

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Brittany Wilt	:	
	:	
v.	:	F-2019-3006971
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On January 7, 2019, Brittany Wilt filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL), docket number F-2019-3006971. The complaint was a timely appeal of a decision of the Commission's Bureau of Consumer Services (BCS), case number 3609127. In her complaint, Ms. Wilt averred that she is being billed for a second meter at her house that PPL should have removed prior to her moving in. Ms. Wilt stated that PPL should investigate apartment complexes to make sure that each tenant only has one meter at all times and that termination notices should be sent out 60 days prior to termination so consumers have a chance to avoid termination.

On January 29, 2019, PPL filed an answer in response to Ms. Wilt's complaint admitting or denying the various averments made. In particular, PPL admitted that it learned from Ms. Wilt that there are two electric meters at her address and that it initiated the process to cancel the original account. PPL denied, however, that it improperly rebilled Ms. Wilt.

On January 31, 2019, a telephone hearing notice was issued establishing an initial call-in telephonic hearing for this case for Wednesday, March 6, 2019 and assigning me as the presiding officer. Also on January 31, 2019, a prehearing order was issued setting forth various rules that would govern that hearing.

Of note, the hearing notice stated that the parties must call in to the hearing on the date and time scheduled or the case will be dismissed. Similarly, the prehearing order stated, among other things, that: "If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party."

Both the hearing notice and the prehearing order were sent to Ms. Wilt at the address provided on her complaint via first-class mail. Neither was returned as undeliverable.

The hearing convened on March 6, 2019, as scheduled. Kimberly Krupka, Esquire appeared on behalf of PPL. No one appeared on behalf of Ms. Wilt.

The record in this case consists of the hearing transcript of eight pages. The record closed in this proceeding when the transcript was filed with the Commission on March 21, 2019. This Initial Decision memorializes the ruling at the conclusion of the hearing granting the motion of PPL to dismiss the complaint for failure to prosecute.

FINDINGS OF FACT

1. The Complainant in this case is Brittany Wilt.
2. The Respondent in this case is PPL Electric Utilities Corporation.

3. The service address is 4071 Rawleigh Street, Harrisburg, PA.
4. Ms. Wilt did not call in to the hearing as instructed on the hearing notice and prehearing order. Tr. 4.
5. The hearing was delayed 12 minutes to accommodate any delay Ms. Wilt may have been experiencing in accessing the call. Tr. 4.
6. Ms. Wilt received notice of the hearing when she was sent a hearing notice via first class mail on January 31, 2019. Tr. 4.
7. Ms. Wilt received notice of the hearing when she was sent a prehearing order via first class mail on January 31, 2019. Tr. 4-5.
8. Both the hearing notice and the prehearing order were sent to Ms. Wilt to the address she provided on her complaint. Tr. 5.
9. Neither the hearing notice nor the prehearing order were returned to the Commission as undeliverable.
10. Counsel for PPL indicated during the hearing that Ms. Wilt received notice of the hearing when she was served with PPL's hearing exhibits via Federal Express on February 25, 2019. Tr. 5.
11. Counsel for PPL also indicated that she attempted to reach Ms. Wilt by phone on January 23, 2019 but had to speak with her mother. Tr. 6.
12. The hearing notice and the prehearing order issued in this matter stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

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). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “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). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, based on a reading of her complaint, Ms. Wilt complained that she was being billed for a second meter at her house that PPL should have removed prior to her moving in. Ms. Wilt requested that PPL bill her based only on one meter. Ms. Wilt, therefore, 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.

No one appeared on behalf of Ms. Wilt at the date and time set for the hearing in her 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 prehearing order and hearing notice were sent to Ms. Wilt by regular first class mail and neither were returned to the Commission as undeliverable. Accordingly, it must be presumed that this document sent to Ms. Wilt in the ordinary course of business was received by Ms. Wilt. 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). Of note, the hearing notice and the prehearing order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. In addition, counsel for PPL sent Ms. Wilt the company's exhibits one week prior to the hearing wherein the date and time of the hearing was reiterated. Tr. 5. Counsel for PPL also made several attempts to reach Ms. Wilt to resolve her complaint but had not heard from Ms. Wilt. Tr. 5-6.

No one appeared on behalf of Ms. Wilt at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, Ms. Wilt had notice and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, Ms. Wilt'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. Tr. 6. By failing to appear and present any evidence in support of her complaint, Ms. Wilt has failed to carry her burden. Thus, it is appropriate to dismiss the complaint. 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. Ms. Wilt'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. Ms. Wilt has failed to carry her 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 Brittany Wilt at docket number F-2019-3006971 for failure to prosecute is granted.
2. That the formal complaint filed by Brittany Wilt at docket number F-2019-3006971 is hereby dismissed.
3. That this matter be marked closed.

Date: May 21, 2019

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge