

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Philip L. Harshbarger	:	
	:	
v.	:	C-2018-3005660
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

This Decision grants a Motion to Dismiss for Failure to Prosecute because the Complainant failed to appear at the scheduled hearing despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On October 29, 2018, Philip Harshbarger (Mr. Harshbarger or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket Number C-2018-3005660. In the complaint, Mr. Harshbarger averred that he had received a termination notice with a shut off date of October 29, 2018. Complainant requests a stay of termination pending his negotiations with PPL regarding the relocation of the meter on his property at 23 Echo Valley Drive, New Providence, Lancaster County, Pennsylvania.

PPL filed an Answer on November 19, 2018 denying the material averments in the Complaint. PPL admitted to attempting installation of a smart meter on Complainant's

residence. PPL admitted to sending Complainant a termination notice on October 15, 2018 because of denied access to Complainant's meter.

On November 21, 2018, a Telephone Hearing Notice was issued scheduling a hearing for June 18, 2019 and assigning the case to me. On February 1, 2019, a Prehearing Order was issued. The Hearing Notice stated that the Presiding Officer would contact Complainant at the telephone number listed on his Complaint. The Prehearing Order stated all parties and witnesses must be available at the phone numbers on the Telephone Hearing Notice issued November 21, 2018. The Order also notified Complainant that he would lose this case if he did not participate in the hearing and present evidence on the issues raised. Prehearing Order Paragraph No. 5 at 2. The Hearing Notice and Prehearing Order were sent to Complainant via e-service.

On April 3, 2019, PPL mailed the Complainant and Presiding Officer a letter proposing its conference bridge be used for the June 18, 2019 hearing. On May 16, 2019, PPL submitted pre-marked exhibits and direct testimony. The hearing convened at 10:00 a.m. on June 18, 2019 as scheduled. Devin Ryan, Esquire, and Curtis Renner, Esquire, appeared as counsel of record for PPL on the PPL conference bridge line. Also present were PPL Witnesses Kevin Durkin, Donald Vinciguerra, Dr. Mark Israel, and Dr. Christopher Davis. Complainant did not appear. Complainant did not submit pre-marked exhibits for the hearing. A call from the Presiding Officer to the telephone number Complainant provided on his complaint at 10:00 a.m. resulted in the Presiding Officer leaving a voice mail to call into the conference bridge with the phone number and password provided. The presiding officer went on the record of the hearing at 10:15 a.m. PPL's counsel made an oral motion to dismiss complaint with prejudice for failure to appear and prosecute. Counsel for PPL indicated that PPL's exhibits were sent to Complainant via e-mail and regular mail on May 16, 2019, and that the cover letter attached to the company's exhibits reminded Mr. Harshbarger of the hearing. Counsel indicated Mr. Harshbarger never requested a continuance of the hearing. Complainant had been in contact with PPL regarding a possible relocation of the existing meter on the service property but had not come to an agreement. The record closed on June 18, 2019. The oral motion to dismiss is ripe for a decision.

FINDINGS OF FACT

1. The Complainant in this case is Philip Harshbarger.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. Complainant failed to appear and prosecute his Complaint at the hearing scheduled for June 18, 2019.
4. Complainant received notice of the hearing on or about November 21, 2018.
5. Complainant received a Prehearing Order on or about February 1, 2019 also notifying him of the hearing on June 18, 2019.
6. The Hearing Notice and Prehearing Order were e-served to the email address Complainant provided.
7. During the hearing, counsel for PPL indicated that he had sent a copy of the company's exhibits to Mr. Harshbarger via e-mail and regular mail on May 16, 2019, with a cover letter reminding Complainant of the hearing, and that the documents were confirmed as delivered.

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. 45, 70 A.2d 854 (1950). In this proceeding, Mr. Harshbarger filed a complaint against PPL seeking to stay termination proceedings of his service pending his negotiations with PPL regarding the relocation of the meter on his property. Mr. Harshbarger, 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 Mr. Harshbarger at the date and time set for the hearing 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 and Prehearing Order were sent to Mr. Harshbarger through e-service. Therefore, the Complainant is deemed to have received the document and to have had sufficient notice of the day, date and time of the scheduled hearing. Morella v. PECO Energy Company, Docket No. C-2016-2553416 (Final Order entered January 31, 2017); Zirkel v. Philadelphia Gas Works, Docket No. C-2016-2561176 (Final Order entered April 7, 2017). Moreover, counsel for PPL, Attorney Ryan, indicated that he had sent the company's exhibits, containing a cover letter providing the date of the hearing, prior to the hearing and that they were confirmed as delivered. No motion for continuance had been made on Mr. Harshbarger's behalf. Although the parties had discussed a possible relocation of the meter on the service property, no agreement had been reached at the time of the hearing.

No one appeared on behalf of Mr. Harshbarger at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, Mr. Harshbarger had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, 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 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. Harshbarger has failed to carry his 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. West Penn 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).

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. 45, 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 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. Harshbarger'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. Harshbarger failed to carry his burden of proof in this proceeding because he failed to appear and prosecute his complaint at the hearing.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the formal complaint of Philip Harshbarger at Docket Number C-2018-3005660 for failure to prosecute is granted.

2. That the formal complaint filed by Philip Harshbarger at Docket Number C-2018-3005660 is hereby dismissed with prejudice.

3. That Docket Number C-2018-3005660 shall be marked closed by the Secretary's Bureau.

Date: July 2, 2019

/s/
Elizabeth H. Barnes
Administrative Law Judge