

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Childs	:	
	:	
v.	:	F-2021-3028344
	:	
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 his Complaint.

HISTORY OF THE PROCEEDING

On August 30, 2021, William Childs (Mr. Childs 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 (PAR). The Complaint is a timely appeal of a determination made by the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3793820.

On September 27, 2021, PPL filed an Answer to the Complaint, denying that Mr. Childs is eligible for a Commission-issued PAR, but indicating that it is not opposed to providing Mr. Childs with a new PAR. PPL asserted that Mr. Childs did not respond to several voicemails left by PPL to discuss PAR options. PPL requested that the Commission deny the Complaint.

On September 29, 2021, an Interim Order Setting Conference Between Parties was served. The Interim Order directed the parties to discuss this matter to determine if this matter could be resolved. The parties did not come to a resolution of this case.

On November 4, 2021, a Hearing Notice was served to the parties, scheduling this matter for a telephonic hearing on December 3, 2021, at 10:00 a.m. and assigning the case to me as presiding officer.

On November 18, 2021, a Prehearing Order containing the hearing date and procedural guidelines for the hearing was served to the parties.

Both the Notice and Order warned the parties that they may lose their case if they failed to appear for the hearing. Both the Notice and Order were served to Mr. Childs by postal mail to the mailing address that Mr. Childs listed on his Formal Complaint, and neither document was returned to the Commission as being undeliverable by the postal authorities.

The hearing was held as scheduled on December 3, 2021. Mr. Childs was not present on the hearing line at 10:00 a.m. PPL was present, represented by Kimberly Krupka, Esquire. The start of the hearing was delayed to give Mr. Childs additional time to call in. The hearing began at 10:15 a.m. without Mr. Childs. No witnesses were presented, and no evidence was introduced into the record.

At the conclusion of the hearing, PPL made an oral Motion to Dismiss the Complaint for failure to prosecute. PPL was informed that the Motion would be taken under advisement. The hearing adjourned without Mr. Childs having ever called in to participate.

The record in this matter was closed at the conclusion of the telephonic hearing. As of the date of this Initial Decision, I have not received any communication from Mr. Childs or anyone on his behalf explaining his absence from the hearing. For the reasons discussed below, PPL's Motion will be granted, and Mr. Childs' Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is William Childs.
2. The Respondent is PPL Electric Utilities Corporation.
3. By Hearing Notice served to the parties on November 4, 2021, this matter was scheduled for a telephonic hearing on December 3, 2021, at 10:00 a.m.
4. By Prehearing Order served to the parties on November 18, 2021, the parties were reminded of the telephonic hearing date.
5. The Hearing Notice and Prehearing Order warned the parties that they may lose their case if they failed to appear for the hearing.
6. The Hearing Notice and Prehearing Order were served to Mr. Childs by postal mail to the mailing address that Mr. Childs listed on his Formal Complaint and was not returned to the Commission as being undeliverable by the postal authorities.
7. Mr. Childs did not appear for the December 3, 2021 hearing.
8. The presiding officer has not received any communication from Mr. Childs, or anyone on his behalf, explaining why he did not participate in the December 3, 2021 hearing.

DISCUSSION

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.

A telephonic hearing was held in this matter on December 3, 2021. The Complainant did not appear for the scheduled hearing. The Respondent made a Motion to Dismiss the Complaint for failure of the Complainant to appear and prosecute his Complaint.

The date and time of the December 3, 2021 hearing was provided in a Hearing Notice served to the parties on November 4, 2021, and a Prehearing Order served to the parties on November 18, 2021. The Hearing Notice and Prehearing Order were served to the Complainant by first-class mail, to the mailing address that the Complainant listed on his Formal Complaint. Neither document was returned to the Commission as being undeliverable by the postal authorities. Therefore, it is presumed that the Notice and Order, that were sent to the Complainant in the ordinary course of business, were received by him. Berkowitz v. Mayflower Sec., Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mut. Ins. Co., 449 A.2d 658 (Pa. Super. 1982). The Complainant had notice of the date and time of the scheduled hearing and did not contact the Commission to request a continuance of the hearing date or to otherwise indicate that he could not appear at the hearing.

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). In this matter, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. As notice and an opportunity to be heard were provided to the Complainant, 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); 52 Pa. Code § 5.245(a).

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). By choosing not to participate in the hearing and proffer any evidence to support his Complaint, the Complainant failed to meet his burden of proof.

In summary, the due process rights of the Complainant have been protected because the Complainant had notice and opportunity to be heard. The Complainant failed to appear for the hearing to prosecute his Complaint. Due to this failure, the Complainant failed to meet his burden of proof. Therefore, the Respondent's Motion to Dismiss the Complaint for failure to prosecute will be granted.

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. A document served to a party through postal mail in the ordinary course of business and not returned by the postal authorities is presumed to be received by that party. Berkowitz v. Mayflower Sec., Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mut. Ins. Co., 449 A.2d 658 (Pa. Super. 1982).

5. 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. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa. Cmwlth. 1984).

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 William Childs v. PPL Electric Utilities Corporation, Docket No. F-2021-3028344, is granted.

2. That William Childs' Complaint against PPL Electric Utilities Corporation at Docket No. F-2021-3028344 is dismissed.

3. That the docket at Docket No. F-2021-3028344 is marked closed.

Date: January 7, 2022

/s/
Alphonso Arnold III
Special Agent