

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kenneth Mull	:	
	:	
v.	:	F-2020-3021443
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the formal complaint brought by Kenneth Mull (Complainant) against PPL Electric Utilities Corporation (PPL) alleging that he had been misbilled. Complainant failed to appear for the hearing in this matter despite prior notice. PPL moved for dismissal of the complaint. That Motion is granted, and the complaint is dismissed.

**HISTORY OF THE PROCEEDING**

On June 30, 2020, Complainant filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL alleging that he had been misbilled. The complaint was a timely appeal of a determination by the Commission's Bureau of Consumer Services (BCS) at Case No. 3746967. The complaint was served on PPL on August 21, 2020.

On September 10, 2020, PPL timely filed an answer to the complaint. In its answer, PPL stated that Complainant had been re-billed because of a mixed meter problem

which PPL had corrected. PPL stated that it had re-billed the accounts involved and denied any misbilling. PPL asked that the complaint be dismissed.

On September 11, 2020, the Commission sent to the parties a telephonic hearing notice by which it scheduled an initial telephonic hearing for October 13, 2020, at 10:00 a.m., and assigned me as the Presiding Officer. The hearing notice stated, “*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in original).

On October 5, 2020, I issued a prehearing Order in which I set forth certain procedural requirements pertaining to the hearing. The prehearing Order also reminded the parties of the date and time of the hearing and the consequences of the failure to appear. The prehearing Order stated, “[i]f 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. Mull at the email address provided by him on his complaint.<sup>1</sup> 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 October 13, 2020. Kimberly G. Krupka, Esquire, appeared on behalf of PPL. Complainant did not appear. 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.

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<sup>1</sup> See, *Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262 at 4 (Order entered March 20, 2020) (providing for electronic service by the Commission during the COVID-19 Emergency).

The hearing concluded and a transcript of six pages was filed on October 26, 2020. The record closed on that date. This Initial Decision grants PPL's Motion to Dismiss the complaint with prejudice for failure of the Complainant to appear and prosecute his case.

#### FINDINGS OF FACT

1. The Complainant is Kenneth Mull.
2. The Respondent is PPL Electric Utilities Corporation, a Commission jurisdictional electric distribution company.
3. On June 30, 2020, the Complainant filed a formal complaint against PPL alleging misbilling.
4. On September 10, 2020, PPL filed an answer in which it denied the allegations in the complaint.
5. On September 11, 2020, a telephonic hearing notice was sent to the parties which scheduled an initial telephonic hearing for October 13, 2020, at 10:00 a.m.
6. On October 5, 2020, a prehearing Order was sent to the parties which set forth certain procedural requirements associated with the initial hearing and reminded the parties of the date and time of the 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 Mr. Mull to his email address that he provided 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. Mull averred that PPL had misbilled him after correcting a mixed meter problem.

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. Berman 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. Mull at the date and time set for the hearing in his case, despite notice of the hearing having been sent to him at the email 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. Mull to his email address. The hearing notice and prehearing Order were not 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. *Morella v. PECO Energy Co.*, 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). As noted above, the hearing notice and 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. Mull 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 Tele. 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. Counsel stated that in conformity with the prehearing Order, she had spoken with Complainant before the hearing to discuss the possibility of settlement, but that

Complainant was not interested. Tr. at 5. In fact, counsel anticipated that Complainant would appear at hearing. Thus, in addition to prior notice of the hearing provided by the Commission, Complainant had discussed the case immediately before the hearing with counsel for PPL. By failing to appear and present any evidence in support of his complaint, Mr. Mull failed to carry his burden. Having failed to appear at hearing or to request a continuance, Complainant failed to prosecute his complaint. 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. Mull's due process rights have been fully protected. *Sentner v. Bell Tele. Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

7. Mr. Mull 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 Kenneth Mull at Docket Number F-2020-3021443 for failure to prosecute is granted.

2. That the formal Complaint filed by Kenneth Mull at Docket Number F-2020-3021443 is dismissed with prejudice.

3. That this matter be marked closed.

Date: January 26, 2021

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/s/  
Dennis J. Buckley  
Administrative Law Judge