

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robert Strydio	:	
	:	
v.	:	C-2018-3005545
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This decision grants a Motion to Dismiss a Complaint for failure to prosecute because the Complainant failed to appear at the hearing on the designated date and time despite having been given notice of the hearing.

HISTORY OF THE PROCEEDING

On October 22, 2018, Robert Strydio (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL), at Docket Number C-2018-3005545. In his Complaint, Mr. Strydio averred that PPL had not properly credited electronic payments and was threatening to cut off his electric service.

On November 12, 2018, PPL filed an Answer to the Complaint in which it maintained that all of the charges billed to Complainant's account were lawful and in accord with PPL's tariff.

On November 26, 2018, a call-in telephonic hearing Notice was issued setting an initial telephonic hearing in this matter for January 21, 2019.

Of note, the hearing Notice stated: “*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).

The hearing Notice was sent to Complainant by first-class mail at the address provided on his Complaint and was not returned as undeliverable.

On December 4, 2018, a call-in telephonic hearing Notice was issued rescheduling the initial telephonic hearing in this matter for January 23, 2019.

The call-in telephonic hearing convened on January 23, 2019, as scheduled. Kimberly G. Krupka, Esquire appeared on behalf of PPL. Complainant failed to appear. Counsel for PPL stated that she had spoken with Complainant by phone the week before the hearing about the case. After waiting approximately fifteen minutes, PPL moved that the Complaint be dismissed for failure to prosecute.

The record in this case consists of the hearing transcript of seven pages. The record closed in this proceeding when the transcript was filed with the Commission on February 12, 2019. This Initial Decision grants the motion of PPL to dismiss the Complaint for failure to prosecute.

FINDINGS OF FACT

1. The Complainant in this case is Robert Strydio.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. Complainant did not appear at the hearing in this case.

4. Complainant received notice of the hearing when he was sent a call-in telephonic hearing Notice dated December 4, 2018 to the address he provided in his Complaint.

5. The hearing Notice was not returned to the Commission as undeliverable.

6. The hearing Notice issued in this matter stated that if a party fails to participate in the hearing and present facts on the issues raised, that they may lose the case.

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, Mr. Strydio complained that PPL had failed to credit electronic payments and requested that a civil penalty be assessed against PPL. Mr. Strydio 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.*

Mr. Strydio did not appear at date and time set for the hearing in his 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 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 was sent to Mr. Strydio by regular first-class mail and was not returned to the Commission as undeliverable. Accordingly, it must be presumed that this document sent to Mr. Strydio in the ordinary course of business was 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. 1997); *Judge v. Celina Mutual Insurance Co.*, 303 Pa. Super. 221, 449 A.2d 658 (1982). The hearing notice stated that if a party fails to participate in the hearing and present facts on the issues raised, that they may lose the case .

Mr. Strydio did not appear at the time of the hearing, nor did he ever request a continuance of the hearing. As such, Mr. Strydio had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Mr. Strydio'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 with prejudice for lack of prosecution. By failing to appear and present any evidence in support of his Complaint, Mr. Strydio failed to meet his 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 thereafter 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. Strydio'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. Mr. Strydio failed to meet his 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 Robert Strydio at Docket No. C-2018-3005545 for failure to prosecute is granted.
2. That the formal Complaint filed by Robert Strydio at Docket No. C-2018-3005545 is hereby dismissed with prejudice.
3. That this matter be marked closed.

Date: April 3, 2019

_____/s/
Dennis J. Buckley
Administrative Law Judge