

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Curtis, Jr.	:	
	:	
v.	:	F-2017-2604607
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Andrew M. Calvelli
Administrative Law Judge

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 being given notice of the hearing.

HISTORY OF THE PROCEEDING

On May 5, 2017, William Curtis, Jr. (Mr. Curtis) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket Number F-2017-2604607. The complaint was an appeal of a decision of the Commission's Bureau of Consumer Services at case number 3502659. In the complaint, Mr. Curtis averred that PPL had switched him into its standard offer plan without obtaining his consent. Mr. Curtis requested that the resulting incorrect charges be removed from his account.

The formal complaint was served on PPL electronically by the Commission's Secretary on May 17, 2017.¹

On June 6, 2017, PPL filed an answer in response to Mr. Curtis' complaint. In its answer, PPL admitted or denied the various averments Mr. Curtis made in his complaint. PPL provided background regarding the service provided to Mr. Curtis by the company, and stated that the account balance was correct because Mr. Curtis had voluntarily switched his electric service to PPL's standard offer plan. PPL concluded its answer by stating that Mr. Curtis's complaint should be dismissed.

On June 14, 2017, a Telephonic Hearing Notice was issued establishing an Initial Telephonic Hearing for Tuesday, August 15, 2017 at 10:00 a.m. and assigning me as the Presiding Officer.

The Hearing Notice indicated to the parties that: "You may lose this case if you do not take part in this hearing and present facts on the issues raised." The Hearing Notice was sent to Mr. Curtis at the address provided on his complaint via first-class mail. The postal authorities did not return the Hearing Notice to the Commission as being undeliverable to Mr. Curtis.

The hearing convened on August 15, 2017 as scheduled. Graig Schultz, Esquire appeared on behalf of PPL. No one appeared on behalf of Mr. Curtis. Mr. Curtis did not answer two separate calls from the Presiding Officer to the telephone number he provided on his complaint. Tr. 5. The first call was made to Mr. Curtis at the time of the hearing (9:59 a.m.), the call went to voice mail, and the Presiding Officer left a message indicating that Mr. Curtis would be called back in 10 minutes for the hearing, and that the hearing would proceed in Mr. Curtis' absence if he failed to answer the phone a second time. Tr. 4, 5. The Presiding Officer again called Mr. Curtis at 10:09 a.m., again received Mr. Curtis' voice mail, and then left a message indicating that the hearing would proceed in Mr. Curtis' absence. Tr. 5.

¹ PPL has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program.

Counsel for PPL then made a motion to dismiss the complaint, due to Mr. Curtis' failure to appear and prosecute his case. Tr. 5.

The record in this case consists of the hearing transcript of six pages. The record closed in this proceeding when the transcript was filed with the Commission on August 17, 2017.

FINDINGS OF FACT

1. The Complainant in this case is William Curtis, Jr.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. No one appeared at the hearing on behalf of Mr. Curtis. Tr. 4, 5.
4. Mr. Curtis received notice of the hearing on June 14, 2017 when the Commission mailed a Hearing Notice to the address he provided on his complaint.
5. The Hearing Notice was not returned to the Commission by the postal authorities as being undeliverable to Mr. Curtis.

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, Mr. Curtis filed a complaint against PPL, requesting that alleged incorrect charges be removed from his account. Mr. Curtis, 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.

No one appeared on behalf of Mr. Curtis at the date and time set for the hearing in his case despite notice of the hearing having been provided to him. 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.

The Hearing Notice was sent to Mr. Curtis by regular first class mail, and was not returned to the Commission as being undeliverable. Accordingly, it must be presumed that the Hearing Notice sent to Mr. Curtis in the ordinary course of business was received by Mr. Curtis. 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, the Hearing Notice stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

No one appeared on behalf of Mr. Curtis at the time of the hearing, nor did anyone ever request a postponement or continuance of the hearing. As such, Mr. Curtis had notice and

an opportunity to be heard in this proceeding, but chose not to appear. Therefore, Mr. Curtis'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 for lack of prosecution. Tr. 5. By failing to appear and present any evidence in support of his complaint, Mr. Curtis has failed to carry his burden of proof. Thus, it is appropriate to dismiss the complaint. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (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. Accordingly, the merits of the complaint will not be addressed in this Initial Decision.

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). "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).

3. 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.

4. 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).

5. Mr. Curtis' 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).

6. Mr. Curtis failed to carry his burden of proof in this proceeding because he failed to appear at the hearing in order to present his case to the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the formal complaint of William Curtis, Jr. at Docket Number F-2017-2604607 is granted.

2. That the formal complaint filed by William Curtis, Jr. at Docket Number F-2017-2604607 is hereby dismissed.

3. That Docket Number F-2017-2604607 shall be marked closed by the Secretary's Bureau.

Date: November 6, 2017

/s/
Andrew M. Calvelli
Administrative Law Judge