

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Campbell	:	
	:	
v.	:	F-2019-3008342
	:	
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 March 4, 2019, David Campbell (Complainant or Mr. Campbell) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket Number F-2019-3008342.¹ In the Complaint, Mr. Campbell stated that PPL was charging him for electric use at his former address where he no longer resided. The Complaint was served on PPL by the Commission on March 7, 2019.

¹ The Complaint is a timely appeal of a Decision of the Commission's Bureau of Consumer Services in BCS Case No. 3673993.

On March 27, 2019, PPL filed an Answer in response to Mr. Campbell's Complaint. In its Answer, PPL admitted or denied the allegations in the Complaint. PPL also asserted that it had properly transferred Mr. Campbell's account balance from his prior address to his new address. PPL concluded its Answer by requesting dismissal of the Complaint.

This case was subsequently transferred to the Mediation Unit of the Commission's Office of Administrative Law Judge, in order to attempt to mediate the matters complained of by Mr. Campbell without the need for a formal hearing. By Notice dated June 12, 2019, the Mediation Unit advised the parties that a Mediation Session would take place on July 8, 2019 via telephone. The Notice was sent to the address that Mr. Campbell had provided on his Complaint filed with the Commission; however, the Notice was returned to the Mediation Unit by the post office as being undeliverable and noting Mr. Campbell's new address.

The Mediation Unit then sent a Notice on June 18, 2019 to Mr. Campbell's new address as listed on the returned mail form. This Notice indicated that the Mediation Session would take place on July 8, 2019 via telephone. This Notice was not returned to the Mediation Unit by the post office as being undeliverable to Mr. Campbell.

The Mediation Session convened on July 8, 2019 as scheduled. PPL attended the Mediation Session, but Mr. Campbell did not appear. The matter was then transferred to the Commission's Office of Administrative Law Judge for hearing and disposition.

On July 9, 2019, a Telephonic Hearing Notice was issued establishing an Initial Call-In Telephonic Hearing for August 8, 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. Campbell at the address provided on his Complaint via first-class mail. The Hearing Notice was also sent to the new address that the post office had provided to the Mediation Unit via the returned mail notation. The postal authorities did not return either of the Hearing Notices to the Commission as being undeliverable to Mr. Campbell.

The hearing convened on August 8, 2019 at 10:00 a.m. as scheduled. Kimberly Krupka, Esquire, appeared on behalf of PPL. No one appeared on behalf of Mr. Campbell. Tr. 5. Mr. Campbell did not call into the hearing as instructed on the Hearing Notices. Id. The Presiding Officer advised PPL's counsel that he would give an extra ten minutes for Mr. Campbell to call in to the hearing. Id. at 4, 5. By 10:12 a.m. on the date of the hearing, Mr. Campbell still had not called in to the hearing. Id.

Counsel for PPL then made a motion to dismiss the Complaint, due to Mr. Campbell's failure to appear and prosecute his case. Id. The record in this case consists of the hearing transcript of nine pages, and the record closed on September 3, 2019 when the transcript was submitted to the Commission.

FINDINGS OF FACT

1. The Complainant in this case is David Campbell.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address is 1760 West Trindle Road, Carlisle, PA, 17015.
4. The service address is also the address that Mr. Campbell listed on his Complaint that he filed with the Commission.
5. No one appeared at the August 8, 2019 hearing on behalf of Mr. Campbell.
Tr. 4.
6. Mr. Campbell received notice of the hearing on July 9, 2019 when the Commission mailed a Hearing Notice to the address he provided on his Complaint.

7. Mr. Campbell also received notice of the hearing on July 9, 2019 when the Commission mailed a Hearing Notice to the address provided by the post office as being Mr. Campbell's new mailing address.

8. Neither of the Hearing Notices were returned to the Commission by the postal authorities as being undeliverable to Mr. Campbell.

9. Both of the Hearing Notices advised Mr. Campbell that he could lose his case if he did not attend the hearing.

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. Campbell filed a Complaint against PPL. Mr. Campbell, 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 afforded notice and the opportunity to be heard. Id.

No one appeared on behalf of Mr. Campbell at the date and time set for the hearing in his case despite being given 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 Notices provided Mr. Campbell with the date and time of the August 8, 2019 hearing. The Notices were sent to Mr. Campbell by regular first-class mail and were not returned to the Commission as being undeliverable. Accordingly, it must be presumed that the Hearing Notices sent to Mr. Campbell in the ordinary course of business were received by Mr. Campbell. 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 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. Campbell at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, Mr. Campbell had notice and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, Mr. Campbell'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. 4, 5. By failing to appear and present any evidence in support of his

Complaint, Mr. Campbell 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. Campbell'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. Mr. Campbell 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.

ORDER

THISEFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the Complaint of David Campbell at Docket Number F-2019-3008342 is granted.
2. That the Complaint filed by David Campbell at Docket Number F-2019-3008342 is hereby dismissed.
3. That Docket Number F-2019-3008342 shall be marked closed by the Secretary's Bureau.

Date: December 2, 2019

_____/s/
Andrew M. Calvelli
Administrative Law Judge