

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lucinda Witt	:	
	:	
v.	:	C-2019-3011354
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Steven K. Haas
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 her complaint.

HISTORY OF THE PROCEEDING

On July 3, 2019, the Complainant, Lucinda Witt, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket No. C-2019-3011354. On her complaint form, Ms. Witt checked the boxes indicating that the utility was threatening to shut off her service and that she would like a payment arrangement. She requested in her complaint an agreement affordable to her income.

On July 25, 2019, PPL filed an answer to Ms. Witt’s complaint. In its answer, PPL admitted that it sent the Complainant a termination notice. It averred that the notice was sent due to outstanding charges on her account. PPL further averred that it already offered the

Complainant the most advantageous payment arrangement to which she is entitled. PPL requested that Ms. Witt's complaint be denied.

On August 13, 2019, the Commission issued a Call-In Telephone Hearing Notice by which it scheduled an initial telephonic hearing for Wednesday, October 2, 2019, at 10:00 a.m., and assigned me as the Presiding Officer. The Hearing Notice instructed the parties to connect to the hearing by dialing a toll-free number and entering a PIN number. The notice informed the parties that they may lose the case if they do not appear at the hearing.

On August 26, 2019, I issued a Prehearing Order in which I set forth certain procedural requirements pertaining to the hearing. The Prehearing Order provided the date and time of the hearing, as well as the conference bridge number and PIN to use to connect to the hearing. The Prehearing Order stated, "you may lose this case if you do not take part in this hearing and present evidence on the issues raised." The Prehearing Order also informed the parties that any requests to reschedule the hearing must be made at least five days before the hearing. Both the Hearing Notice and the Prehearing Order were sent to Ms. Witt at the address provided by her on her complaint form. Neither document was returned to the Commission as undeliverable.

The hearing convened, as scheduled, at 10:00 a.m. on October 2, 2019. Graig M. Schultz, Esquire, appeared on behalf of PPL. Ms. Witt did not connect to the hearing at 10:00 a.m., so we waited until 10:10 a.m. in the event that she was running late. Ms. Witt never connected to the hearing. I checked with the Office of Administrative Law Judge, as well as my e-mail and phone messages. None of the documents sent to the Complainant were returned to the Commission as undeliverable and Ms. Witt had not contacted the Commission to discuss the hearing schedule. Accordingly, the hearing was convened in Ms. Witt'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 October 4, 2019. This Initial 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 Lucinda Witt
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. On July 3, 2019, the Complainant filed a formal complaint against PPL.
4. On July 25, 2019, PPL filed an answer to the complaint.
5. On August 13, 2019, a Call-In Telephone Hearing Notice was sent to the parties which scheduled an initial call-in telephonic hearing for Wednesday, October 2, 2019, at 10:00 a.m.
6. On August 26, 2019, a Prehearing Order was sent to the parties which set forth certain procedural requirements associated with the initial hearing.
7. Both the Prehearing Order and the Hearing Notice instructed the parties to connect to the hearing using the toll-free bridge number and PIN provided.
8. Both the Prehearing Order and 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.
9. The Hearing Notice and the Prehearing Order were sent to Ms. Witt by first class mail to the address provided by her on her complaint form.

10. Neither the Hearing Notice nor the Prehearing Order that were sent to the Complainant were returned to the Commission as undeliverable.

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

12. The Complainant never contacted the Commission prior to the hearing to discuss the hearing schedule or ask that it be rescheduled.

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

DISCUSSION

Ms. Witt filed a formal complaint against PPL in which she sought an affordable payment arrangement.

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. Witt 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. Witt 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 Hearing Notice and the Prehearing Order were both sent to Ms. Witt by first class mail to the address provided by her on her complaint form. Neither of these documents were returned to the Commission as undeliverable. Accordingly, it may be presumed that these documents sent to the Complainant in the ordinary course of business were received by her. 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, both documents 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. Ms. Witt had notice of the hearing and an opportunity to be heard in this proceeding but chose not to participate. 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 due to lack of prosecution by the Complainant. By failing to appear and present any evidence in

support of her complaint, Ms. Witt 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. Witt'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. Witt failed to carry her 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 Lucinda Witt at Docket Number C-2019-3011354 for failure to prosecute is granted.

2. That the Formal Complaint filed by Lucinda Witt at Docket Number C-2019-3011354 is dismissed with prejudice.

3. That this matter be marked closed.

Date: October 7, 2019

_____/s/
Steven K. Haas
Administrative Law Judge