

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ethan Entz	:	
	:	
v.	:	C-2019-3009090
	:	
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 April 10, 2019, Ethan Entz (Mr. Entz or Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket Number C-2019-3009090. In the Complaint, Mr. Entz requested that the Commission grant him a payment arrangement with PPL so that he could get his account back on track. The Complaint was served on PPL electronically by the Commission’s Secretary on April 10, 2019.

On April 30, 2019, PPL filed an Answer in response to Mr. Entz’ Complaint. In its Answer, PPL asserted that it had already provided him with the most advantageous payment

plan that he was entitled to receive. PPL concluded its Answer by requesting dismissal of the Complaint.

On May 7, 2019, a Telephonic Hearing Notice was issued establishing an Initial Call-In Telephonic Hearing for June 25, 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 Mr. Entz at the address provided on his Complaint via first-class mail. The postal authorities did not return the Hearing Notice to the Commission as being undeliverable to Mr. Entz.

Due to a scheduling issue, the Initial Hearing was rescheduled to July 31, 2019, and the parties were notified via a Telephonic Hearing Notice dated June 18, 2019. This Hearing Notice also 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 Mr. Entz at the address provided on his Complaint via first-class mail. The postal authorities did not return the Hearing Notice to the Commission as being undeliverable to Mr. Entz.

A Prehearing Order was sent to the parties on July 16, 2019. The Prehearing Order also advised the parties that they must be available for the hearing or they would risk losing the case. The Prehearing Order sent to Mr. Entz was not returned to the Commission by the postal authorities as being undeliverable.

The hearing convened on July 31, 2019 at 10:00 a.m. as scheduled. Graig Schultz, Esquire, appeared on behalf of PPL. No one appeared on behalf of Mr. Entz. Tr. 4. Mr. Entz did not call in to the hearing as instructed on the Hearing Notices and Prehearing Order. Id. The Presiding Officer advised PPL’s counsel that he would give an extra ten minutes for Mr. Entz to call in to the hearing. Id. By 10:10 a.m. on the date of the hearing, Mr. Entz still had not called in to the hearing. Id.

Counsel for PPL then made a motion to dismiss the Complaint, due to Mr. Entz’ failure to appear and prosecute his case. Tr. 6. Counsel also noted that he had sent several

emails to Mr. Entz and had left several voice messages for Entz to contact him in order to discuss a possible payment arrangement. Tr. 7, 8.

The record in this case consists of the hearing transcript of 10 pages, and the record closed at the conclusion of the hearing on July 31, 2019.

FINDINGS OF FACT

1. The Complainant in this case is Ethan Entz.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. No one appeared at the July 31, 2019, hearing on behalf of Mr. Entz. Tr. 4.
4. Mr. Entz received notice of the originally scheduled hearing on May 7, 2019, when the Commission mailed a Hearing Notice to the address he provided on his complaint.
5. Mr. Entz received notice of the continued hearing on June 18, 2019, when the Commission mailed a Hearing Notice to the address he provided on his complaint.
6. Mr. Entz received notice of the continued hearing on July 16, 2019, when the Commission mailed a Prehearing Order to the address he provided on his complaint.
7. Neither the Hearing Notices nor the Prehearing Order were returned to the Commission by the postal authorities as being undeliverable to Mr. Entz.
8. Both the Hearing Notices and Prehearing Order advised Mr. Entz that he could lose his case if he did not attend the hearing.
9. PPL had several phone discussions with Mr. Entz about his case and PPL made a number of attempts to follow up with Mr. Entz to try to resolve his case. Tr. 7, 8.

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, Mr. Entz filed a Complaint against PPL. Mr. Entz, 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 Mr. Entz at the date and time set for the hearing in his case despite notice of the hearing. Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 of the Commission's Regulations 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 Notices and Prehearing Order were sent to Mr. Entz by regular first class mail and were not returned to the Commission as being undeliverable. Accordingly, it must be presumed that the Hearing Notices and Prehearing Order sent to Mr. Entz in the ordinary course of business were received by Mr. Entz. 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 Notices and Prehearing Order 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 Mr. Entz at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, Mr. Entz had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Mr. Entz' 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. 6. Counsel also noted that he actually spoke to Mr. Entz on one occasion, but Mr. Entz indicated it was not a good time to talk. Id. PPL's witness also stated that she had spoken to Mr. Entz the day prior to the hearing, but that the call disconnected. Tr. 7. PPL's witness tried to call Mr. Entz back, but the calls went directly to voice mail. Id. By failing to appear and present any evidence in support of his Complaint, Mr. Entz has failed to carry his 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.

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).

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. Mr. Entz' 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. Mr. Entz failed to carry his burden of proof in this proceeding because he failed to appear at the hearing to present his case to the Commission.

