

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dechanelle Stewart	:	
	:	
v.	:	F-2020-3021910
	:	
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 3, 2020, Dechanelle Stewart (Ms. Stewart 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 October 5, 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 The Complaint is a timely appeal of a decision by the Commission's Bureau of Consumer Services (BCS), at BCS No. 3743659.

On October 14, 2020, a Hearing Notice was served to the parties, scheduling this matter for a telephonic hearing on November 25, 2020 at 10:00 a.m. and assigning the case to me as presiding officer. Due to an error in the case caption in the Hearing Notice, a Hearing Cancellation/Reschedule Notice was served on October 16, 2020, cancelling the hearing and rescheduling the hearing for December 1, 2020 at 10:00 a.m. The Hearing Cancellation/Reschedule 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 November 6, 2020, a Prehearing Order was served to 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.”

Both the Hearing Cancellation/Reschedule Notice and Prehearing Order were served to the parties by the United States Postal Service. Neither document was returned to the Commission as being undeliverable by the postal authorities to either party.

Attorney Kimberly Krupka, representing PPL, was present for the telephonic hearing on December 1, 2020 at 10:00 a.m. as scheduled. Ms. Stewart was not present on the hearing conference line at 10:00 a.m. The start of the hearing was delayed until 10:15 a.m. to provide Ms. Stewart with additional time to call in to the hearing to participate. Ms. Stewart did not call in by 10:15 a.m.

The hearing began at 10:15 a.m., without the presence of Ms. Stewart. 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. The record was closed at the conclusion of the hearing.

As of the date of this Initial Decision, the Commission has not received any communication from Ms. Stewart or anyone on her behalf explaining her absence from the hearing. For the reasons discussed below, PPL's Motion to dismiss will be granted, and the Complaint will be dismissed with prejudice.

FINDINGS OF FACT

1. The Complainant is Dechanelle Stewart.
2. The Respondent is PPL Electric Utilities Corporation.
3. By Hearing Cancellation/Reschedule Notice served to the parties on October 16, 2020, the Commission scheduled this matter for a telephonic hearing on December 1, 2020 at 10:00 a.m.
4. The Hearing Cancellation/Reschedule 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 to the parties on November 6, 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 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 Hearing Cancellation/Reschedule Notice and Prehearing Order were served to the parties by the United States Postal Service.

8. Neither the Hearing Cancellation/Rescheduled Notice nor the Prehearing Order was returned to the Commission as being undeliverable by the postal authorities to either party.

9. Ms. Stewart did not appear for the December 1, 2020 telephonic hearing scheduled in this matter.

10. As of the date of this Initial Decision, the Commission has not received any communication from Ms. Stewart or anyone on her behalf explaining her absence from the December 1, 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 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 December 1, 2020 at 10:00 a.m. The hearing was held without the Complainant due to her failure to appear. 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 December 1, 2020 hearing was provided in the October 16, 2020 Hearing Cancellation/Reschedule Notice and the November 6, 2020 Prehearing Order served to the parties in this matter. The Hearing Cancellation/Reschedule Notice and the Prehearing Order were served to the Complainant to her mailing address on file with the Commission by the United States Postal Service. The documents were not returned to the Commission as being undeliverable by the postal authorities. Accordingly, it is presumed that these documents sent to the Complainant in the ordinary course of business were received by her. Berkowitz v. Mayflower Sec., 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 Mut. Ins. Co., 303 Pa. Super. 221, 449 A.2d 658 (1982). The Complainant is deemed to have had sufficient notice of the day, date, and time of the scheduled hearing. 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.Cmwlth. 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).

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). The Complainant has not contacted the Commission to explain her absence from the hearing; therefore, a finding cannot be made that her failure to be represented at the hearing was unavoidable or that she made a good faith attempt to attend the hearing.

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. El-Ayazra v. W. Penn Power Co., Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); Volgstadt v. UGI Penn Nat. Gas, Inc., Docket No. F-02266429 (Opinion and Order entered September 12, 2008) and Jefferson v. UGI Utils., 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 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 Dechanelle Stewart v. PPL Electric Utility Corporation, Docket No. F-2020-3021910, is granted.

2. That Dechanelle Stewart's Complaint against PPL Electric Utilities Corporation Docket No. F-2020-3021910 is dismissed with prejudice.

3. That the docket at Docket No. F-2020-3021910 is marked closed.

Date: January 5, 2021

_____/s/
Alphonso Arnold III
Special Agent