

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Curtis Jr.	:	
	:	
v.	:	C-2019-3008056
	:	
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 and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On February 22, 2019, William Curtis, Jr. (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket No. C-2019-3008056. Complainant averred that PPL was threatening to disconnect his electric service and stated that he was offended by the alleged rudeness of a PPL service representative.

On March 18, 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 March 25, 2019, the Commission sent to the parties a telephonic hearing notice by which it scheduled an initial telephonic hearing for April 24, 2019 at 10:00 a.m. and assigned me as the Presiding Officer. The hearing notice was sent by U.S. mail to Mr. Curtis at the address listed by him on his Complaint.

The hearing notice was not returned to the Commission as undeliverable.

On April 24, 2019, the hearing convened as scheduled at 10:00 a.m. Graig M. Schultz, Esquire, appeared on behalf of PPL. Complainant did not appear by 10:10 a.m. or during the course of the hearing. I checked with the Office of Administrative Law Judge, as well as my e-mail and phone messages. Neither I nor the Commission received any contacts from the Complainant prior to the hearing about his availability nor did Complainant call in for the hearing. 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 May 15, 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 William Curtis Jr.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. On February 22, 2019, the Complainant filed a formal Complaint against PPL.
4. On March 18, 2019, PPL filed an Answer in which it denied the allegations in the Complaint.

5. On March 25, 2019, a telephonic hearing notice was sent to the parties which scheduled an initial telephonic hearing for April 24, 2019 at 10:00 a.m.

6. 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.

7. The hearing notice was sent to Mr. Curtis by first class mail to the address provided by him on his Complaint.

8. The hearing notice was not returned to the Commission as undeliverable.

9. The Complainant failed to appear at the scheduled date and time for the hearing.

DISCUSSION

In his Complaint, Mr. Curtis averred that PPL was threatening to disconnect his electric service and stated that he was treated rudely by a PPL service representative.

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. Curtis 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. Curtis 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 was sent to Mr. Curtis by first class mail to the address provided by him on his Complaint. The hearing notice was not returned to the Commission as undeliverable. Accordingly, it must be presumed that this document sent to the Complainant in the ordinary course of business were 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 hearing notice 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 my office. Mr. Curtis 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. By failing to appear and present any evidence in support of his Complaint, Mr. Curtis failed to carry his burden. Thus, the Complaint will be dismissed with 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 thereafter 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. Curtis' 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. Curtis 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 William Curtis, Jr. at Docket Number C-2019-3008056 for failure to prosecute is granted.

2. That the formal Complaint filed by William Curtis, Jr. at Docket Number C-2019-3008056 is dismissed with prejudice.

3. That this matter be marked closed.

Date: July 5, 2019

/s/
Dennis J. Buckley
Administrative Law Judge