

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lewis A. Gregg, Jr.	:	
	:	
v.	:	F-2022-3032127
	:	
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 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 April 18, 2022, Lewis A. Gregg, Jr. (Complainant or Mr. Gregg) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL)¹. In his complaint, Mr. Gregg averred that he was incarcerated from February 7, 2020 to November 29, 2021, and PPL is billing him for electric service provided to his home address during his period of incarceration. Mr. Gregg requested that he not be held responsible for electric service charges incurred while incarcerated. Mr. Gregg's complaint was served on PPL on April 26, 2022.

¹ This formal complaint is a timely appeal from a determination by the Commission's Bureau of Consumer Services at No. 3818802, in response to Complainant's informal complaint. Review of informal complaint determinations are heard *de novo*. 52 Pa. Code § 56.403(a).

On May 16, 2022, PPL filed a timely answer in response to Mr. Gregg's complaint. In its answer, PPL denied the allegations in the complaint and averred that Mr. Gregg is responsible for electricity service provided during his period of incarceration. PPL further averred that it had not received proof of Mr. Gregg's incarceration and denied same.

On May 18, 2022, the Commission served an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for July 7, 2022, at 10:00 a.m. and assigning me as the presiding officer. In anticipation of the hearing, I served a prehearing order on May 18, 2022, setting forth hearing information and the rules that would govern the proceeding.

The July 7, 2022 hearing was held as scheduled. Nicholas A. Stobbe, Esquire appeared on behalf of PPL with one witness, and he was ready to proceed. Mr. Gregg did not call in for the hearing. The start of the hearing was delayed ten minutes to allow Mr. Gregg additional time to call in. Mr. Gregg did not contact the Commission to explain why he did not call in to the hearing. During the hearing, Mr. Stobbe made a motion to dismiss the Complaint with prejudice for Complainant's failure to appear and prosecute his Complaint after having received notice of the hearing date and time. This Initial Decision grants the motion of PPL made at the conclusion of the hearing to dismiss the complaint for failure to prosecute.

The record in this case consists of the transcript of ten pages that was submitted to the Commission on August 3, 2022. The record closed on August 3, 2022, upon the filing of the hearing transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Lewis A. Gregg, Jr. Tr. 5.
2. The Respondent is PPL Electric Utilities Corporation. Tr. 5.
3. The service address is 311 West Paterson Street, Lansford, PA 18232. Tr. 5.
4. On April 18, 2022, Mr. Gregg filed a formal complaint against PPL. Tr. 5-6.

5. The Complaint was served on PPL on April 26, 2022. Tr. 6.
6. On May 16, 2022, PPL filed an answer to Mr. Gregg's Complaint. Tr. 6.
7. On May 18, 2022, a hearing notice was served establishing an initial telephonic hearing in this matter for July 7, 2022, at 10:00 a.m. Tr. 6.
8. In anticipation of the July 7, 2022 hearing, a prehearing order was served on May 18, 2022, reminding the parties of the hearing date and setting forth rules that would govern the proceeding. Tr. 6.
9. The hearing notice served on May 18, 2022 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. 6-7.
10. The prehearing order served on May 18, 2022, 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. 6-7.
11. The hearing notice and the prehearing order were served to Mr. Gregg via the email address that he provided in his Complaint. Tr. 7.
12. Neither the hearing notice nor the prehearing order was returned to the Commission as undeliverable. Tr. 7.
13. The hearing was held as scheduled on July 7, 2022.
14. The start of the hearing was delayed ten minutes to accommodate any potential delay of Mr. Gregg. Tr. 5, 7.

15. Mr. Gregg failed to call in for the July 7, 2022 hearing, and no one appeared on behalf of Mr. Gregg. Tr. 5, 7.

16. Mr. Gregg has not contacted the Commission to explain his failure to appear for the hearing. Tr. 7.

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) (Patterson). “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). 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. Gregg requested that he not be held responsible for electric service charges incurred while he was incarcerated. Therefore, Mr. Gregg 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 provided notice and the opportunity to appear and be heard. Id.

No one appeared on behalf of Mr. Gregg at the date and time set for the hearing in this case, despite being provided notice of the hearing. Tr. 7. 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 notice and prehearing order were served upon Mr. Gregg via the email address that he provided in his Complaint. The documents were not returned to the Commission as undeliverable. Accordingly, it must be presumed that the documents sent to Mr. Gregg in the ordinary course of business were received by Mr. Gregg. Zirkel v. Phila. Gas Works, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017); Morella v. PECO Energy Co., Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016). Of note, the hearing notice 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. Tr. 6-7. Furthermore, counsel for PPL indicated during the hearing the efforts that the Company also took to provide Mr. Gregg with notice of the hearing. Tr. 7.

No one appeared on behalf of Mr. Gregg at the time of the hearing, nor did he request a postponement or continuance of the hearing. As such, Mr. Gregg had notice and an opportunity to be heard in this proceeding but chose not to appear. Mr. Gregg'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).

PPL was present at the hearing with one witness and ready to proceed. Tr. 4-5. The Commission also expended valuable resources in preparation for the hearing, to provide Mr. Gregg with an opportunity to be heard. Mr. Gregg's failure to appear unfortunately resulted in the misspent resources of both the Commission and PPL. During the hearing, counsel for PPL moved to have the complaint dismissed with prejudice for lack of prosecution. Tr. 8. By failing to appear and present any evidence in support of his complaint, Mr. Gregg has failed to carry his burden. 66 Pa.C.S. § 332(a); Patterson. Mr. Gregg also did not contact the Commission at any time on or after

July 7, 2022 to explain why he did not appear at the July 7, 2022 hearing. 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. 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. Gregg’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 hearing and proffer any evidence to support his Complaint, Mr. Gregg 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 with prejudice the formal complaint filed by Lewis A. Gregg, Jr. at docket number F-2022-3032127 for failure to prosecute is hereby granted.
2. That the formal complaint filed by Lewis A. Gregg, Jr. against PPL Electric Utilities Corporation at docket number F-2022-3032127 is dismissed.
3. That the Commission's Secretary mark this docket as closed.

Date: August 10, 2022

/s/
Charece Z. Collins
Administrative Law Judge