

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Evelyn Derosado	:	
	:	
v.	:	C-2016-2523511
	:	
PPL Electric utilities Corp.	:	

**INITIAL DECISION**

Before  
Rebecca Waldemar  
Special Agent

**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 having notice of the hearing.

**HISTORY OF THE PROCEEDING**

On January 12, 2016, Evelyn Derosado (Complainant) filed with the Pennsylvania Public Utility Commission a formal Complaint against PPL Electric Utilities Corporation (Respondent). In her Complaint, Ms. Derosado indicated that PPL was threatening to terminate her service or had already terminated her service. She alleged that charges had been transferred from another address, she had been without power on and off because of wiring problems in her apartment, and that she uses an oxygen machine. As relief, she requested a lower payment arrangement.

On August 4, 2015, PPL filed an Answer to Ms. Derosado's Complaint. In its Answer, PPL denied that it had failed to provide the Complainant with the most advantageous payment plan to which she is entitled and admitted that it had provided a notice of intent to terminate service to the Complainant due to an unpaid, past due balance.

On February 5, 2016, the Commission issued a Telephone Hearing Notice scheduling an initial telephonic hearing for this matter for Wednesday March 2, 2016 at 10:00 a.m. and assigning me as the Presiding Officer. Of note, the Hearing Notice stated, among other things: "Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised." Additionally, a Prehearing Order dated February 9, 2016 was issued establishing the procedural issues pertaining to the hearing. Similar to the Hearing Notice, the Prehearing Order stated: "This case will be dismissed if you do not participate in the hearing and present evidence on the issues raised." Both the Hearing Notice and the Prehearing Order were sent to Ms. Derosado at the address provided in her Complaint via first-class mail. Neither was returned to the Commission as undeliverable.

The hearing convened on March 2, 2016, as scheduled. Graig Schultz, Esquire appeared on behalf of PPL. I attempted to call the Complainant at the number provided in the Complaint at the scheduled time, but she did not answer. I again called the Complainant approximately 15 minutes later, who again did not answer. I left a message both times explaining this was the date and time scheduled for her hearing and that she could lose her case if she did not appear. Neither the Complainant nor anyone on her behalf appeared nor was there any record of a request for a continuance. No witnesses were presented and no exhibits were introduced into the record at the hearing.

PPL's counsel moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa.Code § 5.245. In accordance with Commission policy, the motion to dismiss with prejudice will be granted. The record closed in this proceeding at the conclusion of the hearing.

## FINDINGS OF FACT

1. The Complainant in this case is Evelyn Derosado.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The Complainant's service address is 828 West Turner Street, apartment 4, Allentown, PA.
4. No one appeared at the hearing on behalf of Ms. Derosado.
5. The Commission notified the Complainant of the hearing by Hearing Notice dated February 5, 2016.
6. The Commission also notified the Complainant of the hearing by Prehearing Order dated February 9, 2016.
7. Both the Hearing Notice and the Prehearing Order clearly stated the date and time for the hearing.
8. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission as undeliverable.
9. Both the Hearing Notice and the Prehearing Order issued in this matter explained that, if a party fails to participate in the hearing, that party may lose the case.
10. The parties did not settle prior to the hearing, nor was a continuance requested.

## 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. Derosado seeks a payment arrangement. Ms. Derosado, 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.* Neither the Complainant nor anyone on her behalf appeared at the hearing despite twice receiving notice of the hearing. Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides that if a party fails to appear at a hearing after being notified, that party will be deemed to have waived the opportunity to participate in the hearing and will not be permitted to reopen the disposition of the matter. 52 Pa.Code § 5.245(a).

The Hearing Notice and the Prehearing Order were sent to Ms. Derosado by regular first class mail to the address she provided in her Complaint filed with the Commission. Neither was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Ms. Derosado in the ordinary course of business were received by her. *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. 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 both explained that, if a party failed to participate in the hearing, the hearing may proceed without that party and the party could lose its case. I attempted to contact the Complainant twice to connect her to the hearing and was unable to reach her or leave a message.

No one appeared on behalf of Ms. Derosado at the time of the hearing. Nor did she request a postponement or continuance of the hearing. As such, the Complainant had notice and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, her 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. By failing to appear and present any evidence in support of her Complaint, Ms. Derosado has failed to carry her burden of proof. Thus, the Complaint must be dismissed. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); 52 Pa. Code § 5.245. Accordingly, the merits of the Complaint will not be addressed in this Initial Decision and the Complaint will be dismissed with prejudice.

#### 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. Derosado's due process rights have been fully protected. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

7. Ms. Derosado 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 Evelyn Derosado at Docket Number C-2016-2523511 for failure to prosecute is granted.

2. That the formal Complaint filed by Evelyn Derosado at Docket Number C-2016-2523511 is hereby dismissed with prejudice for failure to appear and prosecute.

3. That this matter be marked closed.

Date: March 3, 2016

\_\_\_\_\_/s/  
Rebecca Waldemar  
Special Agent