

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Denise Smith	:	
	:	
v.	:	F-2017-2612261
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Denise Smith against PPL Electric Utilities Corporation because she failed to prosecute her Complaint.

HISTORY OF THE PROCEEDING

On June 29, 2017, Denise Smith (Complainant) filed a formal Complaint (Complaint) against PPL Electric Utilities Corporation (PPL or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant contends that PPL was threatening to or had shut off her utility service and requests a payment arrangement.

This is a timely appeal of an informal decision issued on June 15, 2017 by the Commission's Bureau of Consumer Services (BCS) at Case No. 3531032. The BCS issued a Level 1 payment agreement requiring the Complainant to pay a budget bill of \$113.00 plus \$46.00 on the arrearage each month. This is a *de novo* review of that decision.

On July 25, 2017, the Respondent filed an Answer to the Complaint. In its Answer, the Respondent admitted that it has provided notice of intent to terminate electric service to the Complainant for an unpaid balance. PPL requested that the Commission deny the Complaint.

Originally, a Telephonic Hearing Notice was sent on July 27, 2017, advising the parties that an initial telephonic hearing was scheduled for Wednesday, October 11, 2017, at 10:00 a.m. before Special Agent Rebecca Waldemar. Subsequently, the case was reassigned to me and a Corrected Telephonic Hearing Notice was sent on September 13, 2017, advising the parties that the presiding officer had changed but the date and time of the hearing remained the same. Of note, both Hearing Notices stated: “*Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.*” Additionally, I issued a Prehearing Order on September 12, 2017 establishing the procedures pertaining to the hearing and stating in bold and capitalized lettering that: “**THIS CASE WILL BE DISMISSED IF YOU DO NOT PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE ON THE ISSUES RAISED.**” The Hearing Notices and the Prehearing Order were sent to the Complainant at the address provided in her Complaint via first-class mail. None were returned to the Commission as undeliverable.

The hearing convened on October 11, 2017, as scheduled.¹ Graig M. Schultz, Esquire appeared on behalf of the Respondent. I attempted to call the Complainant at the number provided in the Complaint at the scheduled time, but she did not answer. I left a message explaining this was the date and time scheduled for her hearing and that she could lose her case if she did not participate. I called the Complainant again approximately 10 minutes later, and there was still no answer. 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 with prejudice for lack of prosecution pursuant to 52 Pa.Code § 5.245. In accordance with Commission regulations, I am granting the Motion. The record closed at the conclusion of the hearing.

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

FINDINGS OF FACT

1. The Complainant in this proceeding is Denise Smith.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. On June 29, 2017, the Complainant filed a Complaint with the Commission against the PPL Electric Utilities Corporation.
4. On July 25, 2017, PPL Electric Utilities Corporation filed an Answer to the Complaint.
5. By Hearing Notices dated July 27, 2017, and September 13, 2017, the Commission scheduled this matter for a telephonic hearing on October 11, 2017, at 10:00 a.m.
6. The Commission also notified the Complainant of the date and time of the hearing by Prehearing Order dated September 12, 2017.
7. The Hearing Notices and Prehearing Order were sent to the Complainant by regular first-class mail to the address stated on the Complaint.
8. Neither the Hearing Notices nor the Prehearing Order were returned to the Commission as undeliverable.
9. Counsel for the Respondent appeared for the hearing at the scheduled date and time and was prepared to proceed.
10. The Complainant failed to appear at the hearing.
11. The Complainant did not settle or withdraw her Complaint, nor did she request a continuance of the matter.

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 her Complaint, the Complainant seeks a payment arrangement. The 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 receiving two scheduling notices of the hearing, as well as a prehearing order. 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 Notices and the Prehearing Order were sent to the Complainant by regular first class mail to the address she provided in her Complaint filed with the Commission. None were 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. 1997); *Judge v. Celina Mutual Insurance Co.*, 303 Pa. Super. Ct. 221, 444 A.2d 658 (1982). Of note, both the Hearing Notices and the Prehearing Order 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 twice to connect her to the hearing and was unable to reach her.

No one appeared on behalf of the Complainant at the time of the hearing. Nor did she request a postponement or continuance of the hearing. As such, the Complainant had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, her 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 her Complaint, Ms. Smith has failed to carry her burden of proof. Thus, the Complaint is appropriately dismissed with prejudice. *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 with prejudice for failure to prosecute and carry her burden of proof.

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 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, the 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).

