

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tanya Mack	:	
	:	
v.	:	C-2019-3010470
	:	
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 hearing and prosecute her Complaint. As the Complainant failed to prosecute her Complaint, she has failed to meet her burden of proof in this matter.

HISTORY OF THE PROCEEDING

On June 11, 2019, Tanya Mack (Ms. Mack or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent) seeking a payment arrangement.

On July 1, 2019, PPL filed an Answer to the Complaint, alleging that Ms. Mack has been provided with the most advantageous payment arrangement to which she is entitled. PPL requested that the Commission deny the Complaint.

On July 9, 2019, a Hearing Notice was eServed on the parties, scheduling this matter for a hearing on August 6, 2019 and assigning the case to me as presiding officer. On July 12, 2019, a Prehearing Order was eServed on the parties detailing the procedures applicable to the hearing.

The morning of August 5, 2019, I received communication from Kimberly Krupka, Esquire, an attorney for PPL, notifying me that Ms. Mack had filed a Chapter 13 voluntary bankruptcy petition on July 16, 2019 in the U.S. Bankruptcy Court Eastern District of Pennsylvania at Docket No. 19-14476-elf. As a result, I issued an Order Staying Proceedings on August 5, 2019. On the same date, a Hearing Cancellation Notice was eServed cancelling the August 6, 2019 hearing. The Order ordered the parties to file a Status Report with the Commission, within sixty days of the issuance of the Order. The Order also noted that Ms. Mack could file a Petition to Withdraw her Complaint if she wished to terminate this proceeding.

On October 7, 2019, PPL filed a Status Report, indicating that Ms. Mack's bankruptcy proceeding remained pending.

On March 3, 2020, I issued an Order requesting a Second Status Report from the parties. On March 6, 2020, PPL filed a Second Status Report, indicating that Ms. Mack's bankruptcy proceeding remained pending.

On October 28, 2020, I issued an Order requesting a Third Status Report from the parties. On that same date, PPL filed a Third Status Report, indicating that Ms. Mack's bankruptcy proceeding remained pending.

On January 28, 2021, given that this matter had been stayed for a lengthy period of time, I issued an Order lifting the Stay in this proceeding, with the intent of holding a hearing to find a resolution to this matter.

On January 29, 2021, a Hearing Notice was eServed to the parties, scheduling this matter for a hearing on February 23, 2021 at 10:00 a.m. 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).

The hearing began as scheduled on February 23, 2021 at 10:00 a.m. Attorney Graig Schultz was present for the hearing representing PPL. Ms. Mack was not present for the hearing at 10:00 a.m., therefore, the hearing was delayed to give Ms. Mack additional time to appear. The hearing was held at 10:15 a.m., without the presence of Ms. Mack. No witnesses were presented, and no evidence was provided for the record. Attorney Schultz noted on the hearing record that PPL wrote off Ms. Mack’s outstanding balance when she filed her bankruptcy petition, and that PPL was not currently attempting to collect any amount from Ms. Mack.

The record in this matter closed at the conclusion of the telephonic hearing. For the reasons discussed below, Ms. Mack’s Complaint will be dismissed for failure to appear at the hearing and prosecute her Complaint.

FINDINGS OF FACT

1. The Complainant is Tanya Mack.
2. The Respondent is PPL Electric Utilities Corporation.
3. By Hearing Notice eServed on the parties on July 9, 2019, the Commission scheduled this matter for a telephonic hearing on August 6, 2019, at 10:00 a.m.
4. On August 5, 2019, the presiding officer was informed by PPL that Ms. Mack had filed a Chapter 13 voluntary bankruptcy petition on July 16, 2019 in the U.S. Bankruptcy Court Eastern District of Pennsylvania.
5. By Hearing Cancellation Notice eServed to the parties on August 5, 2019, the August 6, 2019 hearing was cancelled.

6. By Order eServed to the parties on August 5, 2019, this proceeding was Stayed.

7. By Order dated January 28, 2021, the Stay in this proceeding was lifted.

8. By Hearing Notice eServed on the parties on January 29, 2021, the Commission scheduled this matter for a telephonic hearing on February 23, 2021.

9. The January 29, 2021 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).

10. There is no indication in the Commission’s docketing system indicating that the January 29, 2021 Hearing Notice failed to be eServed to Ms. Mack’s email address.

11. Ms. Mack did not appear for the February 23, 2021 hearing.

12. The presiding officer has not received any communication from Ms. Mack, or anyone on her behalf, explaining why she did not participate in the February 23, 2021 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 February 23, 2021, at 10:00 a.m. The Complainant did not appear for the hearing to prosecute her Complaint, despite being given notice to do so.

The date and time of the February 23, 2021 hearing was provided in the January 29, 2021 Hearing Notice eServed to the parties in this matter. There is no indication in the Commission's docketing system indicating that the Notice failed to be delivered to the Complainant's email address. Accordingly, it is presumed that the Notice, sent to the Complainant in the ordinary course of business, was 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).

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 presiding officer has not received any communication from the Complainant, or anyone on her behalf, explaining the Complainant's absence from the hearing; therefore, her absence 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 Complainant's Complaint will be dismissed, for failure of the Complainant to meet her burden of proof.

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 Tanya Mack's Complaint against PPL Electric Utilities Corporation at Docket No. C-2019-3010470 is dismissed without prejudice.

2. That the docket at Docket No. C-2019-3010470 is marked closed.

Date: April 15, 2021

_____/s/
Alphonso Arnold III
Special Agent