

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kelly Reese	:	
	:	
v.	:	F-2020-3021859
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

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 August 12, 2020, Kelly Reese (Ms. Reese or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent) alleging that there were incorrect charges on her bill.¹

On September 30, 2020, the Respondent filed an Answer to the Complaint, denying the Complainant’s allegations of incorrect billing and requesting that the Commission deny the Complaint.

¹ This Complaint is a timely appeal from a decision of the Commission’s Bureau of Consumer Services dated July 10, 2020 in response to an informal complaint filed by Ms. Reese.

On October 1, 2020, a Hearing Notice was served on the parties, scheduling this matter for a telephonic hearing on November 12, 2020 at 10:00 a.m. and assigning the case to me as presiding officer. The Hearing Notice gave the following warning to the parties: “Attention: *You may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in original).

On October 27, 2020, a Prehearing Order was served on the parties. The Prehearing Order reminded the parties of the day and time of the hearing and gave the parties procedural guidelines for the hearing, including how to request a continuance if the hearing date was not convenient for them. Additionally, the Prehearing Order gave the following warning to the parties: “If a party fails to participate in the hearing on the scheduled day and time, the hearing will proceed without that party and a decision may be entered against that party.”

The Hearing Notice and Prehearing Order were served to Ms. Reese electronically to her email address on file with the Commission in compliance with the Commission’s March 20, 2020 Emergency Order, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency issued by Pennsylvania Governor Wolf in response to the COVID-19 pandemic. See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements, M-2020-3019262 at 4 (Order entered March 20, 2020).

Both parties were present on the hearing conference line at 10:00 a.m. on November 12, 2020, for the scheduled hearing. As it is Commission practice to promote settlements, the start of the hearing was delayed to give the parties an opportunity to hold settlement discussions. I excused myself from the hearing conference line while the parties held their settlement discussions. When I came back on the conference line at approximately 10:15 a.m., Ms. Reese was no longer present on the line. Attorney Kimberly Krupka, representing PPL, stated that the settlement discussions were not productive, and that Ms. Reese abruptly left the conference line after informing Attorney Krupka that she would be seeking the assistance of an attorney to help prosecute her Complaint.

The hearing began at 10:15 a.m., without the presence of Ms. Reese. No witnesses were presented, and no evidence was provided for the record. PPL made a Motion to dismiss the Complaint for failure to prosecute. PPL was informed that the Motion would be taken under advisement. PPL was also informed that the record would be left open to give Ms. Reese the opportunity to explain why she left the hearing conference line before the start of the hearing and to request a further hearing.

On November 12, 2020, I issued an Interim Order, giving Ms. Reese until November 20, 2020 to submit a request for a further hearing. Ms. Reese did not submit a request for a further hearing by the deadline. Therefore, the record was closed by Order on November 23, 2020. As of the date of this Initial Decision, I have not received any communication from Ms. Reese or anyone on her behalf explaining her absence from the hearing and requesting a further hearing. For the reasons discussed below, PPL's Motion to dismiss will be granted, and the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Kelly Reese.
2. The Respondent is PPL Electric Utilities Corporation.
3. By Hearing Notice served on the parties on October 1, 2020, the Commission scheduled this matter for a telephonic hearing on November 12, 2020, at 10:00 a.m.
4. The October 1, 2020 Hearing Notice gave the following warning to the parties: "*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*" (emphasis in original).
5. By Prehearing Order served on October 27, 2020, the parties were reminded of the date and time of the hearing and were given procedural rules for the hearing, including how to request a continuance if the hearing date was not convenient for them.

6. The October 27, 2020 Prehearing Order gave the following warning to the parties: “If a party fails to participate in the hearing on the scheduled day and time, the hearing will proceed without that party and a decision may be entered against that party.”

7. The October 1, 2020 Hearing Notice and October 27, 2020 Prehearing Order were served to Ms. Reese electronically to her email address on file with the Commission.

8. There was no email delivery failure notice received by the Commission indicating that either the October 1, 2020 Hearing Notice or the October 27, 2020 Prehearing Order failed to be delivered to Ms. Reese’s email address.

9. Both parties were present on the hearing conference line at 10:00 a.m. on November 12, 2020, for the scheduled hearing.

10. The start of the November 12, 2020 hearing was delayed to give the parties an opportunity to discuss settling the case.

11. Ms. Reese participated in settlement discussions with PPL but left during the discussions and prior to the start of the hearing.

12. Ms. Reese did not request a continuance of the November 12, 2020 hearing.

13. The November 12, 2020 hearing began at 10:15 a.m. without Ms. Reese.

14. PPL made a Motion to dismiss the Ms. Reese’s Complaint for failure to prosecute.

15. On November 12, 2020, an Interim Order was served to the parties, giving Ms. Reese until November 20, 2020, to explain why she did not participate in the hearing and to request a further hearing be scheduled.

16. The presiding officer has not received any communication from Ms. Reese, or anyone on her behalf, explaining why she did not participate in the hearing or requesting a further hearing date.

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 Tel. Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Phila. 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.Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

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.

This matter was scheduled for a telephonic hearing on November 12, 2020, at 10:00 a.m. Both parties were present on the hearing conference line on the scheduled date and time. The start of the hearing was delayed to give the parties an opportunity to hold settlement discussions. The Complainant participated in settlement discussions with the Respondent but left during the discussions and before the hearing began. The hearing began at 10:15 a.m. without the Complainant. Due to Complainant's failure to appear for the hearing and prosecute her Complaint, the Respondent made a Motion to dismiss the Complaint.

The date and time of the November 12, 2020 hearing was provided in the October 1, 2020 Hearing Notice and the October 27, 2020 Prehearing Order served to the parties

in this matter. The Hearing Notice and the Prehearing Order were served to the Complainant electronically to her email address in compliance with the Commission's March 20, 2020, Emergency Order. See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements, M-2020-3019262 at 4 (Order entered March 20, 2020). There was no email delivery failure notice received by the Commission indicating that either document failed to be delivered to the Complainant's email address. Accordingly, it is presumed that these documents sent to the Complainant in the ordinary course of business were received by her. The Complainant is deemed to have had sufficient notice of the day, date, and time of the scheduled hearing. Morella v. PECO Energy Co., Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); Zirkel v. Phila. Gas Works, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). Furthermore, the Complainant's presence on the hearing conference line at 10:00 a.m. on November 12, 2020, is a clear indication that the Complainant had proper notice of the hearing date and time.

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). Although the Complainant appeared on the hearing conference line at 10:00 a.m., she left before the hearing began. The hearing proceeded in her absence. The Complainant therefore failed to appear and participate in the hearing. The Hearing Notice and Prehearing Order, in addition to providing the Complainant with the hearing date and time, also warned the Complainant that she must participate in the hearing and prosecute her case, or risk losing her case. The Prehearing Order additionally gave the Complainant instructions on how to request a continuance of the hearing if the hearing date was not convenient for her. The Complainant did not request a continuance at any point prior to the start of the telephonic hearing.

Both the Pennsylvania Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be

deemed to have waived the opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a)-(b). However, these provisions do not apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting the reopening or further examination, 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a)-(b), or if the presiding officer determines that the complainant demonstrated a good faith attempt to attend the hearing. See, e.g., Then v. Phila. Gas Works, Docket No. F-2012-2318264 (Order entered June 13, 2013); see also, Wiggins v. PECO Energy Co., Docket No. C-2010-2190335 (Order entered October 27, 2011).

Following the hearing, an Interim Order was issued providing the Complainant with the opportunity to explain to the presiding officer why she did not participate in the telephonic hearing, and to request a further hearing date. The presiding officer has not received communication from the Complainant, or anyone on her behalf, explaining her failure to participate in the hearing and requesting a further hearing date. As such, a finding cannot be made that the failure of the Complainant to be represented at the hearing was unavoidable or that the Complainant made a good faith attempt to attend the hearing. The Complainant's failure to appear and prosecute her Complaint is unexcused.

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 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 will be granted, and the Complaint will be dismissed with prejudice.

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 Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993).
5. By failing to appear at his 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).
6. The Complainant's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).
7. 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 PPL Electric Utilities Corporation's Motion to dismiss the Complaint in the matter of Kelly Reese v. PPL Electric Utility Corporation, Docket No. F-2020-3021859, is granted.
2. That Kelly Reese's Complaint against PPL Electric Utilities Corporation at Docket No. F-2020-3021859 is dismissed with prejudice.
3. That the docket at Docket No. F-2020-3021859 is marked closed.

Date: December 11, 2020

/s/
Alphonso Arnold III
Special Agent