

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jenny Fianza	:	
	:	
v.	:	C-2017-2601251
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Conrad A. Johnson  
Administrative Law Judge

This decision dismisses the Complaint filed in this matter for failure of Complainant to appear for the hearing and prosecute the Complaint.

**HISTORY OF THE PROCEEDING**

On April 21, 2017, Jenny Fianza (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent or PPL). Complainant alleged in her Formal Complaint that PPL had bolts extending from a pole at the end of her driveway that “snagged” her car door. As relief, Complainant requested a monetary award for damages to her car.

On May 18, 2017, Respondent filed an Answer with New Matter admitting that a bolt extended from a PPL utility pole and denying that the bolt extended to a degree that caused a dangerous condition. Respondent also filed Preliminary Objections on May 18, 2017 seeking to dismiss the Complaint by arguing the Commission lacked jurisdiction to award monetary damages and asserting Complainant made no claims regarding violation of reliability, safety or quality of service.

By first Interim Order issued on July 11, 2017, I sustained Respondent's Preliminary Objections with respect to any claim for monetary relief, and the Complaint was ordered to hearing on Complainant's allegations pertaining to reasonableness of service on the part of PPL.

By notice dated July 12, 2017, the Commission scheduled this matter for a call-in telephonic hearing on August 25, 2017 at 10:00 a.m. before me. I issued a Prehearing Order dated July 18, 2017, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I convened the telephonic hearing on August 25, 2017 at 10:01 a.m. Respondent was represented by Kimberly G. Krupka, Esquire. Respondent's witness, Customer Support Engineer Nicholas Peterlin was also present for the hearing. Complainant failed to appear for the hearing. Complainant did not call the conference number shown on the July 12, 2017 hearing notice at 10:00 a.m.

I recessed the hearing at 10:04 a.m. to permit additional time for Complainant to appear or to contact the Office of Administrative Law Judge (OALJ) in order to explain her absence. The telephonic proceeding remained open with counsel for Respondent and the court reporter in the telephonic hearing. I then left the hearing room to verify with the support staff for the OALJ in Pittsburgh that Complainant had not contacted the office to indicate that Complainant would be unable to participate in the telephonic hearing. My voice mail and email had no messages from Complainant stating that she would be unable to participate in the hearing.

After verifying that Complainant had not contacted OALJ in Pittsburgh, I returned to the hearing room and reconvened the hearing at approximately 10:25 a.m. Complainant had not called into the telephonic hearing. Accordingly, the hearing proceeded in Complainant's absence. No testimony or evidence was offered by Respondent. Counsel for Respondent moved for dismissal of the Complaint for lack of prosecution. I informed counsel that the motion would be taken under advisement, and an initial decision would be issued. The record was closed, and the hearing was adjourned at 10:30 a.m. on August 25, 2017.

## FINDINGS OF FACT

1. Complainant in this case is Jenny Fianza.
2. Respondent in this case is PPL Electric Utilities Corporation.
3. On April 21, 2017, Complainant filed a Complaint with the Commission against Respondent, requesting monetary relief.
4. On May 18, 2017, Respondent filed an Answer with New Matter and Preliminary Objections.
5. A First Interim Order Sustaining Respondent's Preliminary Objections was entered on July 11, 2017, with respect to the claim for monetary relief, and the case was to proceed to hearing on the issue of reasonableness of service on the part of Respondent.
6. By notice dated July 12, 2017, the Commission scheduled this matter for an initial telephonic hearing on August 25, 2017, at 10:00 a.m.
7. The Commission sent notice of the telephonic hearing in this case to Complainant by regular first class mail to the address stated on the Complaint.
8. The Commission's hearing notice was never returned to the sender.
9. Complainant failed to appear at the August 25, 2017 telephonic hearing.
10. Complainant 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 Complainant on July 12, 2017, 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 Pittsburgh.

In addition, I issued a Prehearing Order dated July 18, 2017, which, *inter alia*, provided the toll-free bridge number and the PIN in order for the parties to participate in the telephonic hearing. The Prehearing Order directed the parties to call into the hearing on the scheduled day and time. The Prehearing Order, which was mailed to Complainant 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 Complainant. *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).

Complainant did not appear for the hearing scheduled and convened on August 25, 2017, which was the date shown on the July 12, 2017 hearing notice. Under these circumstances, Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of Complainant 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, Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. By failing to appear and proffer any evidence to support her Complaint, Complainant has failed to meet this burden. Under these circumstances, the Complaint may 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 parties and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The due process rights of Complainant 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 for the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Jenny Fidanza against PPL Electric Utilities Corporation at Docket No. C-2017-2601251 is dismissed for failure of Complainant to appear for the hearing and prosecute the Complaint.

2. That the Secretary's Bureau shall mark Docket No. C-2017-2601251 closed.

Date: August 31, 2017

/s/  
Conrad A. Johnson  
Administrative Law Judge