

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robert Jones	:	
	:	
v.	:	F-2020-3021737
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This decision grants a motion to dismiss for failure to prosecute because the complainant failed to appear for the hearing at the designated date and time despite being given notice of the hearing.

**HISTORY OF THE PROCEEDING**

On July 26, 2020, Robert Jones filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL), docket number F-2020-3021737. In his complaint, Mr. Jones averred that PPL is threatening to shut off his utility service or has already shut off his utility service, there are incorrect charges on his bill and that he is having a reliability, safety or quality problem with his utility service. Mr. Jones explained, among other things, that there was a \$1,500 initial balance on his account when he started his current account. Mr. Jones requested that the \$1,500 be removed from his account.

On September 23, 2020, PPL filed an answer to Mr. Jones' complaint. In its answer, PPL admitted or denied the various averments made by Mr. Jones. In particular, PPL discussed details of a Commission-established payment agreement which Mr. Jones defaulted on resulting in a termination notice sent to him by PPL on May 14, 2019.

On September 24, 2020, a telephonic hearing notice was issued establishing an initial call-in telephonic hearing for this case for Wednesday, November 4, 2020 and assigning me as the presiding officer. A prehearing order dated October 7, 2020 was issued setting forth various rules that would govern the hearing. Of note, the hearing notice stated that a party may lose the case if it does not take part in the hearing and present facts on the issues raised. Similarly, the prehearing order stated, among other things, that: "If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party." Both the hearing notice and the prehearing order were sent to Mr. Jones via email.<sup>1</sup> Neither was returned as undeliverable.

On October 29, 2020, counsel for PPL submitted a letter requesting that the hearing scheduled for November 4, 2020 be rescheduled because she is covering a trial for one of her partners due to an unexpected medical condition. By email on November 1, 2020, Mr. Jones indicated that he did not oppose the requested continuance. The parties were informally notified on November 2, 2020 that the request for a continuation would be granted. On November 2, 2020, a hearing cancellation/reschedule notice was issued rescheduling the hearing for Tuesday, December 22, 2020. PPL's request was formally granted via order dated November 2, 2020. Both the hearing notice and the order granting the continuance were sent to Mr. Jones via email. Neither was returned as undeliverable.

The hearing convened on December 22, 2020, as scheduled. Kimberly Krupka, Esquire appeared on behalf of PPL. No one appeared on behalf of Mr. Jones.

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<sup>1</sup> The hearing notice and prehearing order were sent to Complainant by email pursuant to the Commission's *Emergency Order re Suspension of Regulatory and Statutory deadlines, Modification to Filing and Service Requirements* at Docket No. M-2020-3019262, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. (Order entered March 20, 2020).

The record in this case consists of the transcript of 10 pages. The record in this case close when the transcript was filed with the Commission January 6, 2021. This Initial Decision grants the motion of PPL made at the conclusion of the hearing to dismiss the complaint for failure to prosecute.

### FINDINGS OF FACT

1. The Complainant in this case is Robert Jones.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. Mr. Jones received notice of the December 22, 2020 hearing when he was sent a hearing notice via email on November 2, 2020. Tr. 4.
4. Mr. Jones received notice of the December 22, 2020 hearing when he was sent an order granting a continuance of the November 4, 2020 hearing on November 2, 2020. Tr. 4.
5. Mr. Jones was sent a prehearing order on October 7, 2020 that set forth various rules that would govern the hearing. Tr. 4.
6. Both the hearing notice and the prehearing order indicated that a party may lose the case if they do not appear and take part in the hearing. Tr. 4.
7. Neither the hearing notice, the prehearing order nor the order granting the continuance was returned to the Commission as undeliverable.
8. No one called in to the hearing as instructed on the hearing notice on behalf of Mr. Jones at the designated date and time. Tr. 3.
9. The hearing was delayed 11 minutes to accommodate any delay in anyone appearing at the hearing on behalf of Mr. Jones. Tr. 3

10. Counsel for PPL indicated during the hearing the numerous efforts that the company took to provide Mr. Jones with notice of the hearing. Tr. 6.

### DISCUSSION

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). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “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). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, based on a reading of his complaint, Mr. Jones complained that there are incorrect charges on his bill that he would like removed. Mr. Jones, therefore, has the burden of proof in this proceeding.

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 afforded notice and the opportunity to be heard. Id.

No one appeared on behalf of Mr. Jones at the date and time set for the hearing in his case despite notice of the hearing having been provided to 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 prehearing order, order granting the continuance and both hearing notices were sent to Mr. Jones by emails and none were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Mr. Jones in the ordinary course of business were received by Mr. Jones. Morella v. PECO Energy Company, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); Zirkel v. Philadelphia Gas Works, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). Of note, the hearing notices and the prehearing order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. Furthermore, counsel for PPL indicated during the hearing the numerous efforts that the company took to provide Mr. Jones with notice of the hearing. Tr. 6.

No one appeared on behalf of Mr. Jones at the time of the hearing, nor did anyone ever request a postponement or continuance of the hearing. As such, Mr. Jones had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Mr. Jones' 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 to have the complaint dismissed for lack of prosecution. Tr. 7. By failing to appear and present any evidence in support of his complaint, Mr. Jones has failed to carry his burden. Thus, it is appropriate to dismiss the complaint. Jefferson v. UGI Utils., Inc., Docket No. Z-00269892 (Order entered December 26, 1995). Accordingly, the merits of the complaint will not be addressed in this Initial Decision.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter 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 accorded notice and the 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. Jones' due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

7. Mr. Jones has 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 Robert Jones at docket number F-2020-3021737 for failure to prosecute is granted.
2. That the formal complaint filed by Robert Jones against PPL Electric Utilities Corporation at docket number F-2020-3021737 is hereby dismissed.
3. That this matter be marked closed.

Date: January 13, 2021

\_\_\_\_\_/s/  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge