

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kelly Wolfe

v.

PPL Electric Utilities Corporation

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F-2017-2607433

INITIAL DECISION

Before
Dennis J. Buckley
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. However, the Complaint is not dismissed with prejudice because an issue exists as to whether the Complaint was filed by or at the direction of Complainant.

HISTORY OF THE PROCEEDING

On June 1, 2017, a formal Complaint was filed with the Pennsylvania Public Utility Commission (Commission) at this docket against PPL Electric Utilities Corporation (PPL or Company). The Complaint was purportedly signed by Kelly Wolfe. The Complaint was a timely appeal of a determination by the Commission's Bureau of Consumer Services (BCS) at Case No. 3517771. Complainant stated that her electric service was threatened with termination and she requested a payment arrangement (PAR). She also asked that PPL check the premises as she felt that she was not using as much electricity as she was being billed for.

On June 22, 2017, PPL filed an Answer to the Complaint. In its answer, PPL stated that on March 30, 2017, the Company requested that Complainant pay \$384.32 by March

30, 2017. According to PPL, this amount was required to catch up on a previously defaulted PAR. PPL stated that it subsequently requested that Complainant begin paying her current monthly bill plus \$15 per month toward arrearages, until all arrearages are paid in full. PPL asked that the Complaint be dismissed.

On July 7, 2017, the Commission sent the parties a telephonic hearing notice by which it scheduled an initial telephonic hearing for August 17, 2017, at 1:30 p.m., and assigned me as the Presiding Officer. The hearing notice instructed the parties that if their telephone number had changed, to provide the new number to me prior to the hearing, and that they may lose the case if they do not appear at the hearing.

On July 11, 2017, I issued a prehearing Order in which I set forth certain procedural requirements pertaining to the hearing. The prehearing Order also provided the date and time of the hearing. The prehearing Order instructed the parties that if their telephone number had changed, to provide the new number to me prior to the hearing, and stated, “you may lose this case if you do not take part in this hearing and present evidence on the issues raised.” Both the hearing notice and the prehearing Order were sent to Ms. Wolfe at the residential address listed on the Complaint form. Neither was subsequently returned by the postal service.

The hearing convened, as scheduled, at 1:30 p.m. on August 17, 2017. Graig M. Schultz, Esquire appeared on behalf of PPL. Complainant was not present. Thinking that the hearing was scheduled for 10:00 a.m., I had called the telephone number provided on the Complaint at that time. I reached a recording saying that, “Dave is not available,” and was put into voicemail, only to be told that the mailbox was full. I tried to reach Complainant again at 1:30, but with the same lack of results. Counsel for PPL then informed me that he had just received a letter dated June 25, 2017, forwarded to him by PPL, signed by Kelly Wolfe and stating that she has been incarcerated since July 18, 2015. I had a copy of the letter, which had been provided by counsel, marked as Hearing Exhibit 1 and entered into the record. PPL then moved to dismiss the Complaint with prejudice on the basis of Complainant’s failure to appear, which Motion I took under advisement.

The hearing concluded and a brief transcript of 13 pages was generated. The record closed on August 30, 2017, with the filing of the transcript with the Secretary of the Commission. This Initial Decision grants PPL's motion to dismiss the Complaint for failure of the Complainant to appear and prosecute her case, but for reasons that will be given, below, the dismissal is not with prejudice.

FINDINGS OF FACT

1. The Complainant in this proceeding is Kelly Wolfe.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. On June 1, 2017, the Complainant filed a formal complaint against PPL in which she requested a payment agreement.
4. On June 22, 2017, PPL filed an Answer in which it denied that the Complainant is entitled to a payment arrangement.
5. On July 7, 2017, a telephonic hearing notice was sent to the parties which scheduled an initial telephonic hearing for August 17, 2017.
6. On July 11, 2017, a prehearing Order was sent to the parties which set forth certain procedural requirements associated with the initial hearing.
7. Both the prehearing Order and the hearing notice instructed the parties that if their telephone numbers changed, they should provide the new number to me prior to the hearing.
8. Both the prehearing Order and the hearing notice warned the parties that they may lose the case if they did not take part in the hearing and present evidence on the issues raised.

9. The hearing notice and the prehearing Order were sent to Ms. Wolfe by first class mail to the address provided on the Complaint form.

10. The prehearing Order that was sent to the Complainant was not returned to the Commission as undeliverable.

11. The hearing notice that was sent to the Complainant was not returned to the Commission as undeliverable.

12. The Complainant did not contact me or the Commission prior to the hearing to provide an alternate address or telephone number.

13. I called the Complainant at the only number listed on her Complaint at 10:00 a.m. on August 17, 2017, and again at 1:30 p.m.

14. The Complainant did not answer either of my telephone calls on the day of the hearing.

15. The Complainant failed to appear at the scheduled date and time for the hearing.

16. The Complainant did not withdraw or settle her Complaint against PPL, nor did she request a continuance of the hearing.

DISCUSSION

In her Complaint, Ms. Wolfe requested that she be given an affordable payment arrangement. She also asked that PPL check the premises as she felt that she was not using as much electricity as she was being billed for.

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, 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.*

Assuming *arguendo* that the Complaint was in fact filed by Kelly Wolfe, or at her direction, no one appeared on behalf of Ms. Wolfe to prosecute the Complaint on the date and time set for the hearing in this case, despite notice of the hearing having been sent to Complainant at the only address provided.

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. Wolfe by first class mail to the address provided on the Complaint form. The prehearing Order was not returned to the Commission as undeliverable. Accordingly, it must be presumed that this document sent to the Complainant in the ordinary course of business was received. *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. 221, 444 A.2d 658 (1982). As noted above, the prehearing Order stated that the parties may lose the case if they fail to appear and present evidence on the issues raised.

The hearing notice was not returned to the Commission as undeliverable. It was sent to the only address provided in the formal Complaint. No request for a postponement or continuance of the hearing was received by my office. Notice of the hearing and an opportunity to be heard in this proceeding were provided, but Complainant did not appear. Therefore, on the face of the pleadings in this matter, Complainant's due process rights have been fully protected, and the Complaint must be dismissed for failure to prosecute it. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

Although this is an adjudication and not an inquest, and the Complaint is dismissed for failure to prosecute, the legal sufficiency of the Complaint is at least questionable. Arguably, by failing to appear and present any evidence in support of the Complaint, Complainant failed to carry her burden. Thus, the Complaint *could* be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995). During the hearing, counsel for PPL moved for dismissal of the Complaint, but without prejudice. Simply stated, the Complaint may be legally insufficient in that there are doubts as to whether Kelly Wolfe actually filed the Complaint or directed its filing.

I note that the formal Complaint, which is dated June 1, 2017, contains the following verification:

Verification:

I, Kelly Wolfe, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

The formal Complaint was, ostensibly, signed by Kelly Wolfe. However, twenty four days later, in her letter of June 25, 2017, Kelly Wolfe stated that she has been incarcerated since July 8, 2015:

On July 8, 2015 I was incarcerated through Northumberland County, Pennsylvania. My live-in boyfriend, at that time, was to take all the bills from my name to his, David M. Grohol. He told me he had done so. I was just told by someone that he never did this. So if that is the case, I need to do so immediately. And can he be arrested for this and held reliable [sic] for the bill from July 8, 2015, because this is not the only matter, that I am being a victim of ID theft. I am trying my best to fix everything I can from prison. I also have two more years to do in here. Please respond. Thank you, Kelly Wolfe.

Hearing Exhibit 1.

Having read this, I called the State Correctional Institution in Muncy, Pennsylvania, which is where the letter originated from, and I verified that Ms. Wolfe is indeed an inmate. Further, Complainant cannot receive incoming calls unless those calls are pre-approved and go through a system called SECURUS.

Counsel for PPL stated at the hearing that PPL also has concerns as to whether the Complaint was filed by Ms. Wolfe:

Just in comparing the handwriting contained within the complaint to the handwriting contained within Ms. Wolfe's June 25th letter, both the handwriting and the signatures appear to be vastly different. And as, Your Honor, noted, at the time the formal complaint was filed, according to Ms. Wolfe's letter, she would have been incarcerated.

[F]our days after the formal complaint was filed in this case, someone who was - who stated to be Kelly Wolfe contacted PPL to discuss the bills that were being

rendered on that account. At that time, a phone number was updated on the account to the same number that appears on the formal complaint that was filed in this case. And as Your Honor indicated earlier, that is a - a phone number that contains a voicemail with the name Dave on it. So presumably, that is the same David that is referenced in Ms. Wolfe's June 25th letter.

And the only other thing that I'll add, Your Honor, is that in addition to Your Honor trying to contact Dave at that phone number, I personally have attempted to contact both Ms. Wolfe or whomever owns that number, and each time that I have attempted to do so the - the mailbox has been full.

Tr. at 9-11.

As stated, this is not an inquest, and no handwriting expert gave testimony as to the authenticity of the handwriting on the formal Complaint and the letter of June 25, 2017. In sum, given that no one appeared to prosecute the Complaint, the Complaint will be dismissed on those grounds. However, as it is at least questionable whether Kelly Wolfe filed the Complaint, the dismissal will be without prejudice to her right to file a Complaint in this matter in the future. If that Complaint is ever filed and prosecuted, then perhaps the facts relevant to the filing of this Complaint may be made clear.

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. 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. It is the duty of a party to apprise the Commission promptly of changes to the party's current address. 52 Pa.Code § 1.53(d).

7. Ms. Wolfe 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 Kelly Wolfe at Docket Number F-2017-2607433 for failure to prosecute is granted.

2. That the formal Complaint at Docket Number F-2017-2607433 is dismissed without prejudice.

3. That this matter be marked closed.

Date: November 29, 2017

/s/
Dennis J. Buckley
Administrative Law Judge