**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael A. Rizzo :

:

v. : C-2015-2469134 :

PECO Energy Company :

and Public Power, LLC :

**INITIAL DECISION**

Before

Conrad A. Johnson

Administrative Law Judge

INTRODUCTION

A customer filed a Complaint against the electric distribution company (EDC) and an electric generation supplier (EGS) alleging that his supplier had tripled its rates even though the price of energy had significantly dropped. This decision dismisses the complaint against the EGS for lack of prosecution.

HISTORY OF THE PROCEEDING

On February 2, 2015, Michael A. Rizzo (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Public Power, LLC (Public or Respondent) and PECO Energy Company. [[1]](#footnote-1) In the Complaint, the Complainant alleged that Public had tripled its rates and that his bill had gone from $199 a month to $800 a month. He stated that this had also happened last year. He asked that the Commission monitor energy providers.

On March 20, 2015, Public filed an Answer to the Complaint. The Answer denies that Public tripled the Complainant’s bill. According to the Answer, the Complainant’s increased electricity usage caused his electric bills to increase. Public’s Answer requests that the Commission dismiss the Complaint against Public.

By Call-In Telephone Hearing Notice (Hearing Notice) dated July 15, 2015, the parties were informed that the case was assigned to me pursuant to 52 Pa.Code § 56.173 for a telephonic hearing on Monday, September 28, 2015, at 10:00 a.m. The Hearing Notice advised the parties to dial the toll-free bridge number, and enter the PIN on the morning of the hearing in order to participate in the telephonic hearing. The Hearing Notice further 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 July 16, 2015, I issued a Prehearing Order, which provided the toll-free bridge number and the PIN in order to participate in the telephonic hearing. The Prehearing Order stated as follows: **“You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.”** (Emphasis in original.) The Prehearing Order informed the parties about the applicable procedural rules, including the procedure to follow to request a hearing continuance.

The Hearing Notice and Prehearing Order informing the parties about the telephonic hearing were mailed in the ordinary course of the Commission’s business to Complainant and Respondent at the address provided in their respective Complaint and Answer. The Hearing Notice and Prehearing Order were not returned by the U.S. Postal Service as undeliverable to either Complainant or Respondent.

On September 25, 2015, at 10:00 a.m., I convened the telephonic hearing. The court reporter was also present. However, neither the Complainant nor the Respondent had dialed into the telephonic proceeding. Thereupon, I recessed the hearing to permit additional time for the parties to appear or to contact the Office of Administrative Law Judge (OALJ) in order to explain their absences. The telephonic proceeding remained open with the court reporter in the telephonic hearing. I then left the hearing room to determine whether Complainant or Respondent had called into the OALJ. Neither Complainant nor Respondent had called into the OALJ.

I returned to the hearing room at 10:19 a.m. Neither Complainant nor Respondent had called into the telephonic hearing. Accordingly, I closed the record and adjourned the hearing on September 28, 2015 at 10:20 a.m.

FINDINGS OF FACT

1. The Complainant in this case is Michael A. Rizzo.

2. The Respondent in this case is Public Power LLC.

3. On February 2, 2015, the Complainant filed a complaint with the Commission against the Respondent.

4. The Respondent filed an answer on March 20, 2015.

5. By Hearing Notice dated July 15, 2015, the Commission scheduled this matter for a telephonic hearing on September 28, 2015, at 10:00 a.m.

6. The Commission sent the Hearing Notice of the telephonic hearing in this case to the Complainant by regular first-class mail to the address stated on the Complaint.

7. The Commission’s Hearing Notice was not returned to the Commission by the U.S. Postal Service as undeliverable to Complainant.

8. On July 16, 2015, the Commission sent a Prehearing Order in this case to the Complainant stating the date, time and location of the hearing, the applicable procedural rules, including the procedure to follow to request a hearing continuance.

9. The Commission’s Prehearing Order was not returned to the Commission

by the U.S. Postal Service as undeliverable to Complainant.

10. The Complainant did not request a continuance or withdraw his Complaint.

11. The Complainant failed to participate in the telephonic hearing.

DISCUSSION

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, however, when the administrative agency provides the parties notice and the opportunity to be heard.

The Commission sent a Call-In Telephone Hearing Notice in this case to the Complainant on July 15, 2015, by regular first-class mail to the address stated on the Complaint. In addition, on July 16, 2015, the Commission issued a Prehearing Order, which, *inter alia*, reminded the parties of the telephonic hearing date and time. The Prehearing Order also informed the parties about the procedure to request a hearing continuance. The July 15, 2015 Hearing Notice and July 16, 2015 Prehearing Order were not returned to the Commission by the U.S. Postal Service. Accordingly, there is a presumption in the law that the Hearing Notice and Prehearing Order, which were sent in the ordinary course of business, were received by Complainant. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick,* 698 A.2d 71 (Pa.Super. 1997); *Judge v. Celina Mutual Insurance Co.,* 444 A.2d 658 (Pa.Super. 1982).

Complainant did not participate in the scheduled telephonic hearing. Complainant did not request a hearing continuance, nor call the OALJ to explain his absence. Under these circumstances, Complainant had ample opportunity to participate and be heard in this proceeding, but apparently elected not to participate in the telephonic hearing. Therefore, the due process rights of Complainant have been fully protected. *Sentner v. Bell Telephone Co. of Pa.,* Docket No. F‑00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245.

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this Complaint, Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief. By failing to appear at the hearing and proffer any evidence to support his Complaint, the Complainant has failed to meet this burden of proof. Under these circumstances, the Complaint may be dismissed with prejudice. *Martin Jefferson v. UGI Utilities, Inc.*, Docket No. Z‑00269892 (Opinion and Order entered December 26, 1995); 52 Pa.Code § 5.245.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. Complainant as the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).

3. When a complainant fails to appear for a scheduled conference or hearing, the complaint may be dismissed with prejudice. *Martin* *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); 52 Pa.Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Michael A. Rizzo against Public Power LLC at Docket No. C-2015-2469134 is dismissed with prejudice for his failure to prosecute his Complaint.

2. That the Commission’s Secretary’s Bureau shall mark Docket No.

C-2015-2469134 closed.

Date: October 8, 2015 /s/ Conrad A. Johnson

Administrative Law Judge

1. The complaint was dismissed against PECO Energy Company, the EDC, by Administrative Law Judge (ALJ) David A. Salapa in an Initial Decision and Order entered on April 13, 2015. ALJ Salapa’s order became final by Commission Final Order entered on July 21, 2015. [↑](#footnote-ref-1)