

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Phyllis Blackstone	:	
	:	
v.	:	C-2018-3006739
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Andrew M. Calvelli  
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 December 20, 2018, Phyllis Blackstone (Ms. Blackstone) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket Number C-2018-3006739. In the Complaint, Ms. Blackstone contended that PPL was charging her for times that she did not reside at the service address. The Complaint was served on PPL electronically by the Commission's Secretary on December 21, 2018.<sup>1</sup>

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<sup>1</sup> PPL has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program.

On January 10, 2019, PPL filed an Answer in response to Ms. Blackstone's Complaint. In its Answer, PPL admitted or denied the various averments Ms. Blackstone made in her Complaint. PPL concluded its Answer by requesting dismissal of the Complaint.

On January 16, 2019, a Telephonic Hearing Notice was issued establishing an Initial Call-In Telephonic Hearing for March 5, 2019 at 10:00 a.m. and assigning me as the Presiding Officer. The Hearing Notice indicated to the parties: "You may lose this case if you do not take part in this hearing and present facts on the issues raised." The Hearing Notice was sent to Ms. Blackstone at the address provided on her Complaint via first-class mail. The postal authorities did not return the Hearing Notice to the Commission as being undeliverable to Ms. Blackstone.

A Prehearing Order was sent to the parties on February 14, 2019. The Prehearing Order also advised the parties that they must be available for the hearing or they would risk losing the case. The Prehearing Order sent to Ms. Blackstone was not returned to the Commission by the postal authorities as being undeliverable to Ms. Blackstone.

The hearing convened on March 5, 2019 at 10:00 a.m. as scheduled. Kimberly Krupka, Esquire appeared on behalf of PPL. No one appeared on behalf of Ms. Blackstone. Tr. 4, 5. Ms. Blackstone did not call in for the hearing as instructed on the Hearing Notice and Prehearing Order. Id. The Presiding Officer advised PPL's counsel that he would give an extra 10 minutes for Ms. Blackstone to call in to the hearing. Id. By 10:10 a.m. on the date of the hearing, Ms. Blackstone still had not called in to the hearing. Id.

Counsel for PPL then made a motion to dismiss the Complaint, due to Ms. Blackstone's failure to appear and prosecute her case. Tr. 6. Counsel also noted that she had sent PPL's hearing exhibits to Ms. Blackstone on February 25, 2019 via Federal Express, and that the cover letter reiterated that there was a telephone hearing on March 5, 2019 at 10:00 a.m. Tr. 6, 7. Counsel also indicated that Federal Express confirmed delivery of the hearings exhibits and cover letter to Ms. Blackstone. Id. The record in this case consists of the hearing transcript

of 9 pages, and the record closed when the transcript was filed with the Commission on March 26, 2019.

### FINDINGS OF FACT

1. The Complainant in this case is Phyllis Blackstone.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. No one appeared at the March 5, 2019 hearing on behalf of Ms. Blackstone.  
Tr. 4, 5.
4. Ms. Blackstone received notice of the hearing on January 16, 2019 when the Commission mailed a Hearing Notice to the address she provided on her complaint.
5. Ms. Blackstone received notice of the hearing on February 14, 2019 when the Commission mailed a Prehearing Order to the address she provided on her complaint.
6. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission by the postal authorities as being undeliverable to Ms. Blackstone.
7. Both the Hearing Notice and Prehearing Order advised Ms. Blackstone that she could lose her case if she did not attend the hearing.
8. PPL mailed hearing exhibits and a cover letter to Ms. Blackstone via Federal Express on February 25, 2019, reiterating the hearing time and date, and Federal Express confirmed delivery to Ms. Blackstone. Tr. 6, 7.

## 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, Ms. Blackstone filed a Complaint against PPL. Ms. Blackstone, therefore, has 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.

No one appeared on behalf of Ms. Blackstone 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.

The Hearing Notice and Prehearing Order were sent to Ms. Blackstone by regular first class mail, and were not returned to the Commission as being undeliverable. Accordingly, it

must be presumed that the Hearing Notice and Prehearing Order sent to Ms. Blackstone in the ordinary course of business were received by Ms. Blackstone. 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 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.

No one appeared on behalf of Ms. Blackstone at the time of the hearing. Nor did anyone request a postponement or continuance of the hearing. As such, Ms. Blackstone had notice and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, Ms. Blackstone'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 for lack of prosecution. Tr. 6. By failing to appear and present any evidence in support of her complaint, Ms. Blackstone has failed to carry her burden of proof. Thus, it is appropriate to dismiss the complaint. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995). El-Ayazra v. PPL Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245. 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). "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).

3. 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.

4. 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).

5. Ms. Blackstone'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).

6. Ms. Blackstone failed to carry her burden of proof in this proceeding because she failed to appear at the hearing to present her case to the Commission.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the Complaint of Phyllis Blackstone at Docket Number C-2018-3006739 is granted.

2. That the Complaint filed by Phyllis Blackstone at Docket Number C-2018-3006739 is hereby dismissed.

3. That Docket Number C-2018-3006739 shall be marked closed by the Secretary's Bureau.

Date: June 18, 2019

\_\_\_\_\_/s/  
Andrew M. Calvelli  
Administrative Law Judge