**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Natasha Foster :

:

v. : C-2015-2472876

:

PPL Electric Utilities Corporation :

**INITIAL DECISION**

Before

Joel H. Cheskis

Administrative Law Judge

INTRODUCTION

This Decision grants a Motion to Dismiss for Failure to Prosecute because the Complainant failed to appear for the hearing at the designated date and time despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On March 19, 2015, Natasha Foster filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against PPL Electric Utilities Corporation (PPL or “the Company”), Docket Number C-2015-2472876. In her Complaint, Ms. Foster averred that PPL is threatening to shut off her service or has already shut off her service, she would like a payment agreement and there are incorrect charges on her bill. Ms. Foster added that her “monthly bills are outrageous” and that she “would like [her] meters to be ran and tested for efficiency and effectiveness. I would like a reasonable monthly plan.”

On April 9, 2015, PPL filed an Answer to Ms. Foster’s Complaint. In its Answer, PPL admitted or denied the various averments made by Ms. Foster in her Complaint. In particular, PPL admitted that Ms. Foster is seeking a payment arrangement but denied that the Company is not providing Ms. Foster with the most advantageous payment agreement to which she is entitled. PPL further averred that Ms. Foster’s increased bill was due to the supplier rate. PPL concluded its Answer by requesting that the Commission deny Ms. Foster’s Complaint.

On May 18, 2015, the Commission issued a Telephone Hearing Notice scheduling an Initial Telephonic Hearing for this matter for Monday, June 22, 2015 at 10:00 a.m. and assigning me as the Presiding Officer. Of note, the Hearing Notice stated, among other things: “Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.” A Prehearing Order dated May 26, 2015 was issued establishing the procedural issues pertaining to the hearing. Similar to the Hearing Notice, the Prehearing Order stated: “If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.” Both the Hearing Notice and the Prehearing Order were sent to Ms. Foster at the address provided on her Complaint via first-class mail. Neither were returned to the Commission as undeliverable.

The hearing convened on June 22, 2015, as scheduled. Kimberly Krupka, Esquire appeared on behalf of PPL. No one appeared on behalf of the Complainant.

The record in this case consists of the hearing transcript of seven (7) pages. The record closed in this proceeding when the transcript was filed with the Commission on June 26, 2015. This Initial Decision memorializes the ruling at the conclusion of the hearing granting PPL’s Motion to Dismiss the Complaint for failure to prosecute.

FINDINGS OF FACT

1. The Complainant in this case is Natasha Foster.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The Service Address is 301 North Progress Avenue, B17, Harrisburg, PA.
4. No one appeared at the hearing on behalf of Ms. Foster. Tr. 1, 4.
5. Ms. Foster received notice of the hearing when the Commission sent her a Hearing Notice to the address she provided on her Complaint on May 18, 2015. Tr. 4.
6. Ms. Foster also received notice of the hearing when the Commission sent her a Prehearing Order to the address she provided on her Complaint on May 26, 2015. Tr. 5.
7. Neither the Hearing Notice nor the Prehearing Order was received back by the Commission as undeliverable. Tr. 5.
8. Multiple attempts were made to reach Ms. Foster to connect her to the hearing by calling the telephone number she provided in her Complaint at the designated time and date for the hearing, and 20 minutes later, and both times a message was left on her voicemail indicating that she was being called to be connected to the hearing. Tr. 5.
9. During the hearing, counsel for PPL indicated that she has had no contact with Ms. Foster regarding the Complaint despite several attempts to reach her both via telephone and Federal Express mail. Tr. 6.
10. The start of the hearing was delayed approximately 20 minutes to accommodate any delay for Ms. Foster. Tr. 1.
11. Both the Hearing Notice and the Prehearing Order issued in this matter stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

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). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). In this proceeding, based on a reading of her Complaint, Ms. Foster seeks to have her meter tested and to be placed on a “reasonable payment arrangement.” Ms. Foster, therefore, has the burden of proof in this proceeding.

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 accorded notice and the opportunity to be heard. Id.

No one appeared on behalf of Ms. Foster at the date and time set for the hearing in her case despite notice of the hearing. Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

**§ 5.245. Failure to appear, proceed or maintain order in proceedings.**

1. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:
2. Be deemed to have waived the opportunity to participate in the conference or hearing.
3. Not be permitted to reopen the disposition of a matter accomplished at the conference or hearing.
4. Not be permitted to recall witnesses who were excused for further examination.

52 Pa.Code § 5.245(a).

The Hearing Notice and the Prehearing Order were sent to Ms. Foster by regular first class mail. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Ms. Foster in the ordinary course of business were received by Ms. Foster. Berkowitz v. Mayflower Securities, 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 Mutual Insurance Co., 303 Pa. Super. Ct. 221, 444 A.2d 658 (1982). Of note, both the Hearing Notice and the Prehearing Order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. Counsel for PPL also indicated that she has had no contact with Ms. Foster regarding this matter despite several attempts to reach her to discuss the case. Tr. 6.

No one appeared on behalf of Ms. Foster at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, Ms. Foster had notice and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, Ms. Foster’s due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, counsel for PPL moved to have the Complaint dismissed with prejudice for lack of prosecution. Tr. 6. By failing to appear and present any evidence in support of her Complaint, Ms. Foster has failed to carry her burden. Thus, the Complaint must be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z‑00269892 (Order entered December 26, 1995). Accordingly, the merits of the Complaint will not be addressed in this Initial Decision.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding.
2. 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).
3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).
4. 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 accorded notice and the opportunity to be heard. Id.
5. 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 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).
6. Ms. Foster’s due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).
7. Ms. Foster failed to carry her burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the formal Complaint of Natasha Foster at Docket Number C-2015-2472876 for failure to prosecute is granted.
2. That the formal Complaint filed by Natasha Foster at Docket Number C-2015-2472876 is hereby dismissed with prejudice.
3. That this matter be marked closed.

Date: July 13, 2015 /s/

Joel H. Cheskis

Administrative Law Judge