

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Franklin Lowe

v.

PPL Electric Utilities Corporation

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F-2019-3008058

INITIAL DECISION

Before
Gail M. Chiodo
Special Agent

INTRODUCTION

This decision grants a motion to dismiss the complaint of an electric service customer for the failure of the complainant to appear for the hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

On February 25, 2019, Franklin Lowe (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent) averring that PPL is threatening to shut off his service, his bill is too high, and he would like a payment arrangement.

The Complaint is a timely appeal from a decision of the Commission's Bureau of Consumer Services (BCS) in case number 3675414 issued on January 18, 2019 which dismissed the informal complaint.

On March 18, 2019, Respondent filed an answer in which it admitted that it had provided notice of intent to terminate Complainant's service for an unpaid balance but that it was not pursuing termination pending the outcome of the complaint. Respondent also denied that the charges to Complainant's account are incorrect, and averred that Complainant has been provided with the most advantageous payment arrangement to which he is entitled. Respondent requested that the complaint be dismissed.

On March 19, 2019, a Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing on April 22, 2019 at 10:00 a.m. and the case was assigned to me pursuant to 52 Pa. Code § 56.174.¹ 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 April 15, 2019, a Prehearing Order was served on the parties which reminded 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 that Complainant's case would be dismissed if he did not participate in the hearing and present evidence on the issues raised.

On April 22, 2019, the hearing convened as scheduled. Kimberly Krupka, Esquire, appeared on behalf of Respondent. Complainant did not appear at the hearing. After waiting for approximately fifteen minutes for Complainant to appear, the hearing proceeded in Complainant's absence. No testimony was taken and no exhibits were introduced into the record. Respondent moved to dismiss the complaint with prejudice for the failure of Complainant to appear and prosecute his complaint. I took this motion under advisement.

The record closed on April 22, 2019 following the close of the hearing. As of the date of this decision, neither the Office of Administrative Law Judge (OALJ) nor the

¹ 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).

undersigned has received any further communication, verbal or written, from Mr. Lowe explaining his absence from the hearing. For the reasons discussed below, this decision grants the Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainant is Franklin Lowe, who resides at 350 Dudek Road, Williamsport, Pennsylvania (service address).
2. The Respondent is PPL Electric Utilities Corporation, which provides electric service to Complainant.
3. On March 19, 2019, a Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing for April 22, 2019 at 10:00 a.m.
4. 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).
5. On April 15, 2019, 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.
6. The Prehearing Order stated that Complainant’s failure to participate in the hearing and present evidence on the issues raised would result in the case being dismissed for failure to appear.
7. Both the Hearing Notice and Prehearing Order were served on Complainant by first-class mail to the address provided in the complaint.

8. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as being undeliverable.

9. The Complainant did not appear and participate in the telephonic hearing when it convened on April 22, 2019.

DISCUSSION

Due Process and Notice

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 notice and the opportunity to be heard. *Id.*

The record shows that Complainant was provided notice and the opportunity to be heard. First, on March 19, 2019, Complainant was served a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. Second, on April 15, 2019, Complainant was served a Prehearing Order which reminded the parties of the date and time of the hearing, and how to participate.

Further, both documents advised the parties, *inter alia*, how to request a continuance prior to the hearing, and that failure to appear for the hearing and present evidence on the issues raised in the complaint would result in dismissal of the complaint.

Both documents were served separately and by regular, first-class mail to the address provided on the complaint. Neither document was returned as being undeliverable. Thus, it must be presumed that these documents were received by the Complainant. *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).

Failure to appear, waiver and “unavoidable” standard

Both the Public Utility Code and the Commission’s regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f) and 52 Pa.Code § 5.245(a) respectively. However, these provisions in the Code and in the regulations do not apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination. 66 Pa.C.S. § 332(f) and 52 Pa.Code § 5.245(b).

The Complainant failed to appear for the hearing despite given written notices. Further, once the hearing began, the undersigned waited an additional fifteen minutes to allow Complainant time to appear. To date, no communication has been received by me or the OALJ by, or on behalf of, Complainant regarding whether Complainant’s absence was unavoidable.

Further, I note that at the hearing, Attorney Krupka stated that she, along with a representative of PPL, together called Mr. Lowe a few days before the hearing in an effort to resolve this matter. However, Mr. Lowe stated to them that he was not interested in what PPL had to say, that he was wasting his time, and that he may not call into the hearing.

Consequently, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the complaint and Complainant’s absence was not unavoidable.

Burden of proof and dismissal of complaint

As the proponent of any request for relief, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). By failing to participate and proffer any evidence to support the complaint, the Complainant has failed to meet this burden. Thus, it is

appropriate to dismiss the Complaint with prejudice. *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered March 14, 2019), *citing, inter alia, Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995). Accordingly, the merits of the Complaint will not be addressed.

Consequently, Respondent's motion to dismiss with prejudice will be granted.

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. The Commission is required to provide due process to the parties appearing before them; this due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa.Cmwlth. 1984).

3. After being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a).

4. If the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitted the reopening or further examination, the presiding officer may find that a party did not waive the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(b).

5. Complainant's due process rights have been fully protected and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa.Cmwlth. 1984); 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a).

6. As the party seeking relief, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

7. By failing to participate in the hearing and proffer any evidence to support the complaint, the Complainant has failed to meet the 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 with prejudice is granted.

2. That the complaint of Franklin Lowe against PPL Electric Utilities Corporation at Docket No. F-2019-3008058 is dismissed for the failure of the Complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. F-2019-3008058 is marked closed.

Date: May 6, 2019

_____/s/
Gail M. Chiodo
Special Agent