

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|------------------------------------|---|----------------|
| Tanya Reph Mack | : | |
| | : | |
| v. | : | C-2019-3014189 |
| | : | |
| PPL Electric Utilities Corporation | : | |

INITIAL DECISION

Before
Kailey B. Maguire
Special Agent

INTRODUCTION

This decision grants a motion to dismiss the complaint of an electric service customer for failure of the customer to appear at the scheduled hearing and prosecute her complaint despite being given notice of the hearing.

HISTORY OF THE PROCEEDINGS

On November 8, 2019, Tanya Reph Mack (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent). In her complaint, Ms. Mack alleges PPL is threatening to shut off her service or has already shut of her service. As relief, Complainant requests a Commission-issued payment arrangement.

On December 2, 2019, PPL filed an answer admitting it sent Complainant a notice to terminate service notice due to an unpaid balance and denying all other material allegations in the complaint. PPL concluded its answer by requesting dismissal of the complaint.

On December 4, 2019, the Commission issued a Call-In Telephonic Hearing Notice to the parties establishing an initial telephonic hearing for January 23, 2020 and assigning the undersigned as Presiding Officer.¹ Of note, the Hearing Notice advised the parties: “*Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in original).

Also on December 4, 2019, a Prehearing Order was issued reminding the parties of the date and time of the hearing and addressed, *inter alia*, the procedures applicable to the hearing including the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them. Further, the Prehearing Order advised the parties:

If you fail to participate in the hearing on the scheduled day and time, the hearing will proceed in your absence. You will be deemed to have waived the opportunity to participate in the hearing. **The case may be dismissed ‘with prejudice,’ whereby, you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.**

(emphasis in original).

Both the Hearing Notice and the Prehearing Order were eServed to the Complainant.

On January 22, 2020, Ms. Mack eFiled a Motion for a Continuance in which she requested to reschedule the January 23, 2020 hearing due to a medical concern. Due to late nature of the Motion for a Continuance, the undersigned e-mailed a copy to Respondent. PPL, through counsel, Graig Shultz, Esquire, did not object to the continuance request. The parties were informed that Complainant’s continuance request was granted, and the matter would be rescheduled.

¹ 52 Pa. Code § 56.174 provides for review by a special agent of any case in which the issue is solely the ability to pay.

On January 23, 2020, a Call-In Telephone Cancellation/Reschedule Hearing Notice was issued rescheduling the initial telephonic hearing for March 3, 2020.

The March 3, 2020 hearing was continued due to the unavailability of counsel for Respondent. On March 9, 2020, a Call-In Telephone Cancellation/Reschedule Hearing Notice was issued rescheduling the initial telephonic hearing for April 15, 2020. Additionally, on March 9, 2020, a second Prehearing Order was issued setting forth the procedures for the conduct of the hearing.

Due to management directives and the closure of the Commission offices as a result of the COVID-19 pandemic, the April 15, 2020 hearing was cancelled. On April 24, 2020, the Commission issued a Hearing Notice rescheduling the initial telephonic hearing for June 8, 2020, at 10:00 a.m.² Of note, the Hearing Notice repeated the consequences of failing to appear for the hearing—i.e., that the parties may lose their case if they did not appear for the hearing.

On May 20, 2020, a third Prehearing Order was issued reminding the parties of the date and time of the hearing. Like the prior Prehearing Orders, this one also repeated, *inter alia*, the consequences of failing to appear for the hearing—i.e., that if a party failed to appear for the hearing, the hearing would proceed in that party's absence.

Both the April 24, 2020 Hearing Notice and May 20, 2020 Prehearing Order were eServed to Ms. Mack. The Commission's case docketing system contains no notification that the Hearing Notice or the Prehearing Order failed to be eServed to the Complainant.

On the morning of the hearing, June 8, 2020, at approximately 9:50 a.m., I received an e-mail from a staff paralegal in the Office of Administrative Law Judge who forwarded to me an e-mail the paralegal received from Complainant indicating she would be unable to call into the hearing as she was “called back into the office today i [sic.] am not able to

² The Commission's offices were closed beginning on March 16, 2020, pursuant to an Executive Order issued by the Pennsylvania Deputy Secretary for Human Resources and Management due to the COVID-19 pandemic. However, the Commission has continued working remotely.

call” and inquired if anything could be done. Ms. Mack’s e-mail was treated as a continuance request.³

The hearing convened on June 8, 2020, at 10:00 a.m., as scheduled. Graig Shultz, Esquire, appeared on behalf of Respondent and was ready to proceed with one witness. Complainant did not appear. At the hearing, the Respondent was informed of Complainant’s continuance request. Respondent opposed the continuance. Due to the late nature of the continuance request and with objection from Respondent, the continuance request was denied on the record and the hearing proceeded in Complainant’s absence. At the conclusion of the hearing, Respondent moved to dismiss the complaint for failure of Complainant to appear and prosecute her complaint. The undersigned informed counsel the motion would be taken under advisement and a ruling would be issued in an initial decision.

Immediately after the hearing, Ms. Mack was directed via e-mail, copying counsel for PPL, that if she wished to proceed with her complaint, she should submit in writing no later than June 15, 2020, the reason for her absence and why her absence was unavoidable.

During the course of the hearing Complainant eFiled a Motion for Continuance of Hearing, contending “[she] didn’t remember the hearing call until the alert in [her] calendar came up on her phone.” The motion was not added to the Commission’s case docketing system until after the undersigned had sent the e-mail directive above.

No additional communication was received from Complainant by June 15, 2020.

The record closed on June 18, 2020, after the time expired for Complainant to submit any further documentation regarding her absence. For the reasons discussed below, this decision grants Respondent’s motion to dismiss the complaint but does so without prejudice.

³ The undersigned forwarded Complainant’s e-mail to the Commission’s Secretary’s Bureau to be filed under this docket as it is being treated as a motion for a continuance.

FINDINGS OF FACT

1. Complainant is Tanya Reph Mack.
2. Respondent is PPL Electric Utilities Corporation.
3. The parties have selected to accept eService. By selecting eService, the parties have agreed that being provided with a notification of the filings as well as a link to the filings in this proceeding via e-mail shall constitute valid legal service in lieu of service through first class mail. Therefore, all Commission documents were eServed to the parties.
4. On April 24, 2020, a Call-In Telephone Cancellation/Reschedule Hearing Notice was issued, scheduling this matter for a telephonic hearing on June 8, 2020, at 10:00 a.m.
5. The April 24, 2020 Hearing Notice stated the following: *Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.* (emphasis in original).
6. By Prehearing Order issued on May 20, 2020, the parties were reminded of the date and time of the call-in telephonic hearing and were provided with various procedures applicable to the hearing, notably, the method by which a party could request a continuance of the hearing date, if needed.
7. The Prehearing Order advised the parties: “If you fail to participate in the hearing on the scheduled day and time, the hearing will proceed in your absence. You will be deemed to have waived the opportunity to participate in the hearing. **The case may be dismissed ‘with prejudice,’ whereby, you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.**” (emphasis in original).
8. Both the Hearing Notice and Prehearing Order provided the parties with the toll-free bridge telephone number and PIN number to participate in the hearing.

9. The Commission's case docketing system contains no notification that the Hearing Notice or the Prehearing Order failed to be delivered electronically at the e-mail address provided by the Complainant.

10. On June 8, 2020, the morning of the scheduled hearing, Complainant requested a continuance by e-mailing staff in the Office of Administrative Law Judge.

11. Complainant did not appear to participate in the June 8, 2020 telephonic hearing.

12. Immediately after the hearing, Ms. Mack was directed via e-mail, copying counsel for PPL, that if she wished to proceed with her complaint, she should submit in writing no later than June 15, 2020, the reason for her absence and why her absence was unavoidable.

13. During the course of the hearing Complainant eFiled a Motion for Continuance of Hearing, in which she requested a continuance of the hearing contending “[she] didn’t remember the hearing call until the alert in [her] calendar came up on her phone.” The motion was not added to the Commission’s case docketing system until after the undersigned had sent the e-mail directive.

14. Complainant did not file any additional documentation regarding her continuance request.

DISCUSSION

Due Process

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. 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.Cmwlt. 1984). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pa. v. Pa. Pub. Util. Comm'n*, 421 A.2d 481, 484 (Pa. Cmwlt. 1980).

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. 66 Pa. C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a).

Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Order entered January 24, 2002); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993) (*Sentner*).

In the instant matter, the record shows Complainant was provided both notice and the opportunity to appear and be heard. The April 24, 2020 Hearing Notice and the May 20, 2020 Prehearing Order informed the parties of the date and time of the hearing and addressed, *inter alia*, how to request a continuance prior to the hearing, and that failure to appear for the hearing and present evidence on the issues raised in the complaint could result in dismissal of the complaint.

Both documents were served by eService in accordance with Complainant's selection to receive electronic service of all documents instead of receiving a paper copy via first-class mail. EService, in lieu of paper service, constitutes valid legal service. 52 Pa.Code § 1.53(b)(3). The Commission's case docketing system contains no notification that the Hearing Notice or Prehearing Order failed to be served electronically to the e-mail address provided by the Complainant. Therefore, the Complainant is deemed to have had sufficient notice of the day, date and time of the scheduled hearing and for whatever reason chose not to appear at the hearing to prosecute the complaint. *Morella v. PECO Energy Co.*, 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). Accordingly, it must be

presumed these documents, which were eServed to the e-mail address provided by the Complainant, were received by Ms. Mack.

Additionally, it is evident that Ms. Mack received notice of the date and time of the hearing by her e-mail placed at 9:50 a.m. on June 8, 2020 in which she sought a continuance of the 10:00 a.m. hearing. Complainant was directed to provide evidence of the reason for her absence from the June 8, 2020 hearing in writing by June 15, 2020. On June 8, 2020, during the hearing, Ms. Mack filed a Motion for Continuance of Hearing in which she explained she could not attend the hearing because “[she] didn’t remember the hearing call until the alert in [her] calendar came up on her phone.”

Under these circumstances, the Complainant had ample notice and opportunity to appear and be heard in this proceeding, however, chose not to do so. Therefore, the due process rights of Complainant have been fully protected. *Sentner*.

Failure to Appear

Both the 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. Philadelphia 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 public interest is prejudiced by the wasteful use of the Commission's and the respondent's time and resources in addressing a complaint. *See, Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995) (*Jefferson*); *see also, e.g., Nichols v. Bell-Atlantic-Pa*, Docket No. C-00956667 (Order entered August 4, 1995). Out of concern for the waste of the Commission's and respondent's time and resources, the Commission has dismissed *pro se* complaints with prejudice for failure of Complainant to appear at a hearing. *See e.g., Smith v. PECO Energy Co.*, Docket No. F-2014-2446204 (Order entered September 3, 2015); *Day v. PECO Energy Co.*, Docket No. C-2010-2181515 (Order entered June 10, 2011).

In the instant matter, Complainant failed to appear for the hearing despite being given notice from the Commission. Although Complainant filed a motion requesting a continuance in which she explained she was unable to attend the hearing because “[she] didn’t remember the hearing call until the alert in [her] calendar came up on her phone.”, I do not find that simply forgetting about the hearing until being notified by a phone as an unavoidable preclusion from attending and participating in the June 8, 2020 hearing. Consequently, Complainant has waived the opportunity to participate in a hearing on the issues raised in the complaint as her absence was not unavoidable.

Burden of Proof

The proponent of any request for relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, a complainant, as the proponent of the request for relief, must show the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia 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 presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence a

reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

As the proponent of the request for relief from the Commission, Complainant bears the burden of proof. By failing to participate in the June 8, 2020 hearing and proffer any evidence to support the complaint, Complainant has failed to satisfy her burden. Accordingly, the merits of the complaint will not be addressed herein, and the complaint will be dismissed but without prejudice. *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered March 14, 2019), *citing, inter alia, Jefferson*.

CONCLUSIONS OF LAW

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

2. The Commission is required to provide due process to the parties appearing before it. 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).

3. 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 Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

4. 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, shall not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a).

5. If the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination, the presiding officer may find that a party did not waive the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a).

6. Complainant's due process rights have been fully protected and Complainant's failure to appear was not unavoidable nor did Complainant make a good faith attempt to attend the hearing. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. As the proponent of the request for relief, Complainant bears the burden of proof by a preponderance of the evidence standard. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

8. By failing to appear and participate in the hearing and proffer any evidence in support of the complaint, Complainant has failed to satisfy her burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PPL Electric Utilities Corporation to dismiss the formal complaint of Tanya Reph Mack at Docket No. C-2019-3014189 is granted.

2. That the complaint of Tanya Reph Mack against PPL Electric Utilities Corporation at Docket No. C-2019-3014189 is hereby dismissed without prejudice.

3. That the Secretary's Bureau shall mark Docket No. C-2019-3014189 as closed.

Date: September 18, 2020

_____/s/
Kailey B. Maguire
Special Agent