notice was sent to the parties setting March 11, 2020 as the date for a call-in telephonic hearing in this matter.

On February 2, 2020, a prehearing Order was issued reminding the parties of the date and time of the hearing and stating various procedures that would be applicable to the call-in hearing.

On March 9, 2020, a further hearing Notice was sent to the parties setting April 28, 2020 as a new hearing date. That hearing convened as scheduled but neither party appeared and the hearing adjourned.¹

On May 7, 2020, another hearing Notice was issued setting July 7, 2020, at 10:00 a.m., as the date and time for an initial call-in telephonic hearing in this matter.

On July 7, 2020, a telephonic hearing convened pursuant to Notice. Graig Schultz, Esquire, appeared on behalf of PPL with a witness ready to testify and having prefiled proposed exhibits. Complainant did not appear. After waiting for approximately 20 minutes, counsel for PPL moved for dismissal of the complaint with prejudice for failure to prosecute. That motion was granted and the record was closed.

On July 7, 2020, approximately 30 minutes after adjournment, Complainant called the Office of Administrative Law Judge (OALJ) inquiring why he had not been contacted for the hearing. Upon being told that the hearing was a call-in hearing, Complainant stated that he had thought that he would be called. Complainant then submitted an informal petition by email to reopen the record. That petition was communicated to counsel for PPL.

¹ The Commission's offices were closed beginning on March 16, 2020, pursuant to an Executive Order issued by the Pennsylvania Deputy Secretary for Human Resources and Management in response to the COVID-19 pandemic. However, the Commission has continued working remotely. Nonetheless, during the initial period of office closure, there may have been some confusion whether hearings were still being held. Thus, in light of the fact that neither party appeared, I thought it was prudent to reschedule the matter for a further hearing.

On July 9, 2020, counsel for PPL submitted an answer in opposition to the petition to reopen the record.

By Order dated July 21, 2020, Complainant's petition to reopen the record was denied. The Order considered the merits of the petition. In sum, the Order held that Complainant's reason for not attending the hearing in this case on July 7, 2020, was not reasonable. Further, as there was no reason to believe that conditions of fact or of law in this matter had so changed as to require, or that the public interest required, the reopening of the proceeding, PPL's objection was sustained, and Complainant's petition to reopen the record was denied.²

The record in this case consists of two transcripts: one from the hearing of April 28, 2020, which is six pages in length, and the second from the July 7, 2020 hearing of an additional five pages. The latter transcript was filed on September 17, 2020.

This matter is ready for adjudication.

FINDINGS OF FACT

1. The Complainant in this proceeding is Christopher Foti.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation, a Commission jurisdictional electric distribution company.
3. On January 2, 2020, Complainant filed a formal complaint against PPL alleging incorrect billing due to a metering issue.
4. On January 23, 2020, PPL filed an answer to the complaint admitting that there had been an outage and that upon investigating found that there had also been a meter mix-

² Complainant did not seek interlocutory review of this Order.

up-at the service address; however, PPL stated that the problem had been corrected and that the Complainant was properly billed.

5. On January 27, 2020, a hearing Notice was sent to the parties setting March 11, 2020 as the date for a call-in telephonic hearing in this matter.

6. A prehearing Order was issued February 25, 2020, which set forth certain procedural requirements associated with the initial call-in telephonic 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. On May 7, 2020, a rescheduled hearing Notice was sent to the parties rescheduling July 7, 2020, as the date for a call-in telephonic hearing.

9. A toll-free call-in number and PIN were both provided on the May 7, 2020 reschedule Notice.

10. The hearing Notices and the prehearing Order were sent to Complainant to the address provided by him on his Complaint form.

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

12. Complainant did not appear at the hearing, and after waiting for approximately 20 minutes, counsel for PPL moved for dismissal of the complaint with prejudice for failure to prosecute.

DISCUSSION

In his complaint, Complainant alleged incorrect billing due to a metering issue. Complainant asked that all charges from June, 2017, to March, 2018 be “dismissed.” Complainant stated that his current bill reflects charges for which he is not responsible and for which he will not pay. On January 23, 2020, PPL filed an answer to the complaint which sheds further light on the controversy:

[O]n June 1, 2017, Complainant contacted PPL Electric and requested electric service in his name at 3988 Forest Inn Road, Basement, Aquashicola, Pennsylvania 18012 effective June 2, 2017. PPL Electric assigned account number . . . to his account. On November 27, 2017, Complainant contacted PPL Electric and requested to change the premise address from 3988 to 3980. From March 3, 2018 through March 6, 2018, Complainant contacted the company to report a power outage. As a result of this report, PPL Electric issued a field investigation and determined on March 7, 2018 that a possible meter mix existed. Such meter mix was confirmed on March 15, 2018. On May 1, 2018, PPL Electric corrected the billing so that all individuals were billed on the correct meter for their actual usage.

PPL Answer at ¶ 4.

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 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. Foti bears the burden to prove that PPL provided inadequate and unreasonable service. See 66 Pa. C.S. § 1501.

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 Complainant at the date and time set for the hearing in his case, despite Notice of the hearing having been sent to him at the 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 May 7, 2020 hearing Notice and the prehearing Order were sent to Complainant by first-class mail to the address provided by him. Neither the prehearing Order nor the hearing Notice was returned to the Commission as undeliverable. Accordingly, it must be presumed that these 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. Complainant had notice of the hearing and an opportunity to be heard in this proceeding

but did not appear. Therefore, Complainant's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, counsel for PPL moved for dismissal of the complaint for lack of prosecution.

After the hearing, Complainant sought to reopen the record claiming that he had not realized that the hearing was a call-in hearing. That petition to reopen was opposed by PPL. PPL's objection was sustained, and the petition was denied by Order dated July 21, 2020. That Order took into account the fact that Complainant was proceeding *pro se*, but found that Complainant's reason for not attending the hearing in this case on July 7, 2020 was not reasonable because multiple notices and the prehearing Order in this matter clearly stated that the parties were to call in to the hearing. Further, there was no reason to believe that conditions of fact or of law in this matter had so changed as to require, or that the public interest required, the reopening of the proceeding.

Parties must carefully attend to the instructions and notices sent to them by the Commission. The orderly resolution of the many cases that come before the Commission depends on reasonable diligence by the parties to litigation. By failing to appear and present any evidence in support of his complaint, Complainant failed to carry his burden. Thus, the Complaint will be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995).

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

7. Mr. Foti failed to carry his burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the formal Complaint of Christopher Foti at Docket Number C-2020-3015285 for failure to prosecute is granted.

