

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jasmine Blas	:	
	:	
v.	:	C-2017-2624584
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This decision grants a motion to dismiss for failure to prosecute because the complainant failed to appear for the hearing at the designated date and time despite being given notice of the hearing.

**HISTORY OF THE PROCEEDING**

On September 14, 2017, Jasmine Blas filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL), docket number C-2017-2624584. In her complaint, Ms. Blas averred that PPL is threatening to terminate her service or has already terminated her service.

On October 5, 2017, PPL filed an answer to the complaint filed by Ms. Blas. In its answer, PPL admitted that it has provided Ms. Blas with a notice of intent to terminate service for an unpaid balance. PPL also provided additional information regarding the balance Ms. Blas owes to PPL.

On December 1, 2017, a call-in telephonic hearing notice was issued setting an initial telephonic hearing for this matter for Friday, January 19, 2018 and assigning me to the case. A prehearing order dated December 8, 2017 was issued setting forth various procedural rules that will govern the hearing.

Of note, the hearing notice stated: “At 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.” Similarly, the prehearing order stated, among other things, that: “If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.”

Both the hearing notice and the prehearing order were sent to Ms. Blas at the address provided on her complaint via first-class mail. On December 12, 2017, the hearing notice was returned as undeliverable. As a result, the hearing notice was sent to Ms. Blas on January 16, 2018 via electronic mail to the e-mail address she provided on her complaint. The prehearing order was not returned as undeliverable.

The hearing convened on January 19, 2018, as scheduled. Graig Schultz, Esquire appeared on behalf of PPL. No one appeared on behalf of Ms. Blas.

The record in this case consists of the hearing transcript of nine pages. The record closed in this proceeding when the transcript was filed with the Commission on January 30, 2018. This Initial Decision memorializes the ruling at the conclusion of the hearing granting the motion of PPL to dismiss the complaint for failure to prosecute.

#### FINDINGS OF FACT

1. The complainant in this case is Jasmine Blas.
2. The respondent in this case is PPL Electric Utilities Corporation.

3. No one appeared at the hearing on behalf of Ms. Blas. Tr. 1, 4.

4. Ms. Blas received notice of the hearing when she was sent a hearing notice via electronic mail on January 16, 2018 to the e-mail address she provided on her complaint. Tr. 5.

5. Ms. Blas received notice of the hearing when she was sent a prehearing order dated December 8, 2017 to the address provided on her complaint. Tr. 5.

6. Neither the emailed hearing notice nor the prehearing order were received back by the Commission as undeliverable. Tr. 5.

7. Counsel for PPL attempted to reach Ms. Blas on January 15, 2018 at the telephone number listed on her complaint but the telephone number was not in service. Tr. 6.

8. Counsel for PPL attempted to reach Ms. Blas on January 15, 2018 at an alternate telephone number for Ms. Blas but was unable to leave a message because the voice mail box service was not set up. Tr. 6.

9. Counsel for PPL sent Ms. Blas exhibits by cover letter dated January 12, 2018 wherein Ms. Blas was reminded of the date and time of the hearing. Tr. 7.

10. The hearing notice and the prehearing order issued in this matter stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

### DISCUSSION

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). In this proceeding, based on a reading of her complaint, Ms. Blas complained that PPL has terminated her service or threatened to terminate her service. Ms. Blas, therefore, has the burden of proof in this proceeding.

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 accorded notice and the opportunity to be heard. Id.

No one appeared on behalf of Ms. Blas at the date and time set for the hearing in her case despite notice of the hearing. 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 prehearing order was sent to Ms. Blas by regular first class mail and was not returned to the Commission as undeliverable. Accordingly, it must be presumed that this document sent to Ms. Blas in the ordinary course of business was received by Ms. Blas. 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. Ct. 221, 444 A.2d 658 (1982). Of note, the prehearing order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. In addition, a copy of the hearing notice was also sent to Ms. Blas via first class mail. Although the hearing notice was returned to the Commission as undeliverable, the hearing notice was subsequently sent to Ms. Blas via electronic mail which was not returned as undeliverable. Regardless, the prehearing order included the date and time of the hearing and was not returned as undeliverable. Furthermore, counsel for PPL made several attempts to reach Ms. Blas prior to the hearing to ensure that she was aware of the date and time of the hearing. Tr. 6. PPL also served Ms. Blas with exhibits that also reminded her of the date and time of the hearing. Tr. 7.

No one appeared on behalf of Ms. Blas at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, Ms. Blas had notice and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, Ms. Blas' 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. Tr. 7-8. By failing to appear and present any evidence in support of her complaint, Ms. Blas has failed to carry her burden. Thus, it is appropriate to dismiss the complaint with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995). Accordingly, the merits of the complaint will not be addressed in this Initial Decision.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter 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 accorded notice and the 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. Blas' due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

7. Ms. Blas has 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 Jasmine Blas at Docket Number C-2017-2624584 for failure to prosecute is granted.

