

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elyse Kernan	:	
	:	
v.	:	C-2017-2618315
	:	
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 August 9, 2017, Elyse Kernan (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent). Complainant checked the boxes on the Formal Complaint form stating 1) the utility is threatening service termination or has already terminated service, and 2) she would like a payment arrangement.

On August 29, 2017, Respondent filed an Answer admitting that the Company has provided notice of intent to terminate Complainant's electric service for an unpaid balance and denying that it has not provided Complainant with the most advantageous payment arrangement.

By notice dated September 8, 2017, the Commission scheduled this matter for a call-in telephonic hearing on October 31, 2017 at 10:00 a.m. and assigned the case to me. I issued a Prehearing Order dated September 8, 2017, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I convened the telephonic hearing on October 31, 2017 at 10:00 a.m. Respondent was represented by Graig M. Schultz, Esquire. Respondent's witness, Senior Customer Service Representative Michelle Hall was also present for the hearing. Complainant failed to appear for the hearing. Complainant did not call the conference number shown on the September 8, 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 10:24 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 10:27 a.m. on October 31, 2017.

FINDINGS OF FACT

1. Complainant in this case is Elyse Kernan.
2. Respondent in this case is PPL Electric Utilities Corporation.
3. On August 9, 2017, Complainant filed a Complaint with the Commission against Respondent.
4. By notice dated September 8, 2017, the Commission scheduled this matter for an initial telephonic hearing on October 31, 2017, at 10:00 a.m.
5. 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.
6. The Commission's hearing notice was never returned to the sender.
7. Complainant failed to appear at the October 31, 2017 telephonic hearing.
8. 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 September 8, 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 September 8, 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 October 31, 2017, which was the date shown on the September 8, 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 Elyse Kernan against PPL Electric Utilities Corporation at Docket No. C-2017-2618315 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-2017-2618315 closed.

Date: October 31, 2017

/s/
Conrad A. Johnson
Administrative Law Judge