

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Courtney Rowe	:	
	:	
v.	:	C-2017-2627219
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Steven K. Haas
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.

HISTORY OF THE PROCEEDING

On or about October 3, 2017, the Complainant, Courtney Rowe, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL). The Complainant checked the boxes on her complaint form indicating that the company was threatening to shut off her service or had already shut off her service, and that she would like a payment arrangement. She indicated she had a change in circumstances and that she would like a new payment arrangement.

On October 23, 2017, PPL filed an answer to Ms. Rowe's complaint. In its answer, PPL denied that Ms. Rowe was entitled to a new payment arrangement and requested that the complaint be denied.

On November 17, 2017, the Commission issued a Call-In Telephone Hearing Notice scheduling an initial telephonic hearing for Tuesday, January 16, 2018, at 10:00 a.m. and assigning me as the Presiding Officer. The Hearing Notice noted the date and time of the hearing and provided a conference call-in number and PIN to connect to the hearing. The hearing notice stated, “[a]t the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.” The notice also stated, “Attention: You may lose this case if you do not come to this hearing and present facts on the issues raised.”

Subsequently, on November 27, 2017, a Prehearing Order was issued setting forth certain procedural requirements pertaining to the hearing. The Prehearing Order provided the date and time of the hearing, the conference call-in number and PIN and instructed the parties that, “[a]t 10:00 a.m. on January 16, 2018, the parties should connect to the telephonic hearing by dialing the call-in number . . . then entering the conference PIN number.” The Prehearing Order further stated, “you may lose this case if you do not take part in this hearing and present evidence on the issues raised.” Additionally, the Prehearing Order instructed the parties to contact me at least five days before the hearing with any requests to reschedule the hearing. Both the Hearing Notice and the Prehearing Order were sent to the Complainant, via first class mail, to the address provided by her on her complaint form. Neither was returned to the Commission as undeliverable. Ms. Rowe did not contact either me or the Commission to request that the hearing be rescheduled.

At 10:00 a.m. I connected to the conference call by using the call-in number and PIN provided to the parties. Present on the call were counsel to PPL, Graig M. Schultz, and one PPL witness. Ms. Rowe was not present. I waited until 10:10 a.m., but Ms. Rowe did not connect to the call. Accordingly, I proceeded with the hearing in Ms. Rowe’s absence. After an on the record recitation of the various notices sent to the parties in the proceeding and the instructions provided for connecting to the conference call, PPL’s counsel moved to dismiss the complaint for failure to prosecute. I indicated that I would take PPL’s motion under advisement for several days to see if the Complainant tried to contact my office about the hearing. To date, the Complainant has not contacted me or the Commission about the hearing.

A brief transcript was generated following the hearing. I closed the record on Monday, January 22, 2018. This Initial Decision grants PPL's motion to dismiss the complaint for failure of the Complainant to appear and prosecute her case.

FINDINGS OF FACT

1. The Complainant in this proceeding is Courtney Rowe.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. On or about October 3, 2017, the Complainant filed a formal complaint against PPL.
4. On October 23, 2017, PPL filed its Answer.
5. On November 17, 2017, a Hearing Notice was issued which scheduled an initial call-in telephonic hearing for January 16, 2018, at 10:00 a.m.
6. The Hearing Notice provided the conference call-in number and PIN for use by the parties to connect to the hearing.
7. The Hearing Notice warned the parties that they may lose the case if they were not available for the hearing.
8. On November 27, 2017, a Prehearing Order was issued which set forth certain procedural requirements associated with the initial hearing and re-stated the date and time of the scheduled hearing.
9. The Prehearing Order provided the conference call-in number and PIN for use by the parties to connect to the hearing.

10. The Prehearing Order warned the parties that they may lose the case if they were not available for the hearing.

11. The Prehearing Order instructed the parties to contact me at least five days before the hearing with any requests to reschedule the hearing.

12. Both the Hearing Notice and the Prehearing Order were sent to the Complainant at the address listed by her on her complaint form.

13. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission as undeliverable.

14. The Complainant never contacted me or the Commission prior to the hearing to discuss the hearing scheduled or to request that it be rescheduled.

15. At 10:00 a.m. on January 16, 2018, I connected to the conference call to begin the hearing.

16. PPL's counsel and one witness were connected to the conference call.

17. The Complainant did not call in to the conference call to participate in the hearing.

18. I waited until 10:10 a.m. to begin the hearing, but the Complainant never connected to the conference call.

19. The Complainant did not withdraw or settle her complaint against PPL or request a continuance of the hearing.

20. The Complainant failed to appear at the scheduled time for the hearing.

DISCUSSION

The Complainant averred in her complaint that she had a change in circumstances and requested another payment arrangement.

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, the 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.

No one appeared on behalf of Ms. Rowe at the date and time set for the call-in telephonic hearing in her case despite notice of the hearing and call in instructions having been sent to her at the address provided by her on her complaint form.

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. Rowe by regular first-class mail. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission as undeliverable. Accordingly, it is presumed that these documents sent to the Complainant in the ordinary course of business were received by her. 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.Ct. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa.Super.Ct. 221, 444 A.2d 658 (1982). As noted above, both the Hearing Notice and the Prehearing Order provided the call-in telephone number and PIN and stated that the parties may lose the case if they fail to appear and present evidence on the issues raised.

Ms. Rowe did not call in to connect to the conference call to participate in the hearing. No request for a postponement or continuance of the hearing was received by my office. Ms. Rowe had notice and an opportunity to be heard in this proceeding but did not appear. Therefore, the Complainant'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 with prejudice for lack of prosecution. By failing to appear and present any evidence in support of her complaint, Ms. Rowe failed to carry her burden. Thus, the complaint will be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995).

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. Ms. Rowe'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).

7. Ms. Rowe 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 Courtney Rowe at Docket Number C-2017-2627219 for failure to prosecute is granted.
2. That the formal complaint filed by Courtney Rowe at Docket Number C-2017-2627219 is hereby dismissed with prejudice.
3. That this matter be marked closed.

Date: January 22, 2018

/s/
Steven K. Haas
Administrative Law Judge