

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephanie Ramos	:	
	:	
v.	:	F-2021-3029457
	:	
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 4, 2021, Stephanie Ramos (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent). In her complaint, Ms. Ramos alleges PLL is threatening to shut off her service or has already shut of her service and requests a Commission-directed payment arrangement. The complaint is a timely appeal from a decision by the Commission’s Bureau of Consumer Services (BCS) dated October 15, 2021, at BCS No. 3802954, which granted Ms. Ramos’ informal complaint and established a payment arrangement.

On November 29, 2021, PPL filed an answer admitting it provides service at the service address, that it has provided Ms. Ramos with the most advantageous payment arrangement to which she is entitled and denying all other material allegations in the complaint. PPL concluded its answer by requesting denial of the complaint.

On December 1, 2021, the Commission issued a Call-In Telephonic Hearing Notice to the parties establishing an initial telephonic hearing for January 12, 2022, and assigning the undersigned as Presiding Officer.¹ Of note, the Hearing Notice advised the parties:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

(Emphasis in original).

On December 28, 2021, 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 were 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.** 52 Pa. Code § 5.245.

(Emphasis in original).

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.

Both the December 1, 2021 Hearing Notice and the December 28, 2021 Prehearing Order were served electronically to the e-mail address provided to the Commission by Ms. Ramos in her complaint. No e-mail delivery failure notice was received by the Commission indicating that the documents served electronically did not reach Complainant.

The hearing convened on January 12, 2022, at 10:00 a.m., as scheduled. Kimberly G. Krupka, Esquire, appeared on behalf of Respondent and was ready to proceed with one witness. Complainant did not appear. After waiting approximately fifteen minutes for Complainant to appear and participate, the hearing proceeded in Complainant's absence. No witnesses were presented, and no evidence was introduced into the record.

At the conclusion of the hearing, Respondent made an oral motion to dismiss the complaint for failure of Complainant to appear and prosecute her complaint. The undersigned informed counsel that the motion would be taken under advisement and a ruling would be issued in an initial decision.

The record closed on January 12, 2022, following the conclusion of the telephonic hearing. No communication has been made to the Office of Administrative Law Judge (OALJ) by Ms. Ramos or on her behalf explaining the January 12, 2022 hearing absence. For the reasons discussed below, this decision grants Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. Complainant is Stephanie Ramos.
2. Respondent is PPL Electric Utilities Corporation.
3. On December 1, 2021, a Call-In Telephonic Hearing Notice was issued, scheduling this matter for a telephonic hearing to be held on January 12, 2022, at 10:00 a.m.

4. The Hearing Notice stated the following: “**FAILURE TO APPEAR:** You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.” (Emphasis in original).

5. By Prehearing Order issued on December 28, 2021, the parties were informed 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.

6. 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.** 52 Pa. Code.” (Emphasis in original).

7. Both the Hearing Notice and the Prehearing Order provided the parties with the toll-free bridge telephone number and PIN number to participate in the hearing.

8. The Hearing Notice and Prehearing Order were served upon the Complainant at the e-mail address provided by Ms. Ramos.

9. No e-mail delivery failure notice was received by the Commission indicating the Hearing Notice or Prehearing Order failed to reach Ms. Ramos.

10. Complainant did not appear by phone to participate in the January 12, 2022 telephonic hearing.

11. As of the date of this decision, no communication has been made to the OALJ by Ms. Ramos or on her behalf explaining the January 12, 2022 hearing absence.

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. Cmwlth. 1984). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hosp. Ass'n of W. Pa. v. Pa. Pub. Util. Comm'n*, 421 A.2d 481 (Pa. Cmwlth. 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. *See* 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 Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered January 28, 2002); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and 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 December 1, 2021 Hearing Notice informed the parties of the date and time of the hearing and the December 28, 2021 Prehearing Order 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 e-mail to the email address provided to the Commission by the Complainant, no e-mail delivery failure notice was received by the Commission indicating the documents served electronically did not reach Ms. Ramos.

Accordingly, it must be presumed these documents, which were electronically served to the e-mail address provided by the Complainant, were received by Ms. Ramos.

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 her complaint. *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 notice and opportunity to appear and be heard in this proceeding, however, she chose not to do so. Additionally, Complainant made no attempt to notify the Presiding Officer she did not plan on participating in the January 12, 2022 hearing. 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. Phila. Gas Works*, Docket No. F-2012-2318264 (Opinion and Order entered June 13, 2013); *see also, Wiggins v. PECO Energy Co.*, Docket No. C-2010-2190335 (Opinion and 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 where the complainant does not appear without good cause. *See Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995) (*Jefferson*); *see also, Nichols v. Bell-Atlantic-Pa.*, Docket No. C-00956667 (Opinion and 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 a complainant to appear at a hearing. *See Smith v. PECO Energy Co.*, Docket No. F-2014-2446204 (Opinion and Order entered September 3, 2015); *Day v. PECO Energy Co.*, Docket No. C-2010-2181515 (Opinion and Order entered June 10, 2011).

In the instant matter, Complainant failed to appear for the hearing despite being given two written notices. Further, once the hearing began, the undersigned waited an additional fifteen minutes to allow Complainant time to appear. No communication has been received by the OALJ, by or on behalf of Complainant, regarding whether Complainant's absence was unavoidable or that Ms. Ramos made a good faith attempt to attend the January 12, 2022 hearing. Consequently, Complainant has waived the opportunity to participate in a hearing on the issues raised in the complaint.

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 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 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 & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

In the instant matter, as the proponent of the request for relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a). By failing to participate in the January 12, 2022 hearing and proffer any evidence to support the complaint, Complainant has failed to satisfy her burden. *Id.* Accordingly, the merits of the complaint will not be addressed herein, and the complaint will be dismissed with 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 Tel. Co. of Pa.*, 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. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and 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 Stephanie Ramos at Docket No. F-2021-3029457 is granted.

2. That the complaint of Stephanie Ramos against PPL Electric Utilities Corporation at Docket No. F-2021-3029457 is hereby dismissed with prejudice.

3. That the Secretary's Bureau shall mark Docket No. F-2021-3029457 as closed.

Date: April 7, 2022

_____/s/
Kailey B. Maguire
Special Agent