

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vidya Lerio	:	
	:	
v.	:	C-2019-3013710
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint because the Complainant failed to appear for the hearing to prosecute her Complaint.

HISTORY OF THE PROCEEDING

On October 23, 2019, Vidya Lerio (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent) requesting a payment arrangement.

On November 12, 2019, the Respondent filed an Answer admitting or denying the allegations in the Complaint and asking that the Commission deny the Complaint.

The Complainant has selected to accept electronic service in this Commission proceeding. By selecting electronic service (eService), the Complainant has agreed that being provided with a notification of the filings as well as a link to the filings in this proceeding via e-mail shall constitute valid legal service in lieu of service through first class mail. Therefore, all

documents in this proceeding were served electronically to the Complainant instead of by first class mail.¹

By Hearing Notice served on the parties on November 18, 2019, the Commission scheduled this matter for a telephonic hearing on February 10, 2020 at 10:00 a.m. and assigned the case to me. The Hearing Notice stated the following: “*Attention: At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Special Agent.*” (emphasis in the original).

A Prehearing Order, served on the parties on January 31, 2020, reminded the parties of the date and time of the hearing and addressed, *inter alia*, the procedures applicable to the hearing and the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them. Furthermore, the Prehearing Order stated the following: “**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed.**” (emphasis in the original).

The Hearing Notice and the Prehearing Order gave the parties instructions on how to participate in the scheduled hearing. The parties were to dial a toll-free number and enter a passcode to call into the hearing to participate.

The Complainant did not call into the hearing at 10:00 a.m. on February 10, 2020. Attorney Kimberly Krupka, representing the Respondent, called in with a witness and was ready to proceed.

The hearing was delayed until 10:15 a.m., to give the Complainant additional time to call into the hearing. At 10:15 a.m., the Complainant still had not called into the hearing; therefore, the hearing began without her presence. No witnesses were presented, and no exhibits were introduced for the record. The Respondent made a Motion to dismiss the Complaint for failure to

¹ Service may be made electronically to filing users who have agreed to receive electronic service. Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission's electronic filing system and providing a link to the document on the same day the document is posted. 52 Pa. Code § 1.53(b)(3).

prosecute. The Respondent was informed that the Motion would be taken under advisement. The hearing concluded without the Complainant ever calling into the hearing to participate.

The record² closed on February 10, 2020, following the conclusion of the telephonic hearing. As of the date of this Decision, no communication has been made to the Office of Administrative Law Judge on the Complainant's behalf to explain her absence from the hearing. For the reasons discussed below, the Respondent's Motion will be granted, and the Complaint will be dismissed with prejudice.

FINDINGS OF FACT

1. The Complainant is Vidya Lerio.
2. The Respondent is PPL Electric Utilities Corporation.
3. The Complainant has selected to accept eService in this Commission proceeding. By selecting eService, the Complainant has agreed that being provided with a notification of the filings as well as a link to the filings in this proceeding via e-mail shall constitute valid legal service in lieu of service through first class mail. Therefore, all documents in this proceeding were served electronically to the Complainant instead of by first class mail.
4. By Hearing Notice served upon the parties on November 18, 2019, the Commission scheduled this matter for a telephonic hearing on February 10, 2020 at 10:00 a.m.
5. The Hearing Notice served in this matter stated the following: "Attention: *At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Special Agent.*" (emphasis in the original).

² The telephonic hearing was recorded over the phone by means of a digital recorder. No Court Reporter was present.

6. By Prehearing Order served upon the parties on January 31, 2020, the parties were reminded of the date and time of the telephonic hearing and were provided with the method by which a party could request a continuance of the hearing date, if needed.

7. The Prehearing Order served in this matter stated the following: “**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed.**” (emphasis in the original).

8. The Hearing Notice and the Prehearing Order gave the parties instructions on how to participate in the scheduled hearing. The parties were to dial a toll-free number and enter a passcode to call into the hearing to participate.

9. The Commission’s case docketing system contains no notification that the Hearing Notices or the Prehearing Order failed to be delivered electronically at the e-mail address provided by the Complainant.

10. The Complainant did not call in to participate in the February 10, 2020 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). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

If a Complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the Complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlt. 1982).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlt. 1984).

The Complainant did not participate in the February 10, 2020 hearing. The date and time of the hearing were provided in the Hearing Notice and Prehearing Order served to the Complainant in this matter. The Notice and Order informed the Complainant that on February 10, 2020 at 10:00 a.m., she was to dial a toll-free number and enter a passcode to call into the hearing to participate. The hearing was held without the Complainant because the Complainant never called into the hearing to participate. The Notice and Order warned the Complainant that her case would be dismissed if she failed to participate in the scheduled hearing.

The Hearing Notice was served electronically on the Complainant in accordance with her selection to receive electronic service of all documents instead of receiving a paper copy via first class mail. EService, in lieu of paper service, constitutes valid legal service. 52 Pa. Code § 1.53(b)(3). The Commission's case docketing system contains no notification that the Hearing

Notice and/or Prehearing Order failed to be delivered electronically to the e-mail address provided by the Complainant. Therefore, the Complainant is deemed to have had sufficient notice of the day, date and time of the scheduled hearing and for whatever reason chose not to appear at the hearing to prosecute her Complaint. Morella v. PECO Energy Company, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); Zirkel v. Philadelphia Gas Works, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). The Complainant made no attempt to notify the presiding officer that she did not plan to participate in the scheduled hearing.

Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlt. 1984). Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Complainant did not appear, and the hearing proceeded in her absence. Both 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245(a) provide that a party who fails to be represented at a scheduled hearing shall waive the opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat.

§ 332. Procedures in general.

(f) Actions of parties and counsel.--Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination. . . .

66 Pa.C.S. § 332(f).

§ 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.

. . .

52 Pa. Code § 5.245(a).

As the party seeking relief from the Commission, the Complainant bears the burden of proof. By choosing not to participate in the hearing and proffer any evidence to support the Complaint, the Complainant failed to meet this burden.

The due process rights of the Complainant have been fully protected. The Complainant had notice of the scheduled hearing and failed to appear to prosecute her Complaint. Therefore, the Respondent's Motion to dismiss the Complaint is granted. Accordingly, the Complaint in this matter will be dismissed in its entirety with prejudice. El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); Volgstadt v. UGI Penn Natural Gas, Inc., Docket No. F-02266429 (Opinion and Order entered September 12, 2008) and Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. Administrative agencies are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlth. 1984).

4. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. Sentner v. Bell Telephone Co. of Pennsylvania, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

5. Service may be made electronically to filing users who have agreed to receive electronic service. Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission's electronic filing system and providing a link to the document on the same day the document is posted. 52 Pa. Code § 1.53(b)(3).

6. Absent notification from the Commission's case docketing system indicating that notice has failed to be delivered electronically at the e-mail address provided by the Complainant, the Complainant is deemed to have received notice and had sufficient notice of the day, date and time of the scheduled hearing. Morella v. PECO Energy Company, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); Zirkel v. Philadelphia Gas Works, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

7. By failing to appear at her scheduled hearing, the Complainant waived her opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

8. 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); 52 Pa.Code § 5.245(a).

9. By failing to appear and proffer any evidence in support of the Complaint, the Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the Complaint at Docket No. C-2019-3013710 for failure to prosecute is granted.
2. That the Complaint filed by Vidya Lerio against PPL Electric Utilities Corporation at Docket No. C-2019-3013710 is hereby dismissed with prejudice.
3. That the docket at Docket No. C-2019-3013710 is marked closed.

Date: March 19, 2020

/s/
Alphonso Arnold III
Special Agent

