

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Susan Stump	:	
	:	
v.	:	F-2018-3003981
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint because the Complainant failed to appear for the hearing to prosecute her Complaint.

HISTORY OF THE PROCEEDING

On August 9, 2018, Susan Stump (Complainant or Ms. Stump) filed a Complaint with the Commission against PPL Electric Utilities Corporation (Respondent or PPL). In her Complaint, Ms. Stump indicated that PPL was threatening to shut off her service or had shut off her service and requested a payment arrangement. The Complaint is a timely appeal of the Commission’s Bureau of Consumer Services (BCS) decision issued on July 3, 2018 at BCS No. 3628229.

On September 4, 2018, the Respondent filed an Answer to the Complaint. In its Answer, PPL admits that it terminated the Complainant’s service due to an unpaid balance. PPL

is in agreement with the payment arrangement awarded to the Complainant at BCS No. 3628229. PPL requests that the Commission deny the Complaint.

By Hearing Notice served upon the parties on September 12, 2018, the Commission scheduled this matter for a call-in telephonic hearing on Monday, October 29, 2018 at 10:00 a.m., and assigned the case to me. Furthermore, the Hearing Notice stated the following, in bold and underline type: “**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 Special Agent.**”

A Prehearing Order, served upon the parties on September 14, 2018, again gave the parties the date and time of the hearing and addressed, *inter alia*, the method by which the parties could call-in to participate in the hearing, the procedures applicable to the hearing, and the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them. Furthermore, the Prehearing Order stated the following, in bold and underline type: “**You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Special Agent.**”

I conducted the October 29, 2018 telephonic hearing as scheduled. The Complainant was not present on the telephone conference line at 10:00 a.m. The start of the hearing was delayed until approximately 10:15 a.m. to provide the Complainant with additional time to call-in to participate. The Complainant did not call-in to the hearing to participate. No communication was made to the Office of Administrative Law Judge on the Complainant’s behalf to explain her absence. Attorney Graig M. Schultz was present at the hearing on behalf of the Respondent.

No witnesses were presented, and no exhibits were introduced for the record. PPL moved to have the Complaint dismissed for failure to prosecute.

The record¹ closed on October 29, 2018 following the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Susan Stump.
2. The Respondent is PPL Electric Utilities Corporation.
3. The Complainant filed a Complaint against PPL on August 9, 2018.
4. The Respondent filed an Answer to the Complaint on September 4, 2018.
5. By Hearing Notice served upon the parties on September 12, 2018, a hearing in this matter was scheduled for October 29, 2018 at 10:00 a.m.
6. By Prehearing Order served upon the parties on September 14, 2018, the parties were again informed of the date and time of the telephonic hearing and were provided with the method by which a party could request a continuance of the hearing date, if needed.
7. Both the Hearing Notice and the Prehearing Order warned the Complainant, in bold and underline type, that her case would be dismissed if she failed to call-in to the hearing on the scheduled day and time.
8. The Complainant did not call-in to the October 29, 2018 hearing to participate.
9. The Complainant did not withdraw or settle her Complaint with PPL, nor did she request a continuance of the hearing date.

¹ The telephonic hearing was recorded by means of a tape recorder. No Court Reporter was present.

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). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980).

In this proceeding, Ms. Stump filed a Complaint against PPL seeking legal relief in the form of a payment arrangement. As a result, the burden of proof is on Ms. Stump to show that she is eligible for a payment arrangement.

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlt. 1984).

Ms. Stump did not participate in the October 29, 2018 hearing. The date and time of the hearing were provided in the Hearing Notice and the Prehearing Order. The method by which Ms. Stump could call-in to the hearing to participate in the hearing was provided in the Notice and Order. Furthermore, both the Notice and Order warned Ms. Stump of the potential consequences that could result from choosing to not participate in the scheduled hearing, including dismissal of the Complaint.

The Notice and Order were sent separately to Ms. Stump by regular first-class mail and neither of them were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents, which were sent to Ms. Stump 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. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Super. 221, 444 A.2d 658 (1982). Therefore, the Complainant is deemed to have had sufficient notice of the day, date and time of the scheduled hearing and for whatever reason chose not to appear to prosecute her Complaint. In addition, I was informed by Attorney Schultz that representatives from PPL attempted to contact the Complainant in the weeks leading up to the hearing but received no communication back from the Complainant. The Complainant made no attempt to notify the presiding officer that she did not plan to participate in the scheduled October 29, 2018 hearing.

Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlt. 1984). Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Complainant did not appear, and the hearing proceeded in her absence. 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245(a) provide that a party that fails to be represented at a scheduled hearing shall waive the opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat.

(f) Actions of parties and counsel.--Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination. . . .

66 Pa.C.S. § 332(f).

(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.

. . .

52 Pa. Code § 5.245(a).

As stated, the Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. By choosing not to participate in the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden.

The due process rights of the Complainant have been protected. The Complainant had notice of the scheduled hearing and failed to appear to prosecute her Complaint. Therefore, the Respondent's Motion to Dismiss the Complaint for Lack of Prosecution is granted. Accordingly, the Complaint in this matter will be dismissed in its entirety with prejudice. El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); Volgstadt v. UGI Penn Natural Gas, Inc., Docket No. F-02266429 (Opinion and Order entered September 12, 2008) and Martin Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. Administrative agencies are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlth. 1984).

4. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. Sentner v. Bell Telephone Co. of Pennsylvania, Docket No. F-00161106, (Opinion and Order entered October 25, 1993).

5. By failing to appear at her scheduled hearing, the Complainant waived her opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

6. Ms. Stump's 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. By failing to appear and proffer any evidence in support of the Complaint, the Complainant has failed to meet her burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the Complaint at Docket Number F-2018-3003981 for failure to prosecute is granted.

