

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stacey Silverman	:	
	:	
v.	:	F-2017-2619835
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision dismisses the complaint filed in this matter for failure of Complainant to appear for the hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

This decision dismisses a complaint for failure to appear and prosecute. On August 16, 2017, Stacey Silverman (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent or PPL). Complainant alleged the utility is threatening to shut off service or has already shut off service; that Complainant would like a payment arrangement and; that there are incorrect charges on Complainant's bill.

Respondent filed an answer on September 6, 2017. The answer denied that Complainant has not been provided with the most advantageous payment arrangement to which she is entitled and requested that the complaint be denied.

By notice dated September 22, 2017, the Commission scheduled this matter for an initial telephonic hearing on Thursday, October 26, 2017, at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated September 29, 2017, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic initial hearing on October 26, 2017, as scheduled. Complainant failed to appear for that hearing. I called Complainant at the home telephone number listed in her complaint at 10:00 a.m. and 10:04 a.m. Each time I recorded a message indicating the purpose of my call and explaining that if she could be reached at an alternate telephone number for the hearing, she should call the Office of Administrative Law Judge in Pittsburgh by 10:15 a.m. and provide the telephone number. At 10:17 a.m., the hearing proceeded in Complainant's absence.

Upon commencement of the hearing, Graig M. Schultz, Esquire, counsel for Respondent, moved to dismiss the complaint for failure to appear and prosecute. Tr. 6. I advised Respondent's counsel that I would take his motion under advisement. Tr. 6.

The record closed on November 20, 2017, the date the transcript was received by me. This decision grants Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. Complainant in this case is Stacey Silverman.
2. Respondent in this case is PPL Electric Utilities Corporation.
3. On August 16, 2017, Complainant filed a complaint with the Commission against Respondent.
4. Respondent filed an answer on September 6, 2017.

5. By notice dated September 22, 2017, the Commission scheduled this matter for an initial telephonic hearing on Thursday, October 26, 2017, at 10:00 a.m.

6. The Commission sent notice of the telephonic hearing in this case to Complainant by regular first-class mail to the address stated on the complaint.

7. The Commission's hearing notice was never returned to the sender as undeliverable.

8. A Prehearing Order was mailed to Complainant by regular first-class mail to the address stated on the complaint on September 29, 2017.

9. The Prehearing Order was never returned to the sender as undeliverable.

10. Complainant failed to appear at the October 26, 2017 telephonic hearing.

11. Complainant did not settle, withdraw or request a continuance of the matter.

DISCUSSION

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.Cmwlt. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties' notice and the opportunity to be heard.

Notice of the scheduled initial telephonic hearing in this case was sent to Complainant on September 22, 2017, by regular first-class mail to the address stated in the complaint. This piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge in Harrisburg. In addition, I issued a Prehearing Order on September 29, 2017, that advised the parties, *inter alia*, that "[y]ou may lose this case, if you do

not take part in this hearing and present evidence on the issues raised.” Prehearing Order, p. 4. This Order, which was also mailed to Complainant at the address stated on the complaint, was never returned. Accordingly, one must presume this mail, which was sent in the ordinary course of business, was received by the addressee. 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); and Judge v. Celina Mutual Insurance Co., 303 Pa.Super. 221, 444 A.2d 658 (1982).

Neither Complainant nor a representative appeared for the scheduled initial telephonic hearing on October 26, 2017. Complainant’s absence is unexplained. Complainant did not request a continuance of the hearing. Neither a petition to withdraw the complaint¹ nor a certificate of satisfaction² was filed with the Commission. Under these circumstances, it appears Complainant had ample opportunity to appear and be heard in this proceeding, but failed to appear for the scheduled hearing. Therefore, the due process rights of Complainant have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); and 52 Pa.Code § 5.245(a).

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a). By failing to appear and proffer any evidence to support her complaint, Complainant has failed to meet this burden. Complainant’s failure to appear is unexcused. Complainant has waived the opportunity to participate in the hearing and this case may be dismissed with prejudice. 52 Pa.Code § 5.245(a); Jefferson v. UGI Utilities, Inc., (Opinion and Order entered December 26, 1995 at Docket No. Z-00269892); El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

¹ 52 Pa.Code § 5.94.

² 52 Pa.Code § 5.24.

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. The due process rights of Complainant have been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear for the hearing and proffer any evidence to support the complaint, Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PPL Electric Utilities Corporation to dismiss the complaint filed by Stacey Silverman at Docket No. F-2017-2619835, is granted.

2. That the complaint of Stacey Silverman against PPL Electric Utilities Corporation at Docket No. F-2017-2619835 is dismissed with prejudice for failure of Complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. F-2017-2619835 is marked closed.

Date: January 31, 2018

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge