

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Samuel Morales	:	
	:	
v.	:	F-2016-2553323
	:	
PPL Electric Utilities Corporation	:	

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.

HISTORY OF THE PROCEEDING

On June 22, 2016, Samuel Morales (Complainant) filed with the Pennsylvania Public Utility Commission a formal Complaint against PPL Electric Utilities Corporation (Respondent). In his Complaint, Mr. Morales requested a payment arrangement and stated that he and his wife were on a fixed income and could not afford their payments.

On July 18, 2016, PPL filed an Answer to Mr. Morales' Complaint. In its Answer, PPL stated that it was in agreement with a Bureau of Consumer Services decision directing the Complainant to pay a restoration fee, his monthly budget bill, and a specified amount toward his arrearages.

On August 8, 2016, the Commission issued a Telephone Hearing Notice scheduling an initial telephonic hearing for this matter for Tuesday, September 27, 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 September 7, 2016¹ 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 the Complainant at the address provided in his Complaint via first-class mail. Neither was returned to the Commission as undeliverable.

Prior to the commencement of the September 27, 2016, hearing, Respondent’s counsel requested a continuance stating that he was already scheduled to appear before the Commission at that date and time. By Order dated September 22, 2016, I granted the request. On September 26, 2016, the Commission issued a Hearing Cancellation/Reschedule Notice rescheduling the telephonic hearing for Friday, October 21, 2016 at 10:00 a.m.

The hearing convened as scheduled. Graig M. Schultz, Esquire appeared on behalf of PPL. The Complainant did not appear. When I called the Complainant at the number provided in his Complaint, his daughter answered the phone. Mr. Morales’ daughter represented that Mr. Morales lacked the capacity to represent himself and that it was actually her mother who had prepared and filed the Complaint. However, her mother had since died. She expressed that she would like to help her father with this matter but did not have power of attorney. No witnesses were presented and no exhibits were introduced into the record at the hearing.

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

¹ A revised prehearing order was also issued on September 9, 2016 which corrected the docket number in the caption.

FINDINGS OF FACT

1. Complainant in this case is Samuel Morales.
2. Respondent in this case is PPL Electric Utilities Corporation.
3. Mr. Morales did not appear for the hearing nor did an attorney appear on his behalf.
4. The Commission notified Complainant of the hearing by, Hearing Cancellation/Reschedule Notice dated September 26, 2016.
5. The Commission also notified Complainant of relevant procedures by Prehearing Order dated September 27, 2016.
6. The Hearing Cancellation/Reschedule Notice clearly stated the date and time for the hearing.
7. Neither the Hearing Cancellation/Reschedule Notice nor the Prehearing Order were returned to the Commission as undeliverable.
8. 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.
9. 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 his Complaint, Mr. Morales seeks a payment arrangement. Mr. Morales, 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 authorized to appear on his behalf appeared at the hearing despite 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, the Hearing Cancellation/Reschedule Notice, and the Prehearing Order were all sent to Mr. Morales by regular first class mail to the address she provided in his Complaint filed with the Commission. None were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Mr. Morales in the ordinary course of business were received by him. *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. When I attempted to contact the Complainant, his daughter answered the phone and explained that the Complainant had dementia and was unable to participate in the hearing. She further explained that her mother, Complainant's wife, had actually prepared and filed the Complaint but had since died.

No one authorized appeared on behalf of Mr. Morales at the time of the hearing. The Complainant had notice and an opportunity to be heard in this proceeding, but was apparently unable to appear. Despite this, his 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 for lack of prosecution. By failing to appear and present any evidence in support of his Complaint, Mr. Morales has failed to carry his 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. Because it appears that the Complainant's failure to appear was due to circumstances beyond his control, the Complaint will be dismissed without 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 be deemed to have waived the opportunity to participate in the conference or hearing. 52 Pa.Code § 5.245(a).

6. Mr. Morales'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. Mr. Morales failed to carry his 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 Samuel Morales at Docket Number F-2016-2553323 for failure to prosecute is granted.

2. That the formal Complaint filed by Samuel Morales at Docket Number F-2016-2553323 is hereby dismissed for failure to appear and prosecute.

3. That this matter be marked closed.

Date: November 14, 2016

/s/
Rebecca Waldemar
Special Agent