**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LeeAnn Livinghouse :

:

v. : C-2015-2471576

:

PPL Electric Utilities Corporation :

**INITIAL DECISION**

Before

Joel H. Cheskis

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 February 10, 2015, LeeAnn Livinghouse filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against PPL Electric Utilities Corporation (PPL or “the Company”), Docket Number C-2015-2471576. In her Complaint, Ms. Livinghouse averred that she would like a payment agreement. Ms. Livinghouse added that she cannot pay the full amount and that she is a single mother so she is asking for a payment plan to be established.

On April 1, 2015, PPL filed an Answer to Ms. Livinghouse’s Complaint. In its Answer, PPL admitted or denied the various averments made by Ms. Livinghouse, including denying that PPL has not provided Ms. Livinghouse with the most advantageous payment arrangement to which she is entitled. PPL concluded its Answer by requesting that the Commission deny Ms. Livinghouse’s Complaint.

On April 22, 2015, the Commission issued a Telephone Hearing Notice scheduling an Initial Telephonic Hearing for this matter for Wednesday, June 3, 2015 at 10:00 a.m. and assigning me as the Presiding Officer. Of note the Hearing Notice noted the date, time and location of the hearing and stated, among other things, that: “Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.” A Prehearing Order dated April 27, 2015 was issued establishing the procedural issues pertaining to the Hearing. Similar to the Hearing Notice, 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.” Both the Hearing Notice and the Prehearing Order were sent to Ms. Livinghouse at the address provided on her Complaint via first-class mail. Neither were returned to the Commission as undeliverable.

The hearing convened on June 3, 2015 as scheduled. Graig Schultz, Esquire appeared on behalf of PPL. No one appeared on behalf of the Complainant.

The record in this case consists of the hearing transcript of eight (8) pages. The record closed in this proceeding when the transcript was filed with the Commission on June 8, 2015. This Initial Decision memorializes the ruling at the conclusion of the Hearing granting PPL’s Motion to Dismiss the Complaint for failure to prosecute.

FINDINGS OF FACT

1. The Complainant in this case is LeeAnn Livinghouse.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The Service Address is 36 Hendle Street, Shillington, PA.
4. No one appeared at the hearing on behalf of Ms. Livinghouse. Tr. 1, 4.
5. Ms. Livinghouse received notice of the hearing when the Commission sent her a Hearing Notice to the address she provided on her Complaint on April 22, 2015. Tr. 4.
6. Ms. Livinghouse also received notice of the hearing when the Commission sent her a Prehearing Order to the address she provided on her Complaint on April 27, 2015. Tr. 4-5.
7. Neither the Hearing Notice nor the Prehearing Order was received back by the Commission as undeliverable. Tr. 5.
8. Multiple attempts were made by calling two telephone numbers fifteen minutes apart to reach Ms. Livinghouse to connect her to the hearing at the designated time and date and each time an answering service was received and a message was left for her. Tr. 5.
9. During the hearing, counsel for PPL indicated that he has had no contact with Ms. Livinghouse regarding the Complaint despite several attempts to reach her by multiple people both via telephone and first class mail. Tr. 6.
10. The start of the hearing was delayed approximately 20 minutes to accommodate any delay for Ms. Livinghouse. Tr. 1, 5.

1. Both the Hearing Notice and the Prehearing Order issued in this matter 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.
2. Ms. Livinghouse did not withdraw or settle her complaint or request a continuance of the 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). "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). In this proceeding, based on a reading of her Complaint, Ms. Livinghouse seeks a payment arrangement to pay her outstanding bill owed to PPL and, 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 accorded notice and the opportunity to be heard. Id.

No one appeared on behalf of Ms. Livinghouse at the date and time set for the hearing in her case despite notice of the hearing. 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.**

1. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:
2. Be deemed to have waived the opportunity to participate in the conference or hearing.
3. Not be permitted to reopen the disposition of a matter accomplished at the conference or hearing.
4. 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 Ms. Livinghouse by regular first class mail. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Ms. Livinghouse in the ordinary course of business were received by Ms. Livinghouse. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. Ct. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Super. Ct. 221, 444 A.2d 658 (1982). Of note, both 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. Counsel for PPL also indicated that he has had no contact with Ms. Livinghouse regarding this matter despite several attempts to reach her to discuss the case. Tr. 6.

No one appeared on behalf of Ms. Livinghouse at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, Ms. Livinghouse had notice and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, Ms. Livinghouse’s due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, 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 with prejudice for lack of prosecution. Tr. 7. By failing to appear and present any evidence in support of her Complaint, Ms. Livinghouse has failed to carry her burden. Thus, the Complaint must be dismissed with prejudice. Jefferson v. UGI Utilities, 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 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. Ms. Livinghouse’s due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).
7. Ms. Livinghouse failed to carry her 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 LeeAnn Livinghouse at Docket Number C-2015-2471576 for failure to prosecute is granted.
2. That the formal Complaint filed by LeeAnn Livinghouse at Docket Number C-2015-2471576 is hereby dismissed with prejudice.
3. That this matter be marked closed.

Date: June 26, 2015 /s/

Joel H. Cheskis

Administrative Law Judge