

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Johna Swank

v.

PPL Electric Utilities Corporation

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F-2020-3022977

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

This initial decision grants an oral motion to dismiss the complaint for failure of the Complainant to appear and prosecute the complaint.

HISTORY OF THE PROCEEDING

On November 2, 2020, Johna Swank (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) contending that PPL Electric Utilities Corporation (PPL or Respondent) placed incorrect charges on her account. This is a timely appeal of the Commission's Bureau of Consumer Services Decision No. 3769874. The Complaint was served on November 23, 2020.

On December 14, 2020, Respondent filed an Answer denying there are incorrect charges on the account. On December 16, 2020, a Call-In Telephonic Hearing Notice was issued scheduling a hearing on January 13, 2021. A Prehearing Order dated December 16, 2020 was

issued in this case. The Prehearing Order advised the parties with respect to Commission procedure, requests for continuances, required numbers and marking of proposed exhibits, the need for attorney representation, subpoena procedures, discovery, the responsibility of calling into the hearing, and the Commission's policy favoring settlement. Finally, the Prehearing Order reminded the parties of the date and time of the scheduled hearing.

Further, the Telephonic Hearing Notice and Prehearing Order informed the parties that they may lose the case if they did not participate in the hearing. The Telephonic Hearing Notice and the Prehearing Order were both e-mailed to the Complainant at the email address provided by Complainant on the complaint per the Commission's Emergency Order at Docket No. M-2020-3019262.¹ The Commission did not receive any notification that the emails were undeliverable.

In accordance with the terms of the Prehearing Order, under cover letter dated January 6, 2021, Respondent served proposed Exhibits for possible use at the hearing. The hearing convened at 10:00 a.m., as scheduled, on January 13, 2021.

Respondent's attorney, Graig Schultz, Esquire, telephoned into the conference call number provided on the hearing notice. Respondent was prepared to proceed with witness, Sherry Shaffer. The Complainant did not call into the conference call number.

After waiting until 10:30 a.m. for the Complainant to call the conference number to participate in the hearing, Mr. Schultz made an oral motion to dismiss the complaint for failure of Complainant to appear and prosecute the complaint. I took the motion under advisement. The record was closed on January 13, 2021. The Motion to Dismiss is ripe for a decision.

¹ See, *Emergency Order re Suspension of Regulatory and Statutory deadlines, Modification to Filing and Service Requirements* at Docket No. M-2020-3019262, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. (Order entered March 20, 2020).

FINDINGS OF FACT

1. Complainant is Johna Swank.
2. Respondent is PPL Electric Utilities Corporation.
3. On December 16, 2020, a Call-In Telephonic Hearing Notice was issued scheduling a hearing on January 13, 2021.
4. A Prehearing Order dated December 16, 2020 was issued in this case.
5. The Prehearing Order advised the parties with respect to Commission procedure, requests for continuances, required numbers and marking of proposed exhibits, the need for attorney representation, subpoena procedures, discovery, the responsibility of calling into the hearing, and the Commission's policy favoring settlement.
6. The Prehearing Order reminded the parties of the date and time of the scheduled hearing.
7. The Telephonic Hearing Notice and the Prehearing Order were both emailed to the Complainant at the email address provided by Complainant on the complaint.
8. The Telephonic Hearing Notice and Prehearing Order were not undeliverable.
9. The Initial Telephonic Hearing convened at 10:00 a.m., as scheduled, on January 13, 2021.
10. Respondent appeared at the scheduled time represented by counsel with one potential witness and was prepared to proceed.

11. Complainant did not appear at the telephonic hearing at 10:00 a.m. on January 13, 2021 per instructions on the notice and prehearing order.

12. Respondent's counsel made a motion to dismiss the Complaint for failure to prosecute at 10:30 a.m.

13. Complainant was advised that "[y]ou may lose this case if you do not take part in the hearing and present evidence on the issues raised" by the Prehearing Order.

DISCUSSION

As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a). To establish a sufficient case and satisfy the burden of proof, Complainant must show that the respondent public 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). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *app. denied*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993), 2 Pa.C.S. §704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen's Comp. Appeal Bd.*, 612 A.2d 434 (Pa. 1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemp't Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. Dep't. of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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).

The Complainant was advised of the date and time of the telephonic hearing by a Hearing Notice and Prehearing Order that were emailed to Complainant's email address. The documents were not returned as undeliverable. Accordingly, it is presumed that these documents sent to Complainant in the ordinary course of business were received by Complainant. Thus, the Complainant is deemed to have 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). By not appearing for the scheduled Telephone Hearing, Complainant failed to bear the burden of proof. Consequently, the Complaint must be dismissed.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon the Complainant.

3. 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).

4. By failing to appear at the scheduled telephonic hearing, Complainant has failed to satisfy the burden of proof. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemp't Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. Dep't. of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PPL Electric Utilities Corporation's oral Motion to Dismiss is granted.
2. That the Complaint of Johna Swank v. PPL Electric Utilities Corporation at Docket Number F-2020-3022977 is dismissed.
3. That the case at Docket Number F-2020-3022977 be marked closed.

Date: January 19, 2021

_____/s/
Elizabeth H. Barnes
Administrative Law Judge