

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elizabeth Johnson	:	
	:	
v.	:	F-2019-3010050
	:	
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 May 15, 2019, Elizabeth Johnson (Ms. Johnson) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket Number F-2019-3010050. The Complaint is a timely appeal from a Decision of the Commission's Bureau of Consumer Services in Case Number 3685558. In the Complaint, Ms. Johnson requested that she be placed on a budget payment plan or else be placed on the program (presumably a customer assistance program). The Complaint was served on PPL electronically by the Commission's Secretary on May 21, 2019.

On June 10, 2019, PPL filed an Answer in response to Ms. Johnson's Complaint. In its Answer, PPL stated that it has already provided Ms. Johnson with the most advantageous payment plan and further stated that it was in agreement with the prior BCS ordered payment plan of Ms. Johnson paying her monthly budget bill plus \$15 per month towards the arrearage. PPL also stated that Ms. Johnson was enrolled in PPL's OnTrack customer assistance program as of May 14, 2019. PPL concluded its Answer by requesting that the Commission deny Ms. Johnson's Complaint.

On June 13, 2019, a Telephonic Hearing Notice was issued establishing an Initial Call-In Telephonic Hearing on July 22, 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. Johnson 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. Johnson.

The hearing convened on July 22, 2019 at 10:00 a.m. as scheduled. Kimberly Krupka, Esquire, appeared on behalf of PPL. No one appeared on behalf of Ms. Johnson. Tr. 4, 5. Ms. Johnson did not call in to the hearing as instructed on the Hearing Notice. Id. The Presiding Officer advised PPL's counsel that he would give an extra ten minutes for Ms. Johnson to call in to the hearing. Id. By 10:10 a.m. on the date of the hearing, Ms. Johnson still had not called in to the hearing. Id.

Counsel for PPL then made a motion to dismiss the Complaint, due to Ms. Johnson's failure to appear and prosecute her case. Tr. 5. Counsel also noted that Ms. Johnson had been enrolled in PPL's OnTrack customer assistance program and had made her first OnTrack payment in the amount of \$84.47 on June 20, 2019. Id. Counsel also noted that PPL had left several voice messages for Ms. Johnson but had not received any return phone calls from Ms. Johnson. Id. at 6. The record in this case consists of the hearing transcript of six pages, and the record closed at the conclusion of the hearing on July 22, 2019.

## FINDINGS OF FACT

1. The Complainant in this case is Elizabeth Johnson.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. No one appeared at the July 22, 2019, hearing on behalf of Ms. Johnson. Tr. 4, 5.
4. Ms. Johnson received notice of the hearing on June 13, 2019 when the Commission mailed a Hearing Notice to the address she provided on her complaint.
5. The Hearing Notice was not returned to the Commission by the postal authorities as being undeliverable to Ms. Johnson.
6. The Hearing Notice advised Ms. Johnson that she could lose her case if she did not attend the hearing.
7. PPL left several voice messages for Ms. Johnson prior to the hearing, but did not receive any return phone calls from Ms. Johnson. Tr. 6.
8. As of the date of the hearing, Ms. Johnson was enrolled in PPL's OnTrack customer assistance program and made her first OnTrack payment in the amount of \$84.47 on June 20, 2019. Tr. 6.

## 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. Johnson filed a Complaint against PPL. Ms. Johnson, 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. Johnson 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 in pertinent part:

**§ 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 Ms. Johnson by regular first-class mail and was not returned to the Commission as being undeliverable. Accordingly, it must be presumed that the Hearing Notice sent to Ms. Johnson in the ordinary course of business was received by Ms. Johnson. 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 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. Johnson at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, Ms. Johnson had notice and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, Ms. Johnson'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. 5. By failing to appear and present any evidence in support of her complaint, Ms. Johnson has failed to carry her burden of proof. Thus, it is appropriate to dismiss the Complaint. Jefferson v. PPL 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.<sup>1</sup>

#### 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).

---

<sup>1</sup> Although the merits of case are not being addressed in this Decision, it bears mentioning that Ms. Johnson has apparently received what she had been seeking in her Complaint, namely, to be placed in PPL's customer assistance program.

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. Johnson'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. Johnson 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 Elizabeth Johnson at Docket Number F-2019-3010050 is granted.

2. That the Complaint filed by Elizabeth Johnson at Docket Number F-2019-3010050 is hereby dismissed.

3. That Docket Number F-2019-3010050 shall be marked closed by the Secretary's Bureau.

Date: October 10, 2019

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