

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mark Montgomery	:	
	:	
v.	:	C-2018-3006719
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses, with prejudice, a formal Complaint due to the Complainant’s failure to appear at the initial hearing to prosecute his Complaint.

HISTORY OF THE PROCEEDING

On December 20, 2018, the Complainant, Mark Montgomery, filed a formal Complaint with the Pennsylvania Public Utility Commission against PPL Electric Utilities Corporation (PPL), at Docket No. C-2018-3006719. Complainant averred that PPL was threatening to disconnect his electric service and stated that he was confused with respect to which of two meters at his service address was being used to bill his business (Apex Maintenance Group, LLC).¹ Complainant also averred that he had asked PPL to check the meter, but that his request had been disregarded.

¹ Mr. Montgomery stated in his Complaint that he is the President of Apex Maintenance Group, LLC.

On January 10, 2019, PPL filed an Answer to the Complaint. In its Answer, PPL stated that it had sent a disconnection notice to Complainant for payment delinquency but denied any misbilling of the account and all other allegations.

On January 11, 2019, the Commission sent to the parties a telephonic hearing notice by which it scheduled an initial telephonic hearing for February 19, 2019, at 10:00 a.m., and assigned me as the Presiding Officer. On February 6, 2019, I issued a prehearing Order in which I set forth certain procedural requirements pertaining to the hearing. The prehearing Order also provided the date and time of the hearing. The prehearing Order stated, "You may lose this case if you do not take part in this hearing and present evidence on the issues raised." Both the hearing notice and the prehearing Order were sent to Mr. Montgomery by first class mail at the address listed by him on his Complaint.

Neither the hearing notice nor the prehearing Order was returned to the Commission as undelivered.

The hearing convened, as scheduled, at 10:00 a.m. on February 19, 2019. Graig M. Schultz, Esquire appeared on behalf of PPL. Complainant did not appear by 10:08 a.m. nor during the course of the hearing. I checked with the Office of Administrative Law Judge (OALJ), as well as my e-mail and phone messages. Neither I nor the Commission received any contacts from the Complainant prior to or subsequent to the hearing about his availability. Accordingly, the hearing proceeded in his absence. PPL's counsel moved to dismiss the Complaint due to the Complainant's failure to appear at the hearing and prosecute his case.

The hearing concluded, and a transcript of six pages was filed on February 22, 2019. The record closed on that date. 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 Mark Montgomery.

2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. On December 20, 2018, the Complainant filed a formal Complaint against PPL.
4. The service address is 2200 Hummingbird Lane, Harrisburg, Pennsylvania.
5. On January 10, 2019, PPL filed an Answer in which it denied the allegations in the Complainant.
6. On January 11, 2019, a telephonic hearing notice was sent to the parties which scheduled an initial telephonic hearing for February 19, 2019, at 10:00 a.m.
7. On February 6, 2019, a prehearing Order was sent to the parties which set forth certain procedural requirements associated with the initial hearing.
8. Both the prehearing Order and the hearing notice warned the parties that they may lose the case if they did not take part in the hearing and present evidence on the issues raised.
9. The hearing notice and the prehearing order were sent to Mr. Montgomery by first class mail to the address provided by him on his Complaint form.
10. The hearing notice and prehearing Order sent to Complainant were not returned to the Commission as undeliverable.
11. The Complainant failed to appear at the scheduled date and time for the hearing.
12. The Complainant did not withdraw or settle his complaint against PPL, nor did he request a continuance of the hearing.

DISCUSSION

In his Complaint, Mr. Montgomery averred that PPL was threatening to disconnect his electric service and stated that he was confused with respect to which of two meters at his service address was being used to bill his business, Apex Maintenance Group, LLC. Complainant also averred that he had asked PPL to check the meter, but that his request had been disregarded.

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, Mr. Montgomery 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. Montgomery at the date and time set for the hearing in his case, despite notice of the hearing having been sent to him at the only address provided by him.

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. Montgomery by first class mail to the address provided by him on his Complaint. The prehearing Order was not returned to the Commission as undeliverable. Accordingly, it must be presumed that the notice sent to the Complainant 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). As noted above, the prehearing Order stated that the parties may lose the case if they fail to appear and present evidence on the issues raised.

No request for a postponement or continuance of the hearing was received by the OALJ. Mr. Montgomery had notice of the hearing and an opportunity to be heard in this proceeding, but chose not to 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 for dismissal of the Complaint for lack of prosecution.² By failing to appear and present any evidence in support of his Complaint, Mr. Montgomery failed to carry his burden. Thus, the Complaint will be dismissed with

² Counsel for PPL advised me that while PPL had conducted a meter test, PPL's calls to Complainant in January and early February 2019 were not returned. Tr. at 5.

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. It is the duty of a party to apprise the Commission promptly of changes to the party's current address. 52 Pa.Code § 1.53(d).

7. Mr. Montgomery'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).

8. Mr. Montgomery failed to carry 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 Mark Montgomery at Docket Number C-2018-3006719 for failure to prosecute is granted.

2. That the formal Complaint filed by Mark Montgomery at Docket Number C-2018-3006719 is dismissed with prejudice.

3. That this matter be marked closed.

Date: May 8, 2019

/s/
Dennis J. Buckley
Administrative Law Judge