

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Daniel G. Witmer and Brandy Witmer	:	
	:	
v.	:	C-2016-2544835
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

HISTORY OF THE PROCEEDING

This decision dismisses a complaint for failure to appear and prosecute. On May 9, 2016, Daniel G. Witmer and Brandy Witmer (Complainants) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent). The complaint requested that the Commission order a payment arrangement for the Complainants.

The Respondent filed an answer on May 31, 2016. The answer admitted that the Respondent provided service to the Complainants at the address stated in the complaint. The answer asserted that the Respondent had provided the Complainants with the most advantageous payment arrangement to which they are entitled. The answer requested that the Commission deny the complaint.

By notice dated June 17, 2016, the Commission scheduled this matter for an initial telephonic hearing on July 19, 2016 at 10:00 a.m. and assigned the case to me. I issued a

prehearing order dated June 24, 2016, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic hearing on July 19, 2016, at 10:00 a.m. The Complainants failed to appear for that hearing. The Complainants did not call the conference number shown on the July 19, 2016 hearing notice at 10:00 a.m.

I then verified with the support staff for the Office of Administrative Law Judge (OALJ) in Harrisburg that the Complainants had not contacted that office to indicate that they would be unable to participate in the telephonic hearing. My voice mail and email had no messages from the Complainants stating that they would be unable to participate in the hearing. After verifying that the Complainants had not contacted OALJ in Harrisburg, I commenced the hearing at approximately 10:10 a.m.

Upon commencement of the hearing, Graig M. Schultz, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. N.T. 5-6. I advised the Respondent that I would take its motion under advisement. N.T. 6.

The record closed on July 26, 2016, the date the transcript was filed with the Secretary's Bureau. This decision grants the Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainants in this case are Daniel G. Witmer and Brandy Witmer.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. On May 9, 2016, the Complainants filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on May 31, 2016.

5. By notice dated June 17, 2016, the Commission scheduled this matter for an initial telephonic hearing on July 19, 2016 at 10:00 a.m.

6. The Commission sent notice of the telephonic hearing in this case to the Complainants by regular first-class mail to the address stated on the complaint.

7. The Commission's hearing notice was never returned to the sender.

8. The Complainants failed to appear at the July 19, 2016 telephonic hearing.

9. The Complainants did not settle, withdraw or request a continuance of the matter.

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 notice of the telephonic hearing in this case to the Complainants on July 17, 2016, by regular first-class mail to the address stated on the complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for OALJ in Harrisburg.

In addition, I issued a prehearing order dated June 24, 2016, which, inter alia, directed the parties to notify me if the telephone numbers where they could be reached at the time of the hearing changed. The prehearing order, which was mailed to the Complainants at the address shown on the complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the Complainants. 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).

The Complainants did not appear for the scheduled hearing because they did not call the conference number shown on the June 17, 2016 hearing notice. Under these circumstances, it appears the Complainants had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainants 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(a).

Finally, 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, the Complainants bear the burden of proving by a preponderance of the evidence that they are entitled to relief. By failing to appear and proffer any evidence to support their complaint, the Complainants have failed to meet this burden. The Complainant's failure to appear has caused the Commission and the Respondent to waste resources. Under these circumstances, the complaint should be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

CONCLUSIONS OF LAW

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

2. The due process rights of the Complainants have been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear and proffer any evidence to support his complaint, the Complainants have failed to meet their burden of proving that they are entitled to the relief that they seek 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 complaint filed by Daniel G. Witmer and Brandy Witmer at Docket No. C-2016-2544835 is granted.

2. That the complaint of Daniel G. Witmer and Brandy Witmer against PPL Electric Utilities Corporation at Docket No. C-2016-2544835 is dismissed with prejudice for failure to appear and prosecute.

3. That the docket at Docket No. C-2016-2544835 is marked closed.

Date: July 27, 2016

/s/
David A. Salapa
Administrative Law Judge