

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Allen Ulrich for Rebecca Jonney	:	
	:	
v.	:	C-2021-3024839
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Charece Z. Collins
Administrative Law Judge

INTRODUCTION

This decision grants a motion to dismiss for failure to prosecute because, after his absence from the first hearing was excused, the Complainant failed to appear for a second hearing at the designated date and time, despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On March 1, 2021, Allen Ulrich (“Complainant” or “Mr. Ulrich”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against PPL Electric Utilities Corporation (“PPL”). In his complaint, Mr. Ulrich averred that there was an issue with a refund check issued by PPL to his deceased partner, Rebecca Jonney. Mr. Ulrich further averred that he and Ms. Jonney lived together for four years and shared all expenses. Mr. Ulrich requested that the check be reissued to him as his partner is deceased, and he could not deposit Ms. Jonney’s refund check.

Mr. Ulrich's complaint was served on PPL on March 26, 2021. On, April 13, 2021, Kimberly Krupka, Esquire, attorney for PPL, filed a letter with the Commission requesting a prehearing conference or mediation for the purpose of discussing the settlement of this matter prior to scheduling a hearing.

On April 15, 2021, PPL filed a timely answer and new matter in response to Mr. Ulrich's complaint. In its answer, PPL denied that Mr. Ulrich had the right to file a complaint on behalf of Ms. Jonney. PPL acknowledged that Mr. Ulrich contacted its office to discuss a refund check in the amount of \$37.75, but it denied that Mr. Ulrich has the right to a refund on another ratepayer's account. In its new matter, which was accompanied by a notice to plead, PPL averred that Mr. Ulrich was not a ratepayer of record, and he therefore has no standing to seek a refund on Ms. Jonney's account. PPL further argued that to the extent that Ms. Jonney is deceased, the Administrator or Executor of the Will would have standing to seek the refund. PPL requested that the Commission deny Mr. Ulrich's complaint.

On April 15, 2021, PPL also filed preliminary objections, accompanied by a notice to plead, in response to Mr. Ulrich's complaint. In its preliminary objections, PPL reiterated its argument that Mr. Ulrich was not a ratepayer of record, and he therefore does not have standing to bring a claim against PPL for a refund on another ratepayer's account. PPL requested that the Commission dismiss Mr. Ulrich's complaint for lack of jurisdiction, due to Mr. Ulrich's lack of standing to bring the complaint before the Commission.

Mr. Ulrich filed a timely response to PPL's new matter on April 29, 2021. In his answer, Mr. Ulrich averred that he and Rebecca Jonney lived together and shared all expenses as a couple for five years. He further averred that he made over four years of payments to PPL in Ms. Jonney's name. He requested that the refund be granted and that PPL be held accountable for the unnecessary grief and aggravation they have caused him. Mr. Ulrich did not file a response to the preliminary objections.

By motion judge assignment notice dated May 19, 2021, I was assigned by the Commission as the presiding officer to this matter. PPL's preliminary objections were denied

via my Order dated June 11, 2021, and the case was referred to mediation. The case did not resolve at mediation.

On August 30, 2021, the Commission served an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for October 6, 2021 at 10:00 a.m. In anticipation of the hearing, I served a prehearing order on August 30, 2021, setting forth hearing information and the rules that would govern the proceeding. Both the hearing notice and the prehearing order directed all parties to dial **1-866-802-1166** and use PIN **65945489** to attend the hearing on October 6, 2021.

The hearing was held as scheduled on October 6, 2021 at 10:00 a.m. Kimberly Krupka, Esquire attended on behalf of PPL with one witness, and she was ready to proceed. Mr. Ulrich did not call in for the hearing. The start of the hearing was delayed ten minutes to allow Mr. Ulrich additional time to call in. During the hearing, Ms. Krupka made a motion to dismiss the Complaint for Complainant's failure to appear and prosecute his Complaint after having received notice of the hearing date and time. I indicated that I would ensure that Mr. Ulrich had not attempted to contact the Commission during the hearing and would then issue a ruling on the motion upon receipt of the hearing transcript and the close of the record.

After the hearing, Commission staff informed me that Mr. Ulrich called our office at 10:26 a.m. on October 6, 2021 and stated that no one called him for his hearing. He was directed to email me and Attorney Krupka to request a new hearing. Mr. Ulrich emailed me at 11:07 a.m. on October 6, 2021 to request a continuance, as he was "under the mistaken impression that [he] was going to be contacted when the courts were prepared to hear the case." I asked Attorney Krupka if PPL objected to Mr. Ulrich's continuance request. Attorney Krupka advised that PPL respectfully objected to a second hearing, "given the notices provided in this case which provided a call in [sic] number." Over PPL's objection, I granted Mr. Ulrich's request for a second hearing via my Order dated October 8, 2021.

Mr. Ulrich and Ms. Krupka conferred and emailed me on October 8, 2021 to advise that they agreed on November 9, 2021 as the next hearing date. On October 8, 2021, the

Commission served a second initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for November 9, 2021 at 10:00 a.m. In anticipation of the hearing, I served a second prehearing order on October 8, 2021, setting forth hearing information and the rules that would govern the proceeding. Both the hearing notice and the prehearing order again directed all parties to dial **1-866-802-1166** and use PIN **65945489** to attend the hearing on November 9, 2021.

The November 9, 2021 hearing was held as scheduled. Kimberly Krupka, Esquire appeared on behalf of PPL with one witness, and she was again ready to proceed. Mr. Ulrich did not call in for the hearing. The start of the hearing was delayed ten minutes to allow Mr. Ulrich additional time to call in. During the hearing, Ms. Krupka made a motion to dismiss the Complaint for Complainant's failure to appear and prosecute his Complaint after having received notice of the hearing date and time.

At 11:13 a.m. on November 9, Mr. Ulrich emailed me to say that he had "trouble calling in for the hearing." He requested that a third hearing be scheduled to hear his Complaint. At 11:19 a.m., Commission staff informed me that Mr. Ulrich called the office and advised that he missed the 10:00 a.m. hearing because he could not find the email with the phone number. I emailed Ms. Krupka, copying Mr. Ulrich, at 11:32 a.m. to ask if PPL objected to Mr. Ulrich's request for another hearing. Ms. Krupka advised that PPL objected to Mr. Ulrich's request for a third hearing.

This Initial Decision grants the motion of PPL made at the conclusion of the November 9, 2021 hearing to dismiss the complaint for failure to prosecute.

The record in this case consists of a transcript of seven pages that was submitted to the Commission on October 25, 2021, and a transcript of twelve pages that was submitted to the Commission on December 13, 2021. The record in this case closed on December 13, 2021 upon the filing of the second hearing transcript with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Allen Ulrich.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address in this case is 1661 Washington Avenue, 1st Floor, Northampton, PA 18067.
4. On March 1, 2021, Mr. Ulrich filed a formal complaint against PPL.
5. The Complaint was served on PPL on March 26, 2021.
6. On, April 13, 2021, Kimberly Krupka, Esquire, attorney for PPL, filed a letter with the Commission requesting a prehearing conference or mediation for the purpose of discussing the settlement prior to scheduling a hearing.
7. On April 15, 2021, PPL filed an answer to Mr. Ulrich's complaint.
8. On April 15, 2021, PPL filed preliminary objections to dismiss Mr. Ulrich's complaint.
9. On April 29, 2021, Mr. Ulrich filed a response to PPL's new matter.
10. On August 30, 2021, a hearing notice was served establishing an initial telephonic hearing in this matter for October 6, 2021 at 10:00 a.m. Tr. 5.
11. In anticipation of the October 6, 2021 hearing, a prehearing order was served on August 30, 2021 reminding the parties of the hearing date and setting forth rules that would govern the proceeding. Tr. 5.

12. The hearing notice served on August 30, 2021 stated that a party may lose the case if it does not take part in the hearing and present evidence on the issues raised. Tr. 12-13.

13. The prehearing order served on August 30, 2021 stated, among other things, “You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed ‘with prejudice’ which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.” Tr. 12-13.

14. The hearing notice and the prehearing order were served via email to Mr. Ulrich at the email address that he provided in his complaint. Tr. 13.

15. Neither the hearing notice nor the prehearing order was returned to the Commission as undeliverable. Tr. 13.

16. The hearing was held as scheduled on October 6, 2021.

17. PPL was present and ready to proceed.

18. The start of the hearing was delayed ten minutes to accommodate any potential delay of Mr. Ulrich. Tr. 5.

19. Mr. Ulrich failed to call in for the October 6, 2021 hearing, and no one appeared on behalf of Mr. Ulrich. Tr. 4-5.

20. Mr. Ulrich contacted the Commission after the hearing on October 6 to request a continuance. Tr. 12

21. PPL objected to Mr. Ulrich’s continuance request on October 6.

22. Mr. Ulrich's continuance request was granted via my Order dated October 8, 2021. Tr. 12.

23. Mr. Ulrich conferred with Ms. Krupka and agreed on November 9, 2021 as the second hearing date. Tr. 12.

24. On October 8, 2021, a hearing notice was served establishing an initial telephonic hearing in this matter for November 9, 2021 at 10:00 a.m. Tr. 12.

25. In anticipation of the November 9, 2021 hearing, a prehearing order was served on October 8, 2021 reminding the parties of the hearing date and setting forth rules that would govern the proceeding. Tr. 12.

26. The hearing notice served on October 8, 2021 stated that a party may lose the case if it does not take part in the hearing and present evidence on the issues raised. Tr. 12-13.

27. The prehearing order served on October 8, 2021 stated, among other things, "You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed 'with prejudice' which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint." Tr. 12-13.

28. The hearing notice and the prehearing order were served via email to Mr. Ulrich at the email address that he provided in his complaint. Tr. 13.

29. Neither the hearing notice nor the prehearing order was returned to the Commission as undeliverable. Tr. 13.

30. The hearing was held as scheduled on November 9, 2021.

31. PPL was present and ready to proceed.

32. The start of the hearing was delayed ten minutes to accommodate any potential delay of Mr. Ulrich. Tr. 11-12.

33. Mr. Ulrich failed to call in for the November 9, 2021 hearing, and no one appeared on behalf of Mr. Ulrich. Tr. 11-12.

34. Mr. Ulrich contacted the Commission following the November 9, 2021 hearing to request a third hearing.

35. PPL objected to Mr. Ulrich's request for a third hearing.

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 Hosier v. Margulies, 70 A.2d 854 (Pa. 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 his Complaint, Mr. Ulrich requested that a refund check issued to Rebecca Jonney be reissued by PPL in his name. Therefore, Mr. Ulrich 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). However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard. Id.

No one appeared on behalf of Mr. Ulrich at the dates and times set for both hearings in this case, despite being provided notice of the hearing. Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 of the Code 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 the 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 notices and prehearing orders were served upon Mr. Ulrich at the email address he provided in his Complaint. The documents were not returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Mr. Ulrich in the ordinary course of business were received by Mr. Ulrich. Zirkel v. Phila. Gas Works, Docket No. C-2016-2561176 (Final Order entered April 7, 2017); Morella v. PECO Energy Co., Docket No. C-2016-2553416 (Final Order entered January 31, 2017). Of note, the hearing notices and the prehearing orders 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 the efforts that the Company also took to provide Mr. Ulrich with notice of the hearing. Tr. 14. Even further, after missing the October 6, 2021 hearing, Mr. Ulrich specifically stated that November 9, 2021 was a good date to hold the second hearing in this matter. Tr. 12. Mr. Ulrich was aware of the hearing dates and the method by which he was expected to participate in the hearings.

No one appeared on behalf of Mr. Ulrich at the time of both hearings, nor did he request a postponement or continuance of the hearings prior to the hearing dates. As such, Mr. Ulrich had notice and an opportunity to be heard twice in this proceeding but chose not to appear each time. Mr. Ulrich was provided with a second opportunity for a hearing after missing his first hearing despite having received proper notice. Therefore, Mr. Ulrich's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

During both hearings, counsel for PPL moved to have the complaint dismissed for lack of prosecution. Tr. 6; 14-16. By failing to appear and present any evidence in support of his complaint, Mr. Ulrich has failed to carry his burden. After the conclusion of each hearing, Mr. Ulrich contacted the Commission to request another hearing to be scheduled. After missing the October 6, 2021 hearing, Mr. Ulrich advised that he was "under the mistaken impression that [he] was going to be contacted when the courts were prepared to hear the case." I responded to Mr. Ulrich, copying Attorney Krupka, and advised that both the hearing notice and prehearing order directed him to call in to the hearing using the toll-free number and PIN. Notwithstanding, I granted Mr. Ulrich's request to schedule a second hearing to hear his complaint. After being given a second opportunity for a hearing, Mr. Ulrich again missed the November 9, 2021 hearing, with his excuse being that he could not find the paperwork. When asked if PPL objected to Mr. Ulrich's request for a third hearing, Ms. Krupka responded through email:

This matter was originally scheduled for October 6, 2021 and properly noticed. Mr. Ulrich did not attend the hearing at this time. Afterwards, the parties were directed to submit agreeable dates. In response, Mr. Ulrich indicated that November 9, 2021 at 10:00 was an acceptable time and the hearing was so scheduled. The Court, PPL Electric and its witness were all present from 10:00 through 10:19. Not only did Mr. Ulrich not call into the number provided, but there was no message to my office or e-mail provided from Mr. Ulrich during that time expressing any difficulty. Given that this is the second missed hearing and the statement to ALJ Collins' office, I must object. While we can certainly understand the first missed hearing, this is the second occasion on which PPL Electric has presented itself through both its counsel and representative and

the Court has, as well, expended resources of its ALK [sic] and Court Reporter.

The Commission's resources are not unlimited. The Commission incurs expenses each time it schedules a hearing, and it cannot continue to schedule hearings because complainants fail to adhere to its notices and/or miss their hearings because they did not hold on to those notices. Therefore, it is appropriate to dismiss the complaint. Jefferson v. UGI Utils., Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995). Accordingly, the merits of the complaint need not be addressed in this Initial Decision.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of 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, 70 A.2d 854 (Pa. 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 the witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

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

7. By failing to appear for the hearings and proffer any evidence to support his Complaint, Mr. Ulrich has failed to meet his burden of proving that he is entitled to the relief that he seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PPL Electric Utilities Corporation to dismiss the formal complaint filed by Allen Ulrich at docket number C-2021-3024839 for failure to prosecute is hereby granted.

2. That the formal complaint filed by Allen Ulrich against PPL Electric Utilities Corporation at docket number C-2021-3024839 is dismissed.

3. That the Commission's Secretary mark this docket as closed.

Date: January 5, 2022

/s/
Charece Z. Collins
Administrative Law Judge