

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Frey and Sandra Mireles	:	
	:	
v.	:	C-2017-2629947
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Mary D. Long  
Administrative Law Judge

A formal complaint filed by customers of an electric distribution company is dismissed because the complainants failed to appear for the hearing without good cause.

**HISTORY OF PROCEEDINGS**

James Frey and Sandra Mireles (Complainants) filed a formal complaint against PPL Electric Utilities Corporation (PPL or Company) on October 20, 2017, alleging that PPL was threatening to terminate service and other customer service-related issues. PPL filed a timely answer denying the material allegations of the complaint.

By corrected hearing notice dated January 2, 2018, this matter was assigned to me and scheduled for a telephonic hearing on February 7, 2018. I issued a prehearing order on December 28, 2017, which also provided the date and time of the hearing as well as other procedural requirements related to the hearing, including instructions for requesting a continuance if the hearing date and time were not convenient.

Due to a winter storm, the Pittsburgh Office of the Commission was closed on the day of the scheduled hearing. By email dated February 6, 2018, I informed the parties that the hearing was cancelled and would be rescheduled to another date. By interim order dated February 8, 2018, I directed the parties to confer and to provide new hearing dates when they and their witnesses would be available. By email dated February 16, 2018, PPL provided dates when both parties would be available for a hearing. A hearing notice was served on February 27, 2018, which rescheduled the hearing for Friday, March 23, 2018.

The hearing convened as scheduled. Graig M. Schultz, Esquire, appeared on behalf of the Company along with one witness, Tami Rowland. The Complainants did not call the conference call number. Mr. Schultz represented that the utility had contacted the Complainants, but the call had not been returned. After a brief recess to provide the Complainants additional time to call, the hearing proceeded in their absence. The Company made a motion to dismiss, which was taken under advisement. The record closed at the conclusion of the hearing.

#### FINDINGS OF FACT

1. The Complainants are James Frey and Sandra Mireles.
2. The Respondent is PPL Electric Utilities Corporation, a jurisdictional public utility.
3. The Complainants did not call the conference number at 10:00 a.m. on Friday, March 23, 2018.
4. The Complainants did not contact the Commission to explain their failure to appear for the hearing.
5. Neither the hearing notices nor the prehearing order were returned as undeliverable by the U.S. Postal Service.

## DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.<sup>1</sup> However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.<sup>2</sup> The Complainants had adequate notice of the time and date of the hearing, yet they failed to appear or explain why they could not attend their hearing at the scheduled time. Therefore, it is appropriate to dismiss their complaint.

A hearing notice and prehearing order were sent to the Complainants. Paragraph 10 of the prehearing order informed the Complainants that if they failed to appear for the hearing they could lose their case.<sup>3</sup> Paragraph 8 of the order provided instructions for contacting the Commission to request a change of the scheduled hearing date. None of these pieces of mail were returned by the U.S. Postal Service. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received.<sup>4</sup> Therefore, the Complainants are deemed to have received these documents and to have had sufficient notice of the Commission's procedures and notice of the location, date and time of the scheduled hearing.

Section 332(a) of the Public Utility Code<sup>5</sup> places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the Complainants have the burden of demonstrating that the facts alleged in their complaint are true and that they are entitled to the relief requested. By not appearing for the scheduled hearing to present evidence, the Complainants failed to meet their burden of proof. Consequently, the complaint must be dismissed.

---

<sup>1</sup> *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

<sup>2</sup> *Id.*

<sup>3</sup> *See also* 52 Pa.Code § 5.245.

<sup>4</sup> *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Dev. Auth. v. Allegheny County Bd. of Property Assessment Appeals and Rev.*, 645 A.2d 944 (Pa.Cmwlt. 1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Commission Opinion and Order entered September 16, 2010).

<sup>5</sup> 66 Pa.C.S. § 332(a).

The Complainants were notified of the scheduled hearing location, date and time, as well as how to contact the Office of Administrative Law Judge, but failed to appear without explanation. Under these circumstances, the Complainants had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. The due process rights of the Complainants have been fully protected. The motion to dismiss of the Company is granted, and the complaint is dismissed with prejudice.<sup>6</sup>

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 66 Pa.C.S. § 701.

2. The due process rights of the Complainants have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

3. By failing to appear at their scheduled hearing, the Complainants have waived their claims and have failed to sustain their burden of proof. 66 Pa.C.S. § 332; 52 Pa.Code § 5.245.

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion to dismiss the complaint of James Frey and Sandra Mireles, Docket No. C-2017-2629947, is granted.

---

<sup>6</sup> 66 Pa.C.S. § 332(f).

2. That the complaint of James Frey and Sandra Mireles, Docket No. C-2017-2629947, is dismissed with prejudice.

3. That this docket be marked closed and discontinued.

Date: April 30, 2018

\_\_\_\_\_  
/s/  
Mary D. Long  
Administrative Law Judge