

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Yolanda Rosado	:	
	:	
v.	:	F-2017-2621082
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Katrina L. Dunderdale  
Administrative Law Judge

**INTRODUCTION**

The undersigned grants Respondent’s oral Motion to Dismiss a formal complaint with prejudice because Complainant failed to appear and prosecute the case.

**HISTORY OF THE PROCEEDING**

On August 11, 2017, Yolanda Rosado (Ms. Rosado or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent). Ms. Rosado alleged a reliability, safety or quality problem with her electrical service. Specifically, Complainant alleged her billing statements contained incorrect charges and she did not receive a billing statement for three months after she moved into a new address. Complainant requested the unpaid balance be reduced because it was too high for the three-month period.

PPL filed an Answer on September 13, 2017. PPL denied the existence of a reliability, safety or quality problem. PPL admitted it had not sent a bill from November 17, 2016 until Complainant contacted PPL requesting a bill on March 20, 2017, but averred it had correctly billed Complainant for electrical usage.

On October 23, 2017, the Commission issued a Call-In Telephonic Hearing Notice scheduling this matter to be heard as an initial call-in telephonic hearing on Thursday, November 30, 2017, from the Commission's offices in Pittsburgh, Pennsylvania. On October 26, 2017, the presiding officer issued the Prehearing Order which, *inter alia*, advised the parties that continuances would only be granted if requested in writing at least five days prior to the hearing and would only be granted in rare situations where sufficient cause was shown to exist.

The time and date of the November 30, 2017 hearing was included in the October 23, 2017 hearing notice and the October 26, 2017 Prehearing Order. Both the hearing notice and the Prehearing Order specified how to call into the hearing on the scheduled day and at the scheduled time. Both the hearing notice and the Prehearing Order stated in bold, underlined print that the case would be dismissed if Complainant failed to call into the hearing.

On November 30, 2017, at 10:03 a.m., the presiding officer attempted to convene the telephonic hearing as scheduled but Complainant failed to appear for the hearing. The presiding officer suspended the hearing until 10:20 a.m. to provide Complainant with additional time in which to call the Commission's bridge conference telephone number.

At 10:20 a.m., the presiding officer reconvened the hearing with Respondent's attorney present on the telephone line in addition to one PPL employee. Complainant did not appear. Counsel for Respondent made an oral motion to dismiss for failure to appear and prosecute. Counsel noted Complainant was not present at the scheduled hearing, and PPL had one witness present and ready to testify. The presiding officer indicated on the hearing record that she would take the motion under advisement and give Complainant until the end of the business day in which to call and explain why she was not present at the hearing.

The presiding officer kept the telephone line open until 10:23 a.m. at the telephone number shown on the October 23, 2017 hearing notice. Complainant continued to be absent from the telephonic hearing.

The presiding officer did not receive any telephone call, correspondence, electronic message or voicemail message prior to November 30, 2017 indicating any reason why Complainant might be unavailable at the time of the telephonic hearing. On November 30, 2017, counsel for PPL was present and prepared to present its evidence along with the testimony of one witness. The hearing concluded at 10:23 a.m.

The record closed on November 30, 2017 upon the conclusion of the telephonic hearing.

#### FINDINGS OF FACT

1. Complainant and ratepayer of record is Yolanda Rosado, who resided at 103 Orchard Lane, Apartment A-9, Tobyhanna, Pennsylvania (service address) until July 2017.
2. Respondent in this proceeding is PPL Electric Utilities Corporation which provided electric service at the service address.
3. The hearing notice the Commission sent to Complainant on October 23, 2017, to the address provided by Complainant in the formal complaint, was not returned to the Commission as undeliverable.
4. The Prehearing Order sent to Complainant on October 26, 2017, to the address provided by Complainant in the formal complaint, was returned by the United States Postal Service to the Commission as undeliverable on October 27, 2017.

5. The Prehearing Order was re-sent to Complainant on October 27, 2017 at a new address provided by the United States Postal Service: 510 Pittston Avenue, Apartment 5, Scranton, Pennsylvania.

6. The Prehearing Order re-sent to Complainant on October 27, 2017 was not returned to the Commission by the United States Postal Service as undeliverable.

7. Complainant was not present and did not participate in the November 30, 2017 hearing.

8. Respondent was ready to proceed with its witness at the date and time scheduled for the hearing.

### DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S.A. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the proponent of a rule or order. Therefore, Complainant bears the burden of proving by a preponderance of the evidence that Respondent violated the Public Utility Code or a regulation or order of the Commission.<sup>1</sup> Complainant must show the utility is responsible or accountable for the problem described in the complaint.<sup>2</sup>

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard.<sup>3</sup>

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<sup>1</sup> *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

<sup>2</sup> *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

<sup>3</sup> *Schneider v. Pa. Pub. Util. Comm 'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

Ms. Rosado did not appear at the time scheduled for the November 30, 2017 hearing, and she did not participate in the November 30, 2017 hearing. The date, time and location of the hearing were listed in the hearing notice, dated October 23, 2017, and in the Prehearing Order dated October 26, 2017.

The hearing notice and Prehearing Order were mailed to Complainant at the address she provided in her formal complaint. The Prehearing Order was mailed to Complainant at the new address for Complainant provided by the United States Postal Service. Furthermore, on November 27, 2017, Respondent re-sent via FedEx Overnight mail and by electronic mail to Complainant a copy of the exhibits, with a cover letter dated November 20, 2017 which contained the date and time for the initial telephonic hearing. Complainant acknowledged receipt of the exhibits on November 28, 2017. These mailings created a rebuttable presumption Complainant received the documents.<sup>4</sup> Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing.<sup>5</sup>

Section 332(f) of the Public Utility Code, 66 Pa.C.S.A. § 332(f), provides in pertinent part:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat....

Since Complainant did not appear or participate in the hearing, despite receiving notice of the date and time of the hearing, the hearing was held in accordance with 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245. Respondent's attorney moved to dismiss the complaint for failure to prosecute. Respondent's motion was taken under advisement.

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<sup>4</sup> *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A.2d 584 (1974).

<sup>5</sup> *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).

The hearing record closed, pursuant to 52 Pa.Code § 5.431(a) and (b) which provides:

- (a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.
- (b) After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.

In this proceeding, Complainant did not call into the hearing as specified in the hearing notice and Prehearing Order. Both documents clearly indicated Complainant was to call, and both documents provided the Commission's toll-free conference bridge number and PIN number. Both documents clearly provided an address and telephone number where Complainant could reach the presiding officer if a request and/or additional information was needed by Complainant prior to the hearing.

On November 30, 2017, Complainant did not request a continuance and Complainant did not call into the hearing, as directed in the hearing notice and Prehearing Order. Complainant failed to take advantage of the opportunity provided to her in which to appear and prosecute the formal complaint against PPL by presenting evidence to support the allegations. As a result, Complainant failed to sustain the burden of proof.

Accordingly, Respondent's oral motion to dismiss the formal complaint will be granted, and the formal complaint in this matter will be dismissed with prejudice in the Ordering Paragraphs below.<sup>6</sup>

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<sup>6</sup> *Volgstadt v. Metropolitan Edison Company*, Docket No. F-02266429 (Order entered September 12, 2008) and *Martin Jefferson v. Met Ed 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).

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S.A. § 701.
2. Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).
3. The hearing record closed at the conclusion of the hearing on November 30, 2017. 52 Pa.Code § 5.431(a).
4. Complainant, by failing to appear at the scheduled hearing, waived the opportunity to participate in the hearing. 66 Pa.C.S.A. § 332(f).
5. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).
6. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).
7. Complainant failed to sustain the burden of proof.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of PPL Electric Utilities Corporation to dismiss the formal complaint filed by Yolanda Rosado against PPL Electric Utilities Corporation at Docket No. F-2017-2621082 is granted.
2. That the formal complaint filed by Yolanda Rosado against PPL Electric Utilities Corporation at Docket No. F-2017-2621082 is dismissed with prejudice.
3. That the Secretary mark this case as closed.

Date: December 1, 2017

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/s/  
Katrina L. Dunderdale  
Administrative Law Judge