

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Monica DeMarco	:	
	:	
v.	:	F-2018-3005684
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Gail M. Chiodo  
Special Agent

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On October 18, 2018, Monica DeMarco (Complainant) filed a formal complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent) in which she requested a payment arrangement that she could afford. This is a timely appeal from a decision of the Bureau of Consumer Services (BCS) dated September 5, 2018 in BCS case number 3643384 which dismissed her informal complaint finding her ineligible for another Commission-issued payment arrangement.

On November 19, 2018, PPL filed an answer in which it admitted that Complainant is requesting a payment arrangement but denied that Complainant has not been

provided with the most advantageous payment arrangement for which she is entitled. The Respondent requested that the Commission dismiss the Complaint.

On November 27, 2018, the Commission issued a Telephone Hearing Notice setting an initial telephonic hearing on January 22, 2019 at 10:00 a.m., and the case was assigned to me pursuant to 52 Pa. Code § 56.174.<sup>1</sup> Of note, the Hearing Notice stated the following: “Attention: *You may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in original).

On December 17, 2018, the undersigned issued a Prehearing Order reminding the parties of the date and time of the hearing and addressed, *inter alia*, 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: “**You must be available on the scheduled day and time. If you fail to be available, your case will be dismissed.**” (emphasis in original).

Both the Hearing Notice and the Prehearing Order informed the parties that the undersigned would contact the parties by phone at the scheduled date and time to connect the parties to the telephonic hearing. Further, both the Hearing Notice and Prehearing Order verified the phone numbers of the parties with instructions to call the Office of Administrative Law Judge (OALJ) if any party’s phone number had changed.

The hearing convened as scheduled on January 22, 2019 at 10:00 a.m. At 10:00 a.m., I called the phone number that Ms. DeMarco provided to the Commission. Ms. DeMarco did not answer. However, I left a voice message in which I reminded Ms. DeMarco of the hearing, informed her that I would attempt to call her again in approximately ten minutes, and that if she was not available during my second phone call that the hearing would proceed without her and that her case would be dismissed. Because Ms. DeMarco provided an alternative phone

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<sup>1</sup> 52 Pa. Code § 56.174 (providing for review by a special agent of decisions of the BCS and any other case in which the issue is solely the ability to pay).

number on her Complaint, her home phone number, I also called that phone number but no one answered and I was unable to leave a voicemail. Counsel for Respondent, Graig M. Schultz, Esquire, was present at the hearing and was prepared to proceed.

At 10:15 a.m., I again called Ms. DeMarco at the phone number she provided to the Commission. Ms. DeMarco did not answer this call. I left another voicemail and advised Ms. DeMarco that the hearing was going to proceed without her.

The hearing proceeded in Complainant's absence. No witnesses were presented and no exhibits were introduced for the record. Respondent stated that, in PPL's effort to resolve this matter prior to the hearing, a PPL customer service compliance officer left voicemails for Complainant on January 4 and 16, 2019, and Ms. DeMarco did not return the calls. Further, Attorney Schultz stated he called Ms. DeMarco on January 18, 2019, left a voicemail for her, and Ms. DeMarco did not return his call. Respondent moved to have the Complaint dismissed with prejudice for the failure to prosecute.

The record<sup>2</sup> closed on January 22, 2019 following the conclusion of the telephonic hearing.

On January 22, 2019 at approximately 1:30 p.m., I received a voicemail from a person identifying herself as Monica DeMarco. In Ms. DeMarco's voicemail, which was mostly inaudible due to noise in the background, the undersigned believes that Ms. DeMarco stated that she missed the hearing due to attending a funeral. At approximately 2:10 p.m., the undersigned called Ms. DeMarco and no one answered. I left a voicemail advising Ms. DeMarco that I received her voicemail but that it was mostly inaudible. Therefore, I told Ms. DeMarco that she needed to put in writing the reason she did not attend the hearing, as well as the reason she did not request a continuance prior to the hearing date, and send this document to the undersigned at the Office of Administrative Law Judge (OALJ). I further advised Ms.

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<sup>2</sup> Pursuant to 52 Pa. Code § 56.174(3), the hearing was tape recorded. No court reporter was present.

DeMarco that once I received her excuse in writing, I would decide whether to schedule a further hearing. I further advised Ms. DeMarco that if she had any questions, she could call the OALJ.

As of the date of this decision, neither the OALJ nor the undersigned has received any further communication, verbal or written, from Ms. DeMarco explaining her absence from the hearing. For the reasons discussed below, the Complaint will be dismissed.

### FINDINGS OF FACT

1. The Complainant is Monica DeMarco, who resides at 1442 Thackery Street, Scranton, Pennsylvania (service address).
2. The Respondent is PPL Electric Utilities Corporation, which provides service to Complainant.
3. On November 27, 2018, a Telephone Hearing Notice was issued by the Commission scheduling an initial telephonic hearing for January 22, 2019 at 10:00 a.m.
4. On December 17, 2018, a Prehearing Order was issued which advised the parties of the date and time of the scheduled hearing and informed them of various procedures applicable to this proceeding, including the method by which a party could request a continuance of the hearing date, if needed.
5. The Hearing Notice stated the following: “*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in original).
6. The Prehearing Order stated: “**You must be available on the scheduled day and time. If you fail to be available, your case will be dismissed.**” (emphasis in original).

7. Both the Hearing Notice and the Prehearing Order informed the Complainant that she would be contacted by phone on the hearing date and time to be connected to the telephonic hearing.

8. Both the Hearing Notice and the Prehearing Order were sent to the Complainant by first-class mail to the address provided on her Complaint.

9. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission by the United States Postal Service as undeliverable.

10. The hearing convened as scheduled on January 22, 2019.

11. Mr. Graig M. Schultz, Esquire, appeared on behalf of Respondent and was prepared to proceed.

12. The Complainant did not appear for the January 22, 2019 hearing.

13. On January 22, 2019 at approximately 1:30 p.m., the undersigned received a voicemail from a person identifying herself as Monica DeMarco but due to background noise, most of the voicemail message was inaudible but the undersigned believes that Ms. DeMarco stated that she missed the hearing due to attending a funeral.

14. On January 22, 2019, at approximately 2:10 p.m., the undersigned called Ms. DeMarco and no one answered; the undersigned left a voicemail instructing Ms. DeMarco that if she wanted to proceed with her complaint that she needed to put in writing the reason she did not attend the hearing as well as the reason she did not request a continuance prior to the hearing date, and send this document to the OALJ.

15. Neither the OALJ or the undersigned has received any further communication, oral or written, from Ms. DeMarco explaining her absence from the hearing.

## 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 her complaint, Ms. DeMarco seeks relief in the form of a new Commission-issued payment arrangement. Thus, as the party seeking relief, Ms. DeMarco 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 accorded notice and the opportunity to be heard. *Id.*

Ms. DeMarco did not appear at the date and time set for the hearing in his case despite receiving notice of the hearing. Commission regulations address circumstances when a party fails to appear in a proceeding. Specifically, 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.

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52 Pa. Code § 5.245(a)(1)-(2).

The Hearing Notice and Prehearing Order were sent separately to Ms. DeMarco by regular first-class mail and neither of them was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents, which were sent to Ms. DeMarco in the ordinary course of business, were received by him. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 449 A.2d 658 (Pa. Super. 1982).

Consequently, Complainant had sufficient notice of the day, date and time of the scheduled hearing. *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. UGI Utilities, Inc.*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). Further, both the Hearing Notice and Prehearing Order warned Ms. DeMarco of the potential consequences that could result from choosing not to participate in the scheduled hearing, including dismissal of his complaint.

Further, Attorney Schultz noted at the hearing that, in PPL's efforts to resolve this matter prior to the hearing, a PPL customer service compliance officer had left voicemails for Complainant on January 4 and 16, 2019, and Ms. DeMarco did not return the calls. Further, Attorney Schultz stated he also called Ms. Demarco on January 18, 2019 and Ms. DeMarco did not return his voicemail.

If a party fails to attend a scheduled hearing, such failure to appear will be deemed a waiver of the party's opportunity to participate in a hearing, unless the presiding officer determines that such failure was unavoidable. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b); *Hudson v. PECO Energy Co.*, Docket No. C-2016-2555083 (Final Order entered June 21, 2018). The Commission has held that to meet the "unavoidable" standard, the Commission will require a complainant to show, with supporting information, that the failure to appear was due to exigent circumstances. *Hudson*.

Ms. DeMarco did not appear at the time of the hearing, nor did she or anyone on her behalf request a continuance prior to the hearing. While Complainant did call the

undersigned the afternoon of the hearing, most of this call was inaudible due to background noise. Further, Complainant did not submit in writing the reason and any supporting information, if any, as to her failure to appear, as instructed by the undersigned. *See, Osuji v. PECO Energy Company*, Docket No. C-2008-2071982 (Opinion and Order entered July 24, 2009) (affirming the presiding officer's decision to dismiss a complaint, because although Ms. Osuji stated her reason to appear at the hearing was that she was unavailable as a result of a death in the family, the complainant did not, *inter alia*, request a continuance prior to the hearing).

Ms. DeMarco had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Ms. DeMarco's due process rights have been fully protected. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

By failing to appear and present any evidence in support of his complaint, Ms. DeMarco has failed to carry her burden. Accordingly, the merits of the complaint will not be addressed in this Initial Decision and the Complaint will be dismissed.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and 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. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

4. “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).

5. 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.*

6. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will be deemed to have waived the opportunity to participate in the conference or hearing and not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing. 52 Pa. Code § 5.245(a)(1)-(2).

7. If a party fails to attend a scheduled hearing, such failure to appear will be deemed a waiver of the party's opportunity to participate in a hearing, unless the presiding officer determines that such failure was unavoidable. 66 Pa.C.S. § 332(f); *Hudson v. PECO Energy Co.*, Docket No. C-2016-2555083 (Final Order entered June 21, 2018).

8. 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).

9. By failing to appear at his scheduled hearing, the Complainant waived his opportunity to participate in the hearing. 52 Pa. Code § 5.245(a).

10. 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); 52 Pa.Code § 5.245(a).

11. By failing to appear and proffer any evidence in support of the Complaint, the Complainant has failed to meet his 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-2018-3005684 for the failure to prosecute is granted.

2. That the Complaint filed by Monica DeMarco against PPL Electric Utilities Corporation at Docket Number F-2018-3005684 is hereby dismissed.

3. That the docket at Docket Number F-2018-3005684 is marked closed.

Date: March 27, 2019

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/s/  
Gail M. Chiodo  
Special Agent