

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kelly Kon	:	
	:	
v.	:	F-2020-3021606
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses 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 2, 2020, the Complainant, Kelly Kon, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket No. F-2020-3021606. Ms. Kon's formal complaint is an appeal from a decision of the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3745677, issued in response to an informal complaint filed by her on October 30, 2019. In her formal complaint, Ms. Kon alleges that there are billing errors on her PPL bills.

On September 17, 2020, PPL filed an answer to Ms. Kon's complaint. In its answer, PPL denied that there were any improper charges on Ms. Kon's account. PPL requests that the complaint be denied.

On September 21, 2020, the Commission issued an Initial Telephonic Hearing Notice by which it scheduled an initial telephonic hearing for Tuesday, November 17, 2020 at 10:00 a.m. I was assigned as the Presiding Officer. The Hearing Notice instructed the parties to connect to the hearing by dialing a toll-free telephone number and entering a PIN. The notice informed the parties that they may lose the case if they do not appear at the hearing.

On September 24, 2020, 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 for use to connect to the hearing. The prehearing order reminded the parties that their case would be dismissed if they failed to appear at the hearing. The prehearing order also informed the parties that any requests to reschedule the hearing must be made by contacting me at the electronic mail address provided at least three days before the hearing. Both the hearing notice and the prehearing order were sent to Ms. Kon, via electronic mail, to the e-mail address provided by her on her complaint form.¹

The hearing convened, as scheduled, at 10:00 a.m. on November 17, 2020. Graig Schultz, Esquire, appeared on behalf of PPL. Ms. Kon did not connect to the hearing at 10:00 a.m., so we waited until 10:10 a.m. in the event she was running late. Ms. Kon never connected to the hearing. Ms. Kon did not contact me prior to the hearing to discuss the hearing schedule. Accordingly, the hearing was convened in Ms. Kon'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 November 18, 2020. This Initial Decision grants PPL's motion and dismisses the complaint for failure of the Complainant to appear and prosecute her case.

¹ In its *Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, at Docket No. M-2020-3019262, p. 4, the Commission directed that service by the Commission on parties will be exclusively electronic during the pendency of the Governor's Proclamation of Disaster Emergency.

FINDINGS OF FACT

1. The Complainant is Kelly Kon.
2. The Respondent is PPL Electric Utilities Corporation.
3. On July 2, 2020, the Complainant filed a formal complaint against PPL.
4. On September 17, 2020, PPL filed an answer to the complaint.
5. On September 21, 2020, an Initial Telephonic Hearing Notice was sent to the parties which scheduled an initial call-in telephonic hearing for Tuesday, November 17, 2020, at 10:00 a.m.
6. On September 24, 2020, 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 conference call 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 the parties by electronic mail.
10. The Complainant never connected to the call-in telephonic hearing.
11. The Complainant never contacted me prior to the hearing to discuss the hearing schedule or ask that it be rescheduled.

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

DISCUSSION

Ms. Kon filed a formal complaint against PPL in which she alleges that there were incorrect charges on her bills. She asked that she be provided with correct billing.

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. Kon 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. Kon 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 the parties by electronic mail. Neither of the notices sent to Ms. Kon 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. Morella v. PECO Energy Co., 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). As noted above, both notices 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. Kon 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 Co. of Pa., 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. Kon failed to meet her burden of proof. Thus, the complaint will be dismissed. Jefferson v. UGI Utils., 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 thereafter 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. Kon's due process rights have been fully protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

7. Ms. Kon 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 Kelly Kon at Docket Number F-2020-3021606 for failure to prosecute is granted.
2. That the Formal Complaint filed by Kelly Kon at Docket Number F-2020-3021606 is dismissed.
3. That this matter be marked closed.

Date: December 8, 2020

/s/
Steven K. Haas
Administrative Law Judge