

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Manning	:	
	:	
v.	:	F-2017-2628793
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

This initial decision grants an oral motion to dismiss the complaint for failure to appear and prosecute.

HISTORY OF THE PROCEEDING

On October 2, 2017, Jennifer Manning (Ms. Manning or Complainant) filed a formal complaint contending that PPL Electric Utilities Corporation (PPL or Respondent) placed incorrect charges on her account and unfairly denied her a payment arrangement. This is a timely appeal of BCS Decision No. 3557109.

On November 1, 2017, Respondent filed an Answer denying it had not provided Complainant with the most advantageous payment arrangement to which she is entitled. Additionally, PPL agreed with BCS Decision No. 3557109, which directed Complainant to pay her regular monthly budget bill plus \$15 per month toward arrearages.

On November 6, 2017, a Call-In Telephonic Hearing Notice was issued scheduling a hearing on January 8, 2018. A Prehearing Order dated November 8, 2017 was issued in this case. The Prehearing Order advised the parties with respect to Commission procedure, requests for continuances, required numbers and marking of proposed exhibits, the need for attorney representation, subpoena procedures, discovery, the responsibility of calling into the hearing, and the Commission's policy favoring settlement. Finally, the Prehearing Order reminded the parties of the date and time of the scheduled hearing.

Further, the Telephonic Hearing Notice and Prehearing Order informed the parties that they may lose the case if they did not participate in the hearing. The Telephonic Hearing Notice and the Prehearing Order were both mailed to the Complainant at 208 Marion St., Jersey Shore, PA 17740, the address shown on the complaint. The Commission did not receive any returned mail.

In accordance with the terms of the Prehearing Order, under cover letter dated December 29, 2017, Respondent served proposed Exhibits 1 through 4 for possible use at the hearing. The hearing convened at 10:00 a.m., as scheduled, on January 8, 2018.

Respondent's attorney, Graig Schultz, Esquire telephoned into the conference call number provided on the hearing notice. Respondent was prepared to proceed with witness, Jan Brett. The Complainant did not call into the conference call number.

After waiting several minutes for the Complainant to call the conference call number, I attempted to contact the Complainant at the telephone number shown on the Complainant's complaint and received a recorded message. I left a message requesting Complainant join the Call-In Telephonic Hearing.

There was a different phone number on the Request for Formal Complaint Forms, which I also dialed, but was unsuccessful in reaching Complainant. No other phone number was provided by Complainant. Complainant did not appear at the hearing. Respondent did not have any

other alternative phone numbers for Complainant. Respondent's counsel stated that he also attempted to contact Complainant three times prior to the hearing and was unsuccessful each time.

Mr. Schultz made an oral motion to dismiss the complaint for failure to prosecute. I took the motion under advisement. The record was closed on January 8, 2018. The Motion to Dismiss is ripe for a decision.

FINDINGS OF FACT

1. Complainant is Jennifer Manning.
2. Respondent is PPL Electric Utilities Corporation, an electric distribution company operating in the Commonwealth of Pennsylvania.
3. By Telephonic Hearing Notice dated November 1, 2017, a Call In Telephonic Hearing was scheduled for 10:00 a.m. on January 8, 2018.
4. A prehearing order dated November 6, 2017, had been issued in this case.
5. The Telephonic Hearing Notice and the Prehearing Order were both mailed to the Complainant at 208 Marion St., Jersey Shore, PA 17740.
6. The Telephonic Hearing Notice and Prehearing Order were not returned by the United States Postal Service.
7. The address at 208 Marion St., Jersey Shore, PA 17740 is the same address Complainant listed as the mailing address on the Complaint form.
8. The Initial Telephonic Hearing convened at 10:00 a.m., as scheduled, on January 8, 2018.

9. Respondent appeared at the scheduled time represented by legal counsel with one potential witness and was prepared to proceed.

10. When the presiding officer telephoned Complainant's phone numbers as provided by Complainant on the complaint and Request for Formal Complaint Forms, she was unable to reach Complainant.

11. Complainant did not appear at the telephonic hearing at 10:00 a.m. on January 8, 2018 per instructions on the notice and prehearing order.

12. Respondent's counsel made a motion to dismiss the Complaint for failure to prosecute and notified the ALJ that he had also attempted to contact Complainant three times prior to the hearing but was unsuccessful.

13. Complainant was advised of the date and time of the scheduled Initial Telephonic Hearing by the Telephonic Hearing Notice and the Prehearing Order.

14. Complainant was advised of the procedures for requesting a continuance of a scheduled hearing by the Prehearing Order.

15. Complainant was advised that "[y]ou may lose this case if you do not take part in the hearing and present evidence on the issues raised" by the Prehearing Order.

16. Complainant neither settled nor withdrew the Complaint and did not receive a continuance prior to the scheduled Telephonic Hearing.

DISCUSSION

As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a). To establish a sufficient case and satisfy the burden of proof, Complainant must show that the respondent public utility is responsible or accountable for

the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), app. denied, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993), 2 Pa.C.S. §704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd.*, 612 A.2d 434 (Pa. 1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

By not appearing for the scheduled Telephone Hearing, Complainant failed to bear the burden of proof. Consequently, the Complaint must be dismissed.

Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Auth. v. Allegheny Cty. Bd. of Property Assessment Appeals and Review*, 165 Pa.Cmwlth. 671, 645 A.2d 944 (1994), app. denied, 539 Pa. 696, 653 A.2d 1234 (1994); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *John D. Stewart, Jr. v. Columbia Gas of Pennsylvania, Inc.*, Docket Number C-00957041, (Opinion and Order entered May 10, 1996). Mere assertion that the document was not received, without corroboration, is insufficient to overcome the presumption of receipt. *Donegal Mutual Ins. Co. v. Insurance Dep't*, 719 A.2d 825 (Pa. Cmwlth. 1998); *Geise v. Nationwide Life and Annuity Co.*, 939 A.2d 409 (Pa.Super. 2007).

Due to the waste of the Commission's and the respondent's time, money, and energy occasioned by Complainant's failure to appear at a hearing of which Complainant had notice, the dismissal will be with prejudice. 52 Pa.Code §5.245. *Martin W. Jefferson v. UGI Utilities, Inc.*, Docket Number Z-00269892, (Opinion and Order adopted October 26, 1995, entered December 26, 1995); *Maurice Jones v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket Number C-20054885, (Opinion and Order entered February 14, 2006). *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 to, and the subject matter of, this proceeding. 66 Pa. C.S. § 701.
2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon the Complainant.
3. Notice properly mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Auth. v. Allegheny Cty. Bd. of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa. Cmwlth. 1994), app. denied, 653 A.2d 1234 (Pa. 1994); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *John D. Stewart, Jr. v. Columbia Gas of Pennsylvania, Inc.*, Docket Number C-00957041, (Opinion and Order entered May 10, 1996).
4. By failing to appear at the scheduled telephonic hearing, Complainant has failed to satisfy the burden of proof. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).
5. Failure by a complainant to appear for a scheduled hearing of which the complainant had notice warrants dismissal of the Complaint with prejudice. *Martin W. Jefferson v.*

UGI Utilities, Inc., Docket Number Z-00269892, (Opinion and Order entered December 26, 1995);
Maurice Jones v. The Peoples Natural Gas Company d/b/a Dominion Peoples, Docket Number
C-20054885, (Opinion and Order entered February 14, 2006).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PPL Electric Utilities Corporation's oral Motion to Dismiss is granted.
2. That the Complaint of Jennifer Manning v. PPL Electric Utilities Corporation at Docket Number F-2017-2628793 is dismissed, with prejudice.
3. That the case at Docket Number F-2017-2628793 be marked closed.

Date: January 10, 2018

/s/
Elizabeth H. Barnes
Administrative Law Judge