

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Doris Kerubo Obaigwa	:	
	:	
v.	:	F-2018-3001225
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision (ID) dismisses, with prejudice, a formal complaint due to the Complainant’s failure to appear at the initial hearing and prosecute her complaint.

HISTORY OF THE PROCEEDING

On April 11, 2018, the Complainant, Doris Kerubo Obaigwa (Complainant or Ms. Obaigwa), filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket No. F-2018-3001225. In her complaint, Ms. Obaigwa alleged that there were incorrect charges on certain bills she received from PPL and that she was billed for accounts that were not hers.

On May 7, 2018, PPL filed an answer to Ms. Obaigwa’s complaint. In its answer, PPL denied that there were incorrect charges on the Complainant’s bills. It alleged that Ms. Obaigwa refused a special payment arrangement offered by the company. PPL requests that the complaint be dismissed.

Telephonic hearings had been scheduled in this proceeding for June 7, 2018, December 18, 2018, and March 14, 2019. In all three cases, the hearings, as more fully described below, were rescheduled at Ms. Obaigwa's request. Subsequently, on May 22, 2019, the Commission issued another Call-In Telephone Hearing Notice by which it scheduled a fourth telephonic hearing for Tuesday, July 30, 2019, at 10:00 a.m. The Hearing Notice instructed the parties to connect to the hearing by dialing a toll-free bridge number and PIN. The notice informed the parties that they may lose the case if they do not appear at the hearing.

On July 24, 2019, Ms. Obaigwa sent an e-mail message to me asking, once again, that the hearing be rescheduled. By e-mail dated July 25, 2019, I informed Ms. Obaigwa that I would not reschedule the hearing again and that it would be held as scheduled at 10:00 a.m. on July 30, 2019. I did not hear back from Ms. Obaigwa after my July 25, 2019 e-mail.

The hearing convened, as scheduled, at 10:00 a.m. on July 30, 2019. Kimberly G. Krupka, Esquire, appeared on behalf of PPL. Ms. Obaigwa did not connect to the hearing at 10:00 a.m., so I waited until approximately 10:12 a.m. in the event that she was running late. Ms. Obaigwa never connected to the hearing. I checked with the Office of Administrative Law Judge (OALJ), as well as my e-mail and phone messages. None of the notices sent to the Complainant were returned to the Commission as undeliverable and she did not contact the Commission on the morning of the hearing to inform the Commission that she would not appear for the hearing. Accordingly, the hearing was convened in Ms. Obaigwa's absence. PPL's counsel moved to dismiss the complaint due to the Complainant's failure to appear at the hearing and prosecute her complaint.

The hearing concluded and a brief transcript was generated. I closed the record on July 30, 2019, following the hearing. This decision grants PPL's motion and dismisses the complaint with prejudice for failure of the Complainant to appear and prosecute her case.

FINDINGS OF FACT

1. The Complainant in this proceeding is Doris Kerubo Obaigwa.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. On April 11, 2018, the Complainant filed a formal complaint against PPL.
4. On May 7, 2018, PPL filed an answer to the complaint.
5. On May 9, 2018, a Telephonic Hearing Notice was sent to the parties which scheduled an initial telephonic hearing for Thursday, June 7, 2018, at 10:00 a.m.
6. On June 5, 2018, I received a fax from Ms. Obaigwa in which she requested a postponement of the June 7, 2018 hearing because she was caring for a sick relative and would not be able to participate.
7. PPL had no objection to postponement of the June 5, 2018, so the hearing was canceled.
8. On November 7, 2018, a Telephone Hearing Notice was sent to the parties which scheduled a telephonic hearing for Tuesday, December 18, 2018, at 10:00 a.m.
9. On December 10, 2018, I received a letter from Ms. Obaigwa in which she requested a postponement of the December 18, 2018 hearing, again because she had to care for a sick relative and would not be able to participate.
10. PPL had no objection to postponement of the December 18, 2018 hearing, so long as there were no further postponements. The December 18, 2018 hearing was canceled.

11. On February 5, 2019, a Call-In Telephone Hearing Notice was sent to the parties scheduling a call-in telephonic hearing for Thursday, March 14, 2019, at 10:00 a.m.

12. On the morning of the March 14, 2019 hearing, Ms. Obaigwa contacted a staff member of the Office of Administrative Law Judge and informed the representative that she was unable to participate in that morning's hearing due to dental pain.

13. The March 14, 2019 telephonic hearing was convened as scheduled. Kimberly Krupka, Esquire, connected to the call on behalf of PPL.

14. I informed Ms. Krupka that Ms. Obaigwa had contacted my office prior to the hearing to request another continuance, this time for the reason that she was experiencing dental pain, and that I decided to cancel and reschedule the hearing a final time.

15. By e-mail dated April 1, 2019, I contacted Ms. Krupka and Ms. Obaigwa and asked them to provide me with dates on which they would be available for a hearing.

16. On April 5, 2019, I received an e-mail from Ms. Obaigwa in which she informed me that she had been involved in a car accident and did not know when she would be able to participate in a hearing.

17. Upon receiving Ms. Obaigwa's April 5, 2019 e-mail, I called her to discuss her condition. She informed me that she had a follow-up appointment scheduled with her doctor at the end of April.

18. Ms. Obaigwa and I agreed that she would contact me after her late-April doctor's appointment to further discuss her condition and potential hearing dates.

19. Ms. Obaigwa never contacted me after our early-April telephone conversation.

20. On May 22, 2019, I sent a Call-In Telephonic Hearing Notice in which a call-in telephonic hearing was scheduled for Tuesday, July 30, 2019, at 10:00 a.m.

21. On July 24, 2019, I received an e-mail from Ms. Obaigwa in which she requested that the hearing be postponed because she was still recovering from her April 1, 2019 accident and was unable to participate in the hearing.

22. On July 25, 2019, I sent an e-mail message to both Ms. Obaigwa and Ms. Krupka in which I informed them that, due to the number of previous hearing postponements, and because Ms. Obaigwa never responded to my request that she contact me after her doctor's appointment to discuss her condition and availability for a hearing, I would not postpone the July 30, 2019 hearing and that it would be conducted as scheduled.

23. On July 30, 2019, the hearing was convened as scheduled at 10:00 a.m. Ms. Krupka connected to the call on behalf of PPL. Ms. Obaigwa did not connect to the call.

24. I waited until approximately 10:12 a.m. before beginning the hearing in the event Ms. Obaigwa was running late.

25. The Complainant never connected to the call-in telephonic hearing.

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

27. All hearing notices and prehearing orders advised the parties that failure to participate in the hearing may result in that party losing the case.

DISCUSSION

Ms. Obaigwa filed a formal complaint against PPL in which she alleges that there were incorrect charges on her bills.

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, Ms. Obaigwa bears 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 provided with notice and an opportunity to be heard. Id.

No one appeared on behalf of Ms. Obaigwa at the date and time set for the hearing in her case, despite notice of the hearing having been provided. 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 issue here is not whether Ms. Obaigwa actually received notice of the various hearings scheduled in this proceeding and, therefore, had a fair opportunity to be heard at a hearing. She clearly did as she contacted me prior to each of the scheduled hearings to request postponements. Rather, the issue is at what point is it fair and reasonable to refuse to grant any further requests to postpone and delay a hearing. As more fully explained below, I believe Ms. Obaigwa has been given more than sufficient opportunity to participate in a hearing and present evidence in support of the allegations in her complaint.

The initial hearing in this proceeding was scheduled for June 7, 2018. I received a fax from Ms. Obaigwa on June 5, 2018 in which she requested that the hearing be postponed. She stated that she was caring for her sick mother and was unable to participate in the scheduled hearing. PPL had no objection to her request. Accordingly, I agreed to cancel and reschedule the hearing.

A second hearing was scheduled for December 12, 2018. I received a letter from Ms. Obaigwa on December 10, 2018, in which she again requested that the hearing be postponed because she was caring for her sick mother. PPL said it had no objection provided there were no further continuances. Accordingly, I again agreed to cancel and reschedule the hearing.

In an attempt to avoid the need for any further continuances, I asked both parties on January 25, 2019, to provide me with future dates on which they would be available for a telephonic hearing. Ms. Krupka contacted me with dates suitable to PPL. Ms. Obaigwa never responded to my request.

A third hearing was scheduled for March 14, 2019. Immediately prior to the start of the hearing on March 14, 2019, Ms. Obaigwa called OALJ and informed a representative that she was unable to participate in the hearing due to pain from a dental issue. She requested once again that the hearing be rescheduled. I convened the hearing as scheduled at 10:00 a.m. and informed PPL that, given Ms. Obaigwa's claim of yet another medical issue, I intended to reschedule the hearing.

On April 1, 2019, I directed in an e-mail to the parties that they provide me with future dates on which they would be available for a hearing. Ms. Krupka provided me with dates suitable to PPL. I received an e-mail from Ms. Obaigwa on April 5, 2019 in which she informed me that she sustained injuries in a recent car accident and did not know when she would be recovered enough to participate in a hearing. She further informed me that she had a follow-up appointment scheduled with her doctor at the end of April. After receiving her e-mail, I called her to discuss her situation. She and I agreed that she would contact me after her late-April doctor's appointment to further discuss her condition and availability for a hearing. Ms. Obaigwa never contacted me after our early-April conversation.

A fourth hearing was scheduled for July 30, 2019. On July 24, 2019, I received an e-mail from Ms. Obaigwa in which she stated that she was still recovering from her April 1, 2019 car accident and was unable to participate in the July 30, 2019 hearing. On July 25, 2019, I sent an e-mail message to both Ms. Obaigwa and Ms. Krupka. I informed Ms. Obaigwa that due to all of the previous hearings being rescheduled at her request, and the fact that she did not contact me after her late-April doctor's appointment to discuss her condition and availability, I would not cancel the hearing and that it would commence as scheduled on July 30, 2019, at 10:00 a.m. I further reminded her that it was a telephonic hearing and that she could participate by telephone, without having to leave her home. As noted above, Ms. Obaigwa did not connect to the hearing at the scheduled time, nor had she connected after an approximately 12-minute wait.

During the hearing, counsel for PPL moved for dismissal of the complaint due to lack of prosecution by the Complainant. In light of the numerous opportunities given to Ms. Obaigwa to participate telephonically in a hearing and present evidence in support of the allegations in her complaint, and given her failure on at least two occasions to contact me as directed to discuss her condition and suitable hearing dates, I believe she has been given sufficient due process accommodations such that dismissal of her complaint at this time is justified. By failing to appear and present any evidence in support of her complaint, Ms. Obaigwa failed to meet her burden of proof. 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 to recall witnesses who were excused for further examination. 52 Pa.Code § 5.245(a).

6. Ms. Obaigwa'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).

7. Ms. Obaigwa failed to carry her burden of proof in this proceeding.

