

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Clement Barnwell	:	
	:	
v.	:	F-2016-2578908
	:	
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 despite having notice of the hearing.

HISTORY OF THE PROCEEDING

On December 7, 2016, Clement Barnwell (Complainant) filed with the Pennsylvania Public Utility Commission, a Formal Complaint against PPL Electric Utilities Corporation (Respondent). In his Complaint, Mr. Barnwell alleged that PPL had threatened to terminate his service and requested an affordable payment arrangement.

On December 27, 2016, PPL filed an Answer to Mr. Barnwell's Complaint. In its Answer, Respondent averred that a payment arrangement on the Complainant's account had been established by the Commission's Bureau of Consumer Services and that it agreed with that decision.

On January 13, 2017, the Commission issued a Telephone Hearing Notice scheduling an initial telephonic hearing for this matter for Tuesday March 7, 2017 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 14, 2017 was issued establishing the procedures 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 Complainant at the address provided in his Complaint via first-class mail. Neither were returned to the Commission as undeliverable.

The hearing convened on March 7, 2017, as scheduled.¹ Graig M. Schultz, Esquire appeared on behalf of Respondent. I attempted to call the Complainant at the number provided in the Complaint at the scheduled time, but I received a recording which stated that the wireless customer I was calling was not available. It was not possible to leave a message. Neither the Complainant nor anyone on her behalf appeared nor had the matter been withdrawn, settled, or continued. 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 failure to appear and prosecute 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.

FINDINGS OF FACT

1. The Complainant in this case is Clement Barnwell.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. No one appeared at the hearing on behalf of Mr. Barnwell.

¹ A tape recording of the hearing was made, no court reporter being present.

4. The Commission notified Complainant of the hearing by Hearing Notice dated January 13, 2017.

5. The Commission also notified the Complainant of the hearing by Prehearing Order dated February 14, 2017.

6. Both the Hearing Notice and the Prehearing Order clearly stated the date and time for the hearing.

7. Neither the Hearing 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 failed 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 or the matter withdrawn.

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, Complainant seeks a payment arrangement. Complainant, 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 Complainant 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 the Complainant 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. I attempted to contact the Complainant to connect him to the hearing and was unable to reach him.

No one appeared on behalf of Mr. Barnwell at the time of the hearing. Nor did he request a postponement or continuance of the hearing. As such, Complainant had notice and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, 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 failure to appear and prosecute. By failing to appear and present any evidence in support of his Complaint, Mr. Barnwell has failed to carry his burden of proof. Thus, the Complaint must be dismissed. 52 Pa. Code § 5.245; *El-Ayazra v West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016). Accordingly, the merits of the Complaint

will not be addressed in this Initial Decision and the Complaint will be dismissed for failure to prosecute and carry the burden of proof.

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. Mr. Barnwell'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. Barnwell failed to carry his burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PPL Electric Utilities to dismiss the Formal Complaint of Clement Barnwell at Docket No. F-2016-2578908 for failure to prosecute is granted.
2. That the Formal Complaint filed by Clement Barnwell at Docket Number F-2016-2578908 is hereby dismissed for failure to appear and prosecute.
3. That this matter be marked closed.

Date: April 12, 2017

_____/s/_____
Rebecca Waldemar
Special Agent