

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|------------------------------------|---|----------------|
| Theresa Brown-Albert | : | |
| | : | |
| v. | : | C-2017-2613137 |
| | : | |
| PPL Electric Utilities Corporation | : | |

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses a formal complaint due to the Complainant's failure to appear at the initial hearing and prosecute her complaint.

HISTORY OF THE PROCEEDING

On July 7, 2017, Theresa Brown-Albert (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL). The Complainant checked the boxes on her complaint form indicating that the company was threatening to shut off her service or had already shut off her service, and that there were incorrect charges on her bill. She requested that the company verify the charges on her utility bills for her accounts.

On July 27, 2017, PPL filed an Answer to Ms. Brown-Albert's complaint. In its Answer, PPL admitted that the Complainant's service had been shut off. PPL averred that this action had been taken due to an unpaid balance on her account. It denied that there were any incorrect charges on her account. PPL requested that the Complaint be denied.

On August 8, 2017, the Commission issued a Hearing Notice scheduling an initial telephonic hearing for Monday, October 2, 2017, at 10:00 a.m. and assigning me as the Presiding Officer. The Hearing Notice noted the date and time of the hearing and stated, among other things, “Attention: You may lose this case if you do not come to this hearing and present facts on the issues raised.” The Hearing Notice also instructed the parties to inform the Presiding Officer prior to the hearing if the telephone number where they could be reached for the hearing changed. Subsequently, a Prehearing Order dated August 10, 2017 was issued setting forth certain procedural requirements pertaining to the hearing. The Prehearing Order provided the date and time of the hearing. The Prehearing Order stated, “you may lose this case if you do not take part in this hearing and present evidence on the issues raised.” It also instructed the parties to inform the Presiding Officer prior to the hearing if the telephone number where they could be reached for the hearing changed. Both the Hearing Notice and the Prehearing Order were sent to the Complainant, via first class mail, to the address provided by her on her complaint form. Neither was returned to the Commission as undeliverable.

At approximately 9:30 a.m. on October 2, 2017, the day of the hearing, Ms. Brown-Albert called the Office of Administrative Law Judge and provided a scheduler in the office with a telephone number at which to call her for the 10:00 hearing. This number was different from the number she listed on her complaint form. At 10:00 a.m. I called the number she provided at 9:30 and received a recorded message stating that the person called is not answering the phone and inviting the caller to leave a message. I left a message in which I introduced myself and stated that I would call back in several minutes to begin the hearing. I called the number provided that morning again at approximately 10:08 and received the same recorded message. Out of an abundance of caution, I also tried the original number she had provided on her complaint form. I received a recorded message stating that the number was not in service. I then called the attorney for PPL, Graig Schultz, who was available for the hearing. After an on the record recitation of the various notices sent to the parties in the proceeding, as well as my efforts in trying to reach the Complainant, PPL’s counsel moved to dismiss the Complaint for failure to prosecute. I indicated that I would take PPL’s motion under advisement for several days to see if the Complainant made another effort to contact my office about the

hearing. To date, the Complainant has made no further attempts to contact me or the Commission about the hearing.

A brief transcript was generated following the hearing. The record closed on Thursday, October 12, 2017. This Initial Decision grants PPL's Motion to Dismiss the Complaint for failure of the Complainant to appear and prosecute her case.

FINDINGS OF FACT

1. The Complainant in this proceeding is Theresa Brown-Albert.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. On July 7, 2017, the Complainant filed a Formal Complaint against PPL.
4. On July 27, 2017, PPL filed its Answer in which it denied any wrongdoing.
5. On August 8, 2017, a Hearing Notice was issued which scheduled an initial telephonic hearing for October 2, 2017, at 10:00 a.m.
6. The Hearing Notice instructed the parties to provide an alternate telephone number prior to the hearing if they would be at a different number than the one on the complaint or answer, and warned the parties that they may lose the case if they were not available for the hearing.
7. On August 10, 2017, a Prehearing Order was issued which set forth certain procedural requirements associated with the initial hearing and re-stated the date and time of the scheduled hearing.
8. The Prehearing Order instructed the parties to provide an alternate telephone number prior to the hearing if they would be at a different number than the one on the complaint or answer, and warned the parties that they may lose the case if they were not available for the hearing.

9. Both the Hearing Notice and the Prehearing Order were sent to the Complainant at the address listed by her on her complaint form.

10. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission as undeliverable.

11. The Complainant called the Office of Administrative Law Judge at approximately 9:30 a.m. on October 2, 2017, the morning of the hearing, and provided an alternate telephone number at which to contact her for the hearing.

12. At 10:00 on October 2, 2017, I attempted to contact the Complainant at the alternate number she provided earlier that morning. I received a recorded message indicating that the party called was not answering their phone.

13. I left a voice mail message introducing myself and stating that I would call back in a few minutes to attempt to reach her again for the hearing.

14. I called the alternate number again at approximately 10:08 and received the same recorded message.

15. I called the number originally provided by the Complainant on her complaint form and received a recorded message stating that the number was not in service.

16. The Complainant failed to appear at the scheduled time for the hearing.

17. The Complainant did not withdraw or settle her complaint against PPL or request a continuance of the hearing.

DISCUSSION

The Complainant avers that there are incorrect charges on her PPL account and requests that the company verify the charges on her utility bills.

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). As the party seeking relief from the Commission, the Complainant bears the burden of proof.

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 provided with notice and an opportunity to be heard. Id.

No one appeared on behalf of Ms. Brown-Albert at the date and time set for the telephonic hearing in her case despite notice of the hearing having been provided and despite her having provided an alternate telephone number earlier in the day of the hearing.

Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

- (a) 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.
- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa.Code § 5.245(a).

The Hearing Notice and the Prehearing Order were sent to Ms. Brown-Albert by regular first class mail. Neither the Hearing Notice nor the Prehearing Order 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 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.Ct. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa.Super.Ct. 221, 444 A.2d 658 (1982). As noted above, both the Hearing Notice and the Prehearing Order stated that the parties may lose the case if they fail to appear and present evidence on the issues raised. The presumption that the Complainant received the notices and was aware of the hearing schedule is supported by the fact that she called the Office of Administrative Law Judge at 9:30 on the morning of the hearing to provide an alternate telephone number for the hearing.

Ms. Brown-Albert did not answer either of the telephone numbers she had provided for the hearing when I called several times between 10:00 and approximately 10:08. No request for a postponement or continuance of the hearing was received by my office. Ms. Brown-Albert had notice and an opportunity to be heard in this proceeding, but did not appear. Therefore, the Complainant's 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. Brown-Albert failed to carry her burden. Thus, the Complaint will be dismissed

with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995).

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 provided with notice and an 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. Brown-Albert's 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).

7. Ms. Brown-Albert 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 Theresa Brown-Albert at Docket Number C-2017-2613137 for failure to prosecute is granted.
2. That the Formal Complaint filed by Theresa Brown-Albert at Docket Number C-2017-2613137 is hereby dismissed with prejudice.
3. That this matter be marked closed.

Date: October 12, 2017

/s/
Steven K. Haas
Administrative Law Judge