

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tony Porter t/a Unforgettable Baskets	:	
	:	
v.	:	C-2018-3003364
	:	
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 his complaint.

HISTORY OF THE PROCEEDING

On July 11, 2018, the Complainant, Tony Porter, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL). The Complainant checked the boxes on the complaint form indicating that the company was threatening to shut off his service or had already shut off his service, and that he would like a payment arrangement. The Complainant indicated that he was unable to make the lump sum payment required by PPL.

On August 1, 2018, PPL filed an answer to the complaint. In its answer, PPL admitted that it provided notice to the Complainant of its intent to terminate service due to outstanding charges on the account. PPL averred that it already offered the Complainant the

most advantageous payment arrangement to which he was entitled. PPL requested that the complaint be denied.

On August 16, 2018, the Commission issued a call-in telephone hearing notice scheduling an initial telephonic hearing for Wednesday, October 10, 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 August 17, 2018, 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, “no later than 10:00 a.m. on October 10, 2018, you must 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 him on his complaint form. Neither document was returned to the Commission as undeliverable. Mr. Porter did not contact either me or the Commission to request that the hearing be rescheduled.

At 10:00 a.m. on the day of the hearing, 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. Mr. Porter was not present. I waited until 10:15 a.m., but Mr. Porter did not connect to the call. Accordingly, I proceeded with the hearing in Mr. Porter’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 due to the Complainant's failure to appear for the hearing and prosecute his complaint. I indicated that I would take PPL's motion under advisement 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.

The record closed following the hearing and a brief transcript was generated. This initial decision grants PPL's motion to dismiss the complaint for failure of the Complainant to appear and prosecute his case.

FINDINGS OF FACT

1. The Complainant in this proceeding is Tony Porter t/a Unforgettable Baskets.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. On July 11, 2018, the Complainant filed a formal complaint against PPL.
4. On August 1, 2018, PPL filed its Answer.
5. On August 16, 2018, a hearing notice was issued which scheduled an initial call-in telephonic hearing for October 10, 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 August 17, 2018, 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 him on his 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 schedule or to request that the hearing be rescheduled.

15. At 10:00 a.m. on October 10, 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 into the conference call to participate in the hearing.

18. I waited until 10:15 a.m. to begin the hearing, but the Complainant never connected to the conference call.

19. The Complainant did not withdraw or settle his 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 is requesting an affordable payment arrangement to avoid service termination.

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 Mr. Porter at the date and time set for the call-in telephonic hearing in his case despite notice of the hearing and call-in instructions having been sent to him at the address provided by him on his 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 thereafter 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 Mr. Porter 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 him. 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. 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.

Mr. Porter 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. Mr. Porter 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 for lack of prosecution. By failing to appear and present any evidence in support of his complaint,

Mr. Porter failed to carry his 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. Mr. Porter'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. Mr. Porter failed to meet his burden of proof in this proceeding.

