

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

April Liao	:	
	:	
v.	:	C-2022-3032973
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This decision dismisses the formal complaint of an electric service customer for failure of the customer to appear for the scheduled hearing and prosecute her complaint despite having notice and an opportunity to be heard.

HISTORY OF THE PROCEEDING

On June 13, 2022, April Liao (“Complainant”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against PPL Electric Utilities Corporation (“PPL”) alleging that PPL was threatening to shut off her electric service or has already shut off her service. As relief, Ms. Liao requested a Commission payment arrangement.

On July 5, 2022, PPL timely filed an answer to the complaint. PPL denied the material allegations of the complaint, and averred by way of further background that Complainant defaulted on several Company payment agreements and at the time of filing its answer that Complainant’s outstanding balance was \$5,764.00. PPL requested that the complaint be dismissed.

On July 8, 2022, a Corrected Hearing Notice was e-served on both parties scheduling a call-in telephonic hearing on August 30, 2022 at 10:00 a.m., and assigning me as presiding officer.¹ The corrected Hearing notice included the telephone number for the parties to call to participate in the hearing. Also on July 8, 2022, a Prehearing Order was e-served on both parties which, *inter alia*, reminded the parties of the hearing date and time, and the telephone number to call to participate in the hearing.

Additionally, both the corrected Hearing Notice and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint. Neither document was returned as undeliverable.

On August 30, 2022, the hearing convened as scheduled. Mr. Nicholas A. Stobbe, Esquire, appeared on behalf of PPL, and was prepared to proceed. A witness for PPL also appeared and was prepared to testify. Complainant did not appear. I recessed the hearing and convened it again approximately fifteen minutes later in order to allow time for Complainant to appear. Since Complainant did not appear, the hearing proceeded in her absence. No testimony was taken and no exhibits were introduced for the record.

During the hearing, counsel for PPL moved to dismiss the complaint with prejudice for the failure of Complainant to appear and prosecute her complaint. Prior to PPL's motion, attorney Stobbe noted that, on August 23, 2022, he served on Complainant by email five proposed PPL exhibits and stated in his cover letter that they were in anticipation of the hearing scheduled for August 30, 2022. (Tr. at 5-6; *also see* Respondent's certificate of service filed on August 23, 2022 indicating said service of PPL's proposed exhibits). Further, counsel stated that on behalf of PPL, within the week prior to the hearing, he made several attempts to contact

¹ A Call-In Telephone Hearing Notice was e-served on the parties on July 7, 2022. The corrected Hearing Notice was issued the following day to reflect the proper docket number assigned to this matter, which was incorrectly identified in the July 7, 2022 Hearing Notice. No other corrections were made.

Ms. Liao via email and telephone to discuss possibly settling this matter, but that his attempts to reach her were not successful. (Tr. at 5-6).

I took PPL's motion to dismiss the complaint with prejudice under advisement. The record closed at the conclusion of the hearing pursuant to 52 Pa. Code § 5.431(a).² An eight-page hearing transcript was filed on September 9, 2022.

To date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding Complainant's absence. This decision grants PPL's motion to dismiss the complaint with prejudice.

FINDINGS OF FACT

1. The Complainant is April Liao.
2. The Respondent is PPL Electric Utilities Corporation.
3. Respondent provides electric service to Complainant at 1305 S. Broad Street, Jersey Shore, Pennsylvania. Complaint at ¶ 1.
4. On June 13, 2022, Ms. Liao filed a formal complaint against Respondent.
5. On July 5, 2022, Respondent timely filed an answer to the complaint.
6. On July 8, 2022, a Corrected Call-In Telephone Hearing Notice was e-served on both parties scheduling an initial telephonic hearing on August 30, 2022 at 10:00 a.m.

² Section 5.431(a) provides: "The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission." 52 Pa. Code § 5.431(a).

7. On July 8, 2022, a Prehearing Order was e-served on both parties which, *inter alia*, reminded the parties of the date and time of the scheduled hearing.

8. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

9. Both the Hearing Notice and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

10. On August 30, 2022, Complainant failed to appear and participate in the hearing.

11. To date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding Complainant's absence

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) (*Schneider*). This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Id.* As the proponent of any request for relief, the complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, the Commission's decision must be supported by substantial evidence. 2 Pa.C.S. § 704.

The Commission is required to fix the time and place of a hearing in a complaint proceeding and 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 § 5.61(a). As the Commission explained, “[i]t is well-established law that once timely notice of a hearing and the opportunity to

be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” *Mumma v. PPL Elec. Utils. Corp.*, No. C-00014869 at 3 (Opinion and Order entered Jan. 28, 2002) (citing *Schneider*).

In the instant case, both the corrected Hearing Notice and Prehearing Order were e-served on Complainant and neither document was returned as undeliverable. Both the corrected Hearing Notice and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

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, 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). However, neither of these provisions apply 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. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(b).

In the instant case, to date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding Complainant’s absence. Consequently, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the complaint and Complainant’s absence was not unavoidable. Thus, by her failure to appear, Complainant did not meet her burden of proof.

Consequently, it is appropriate to dismiss Ms. Liao’s complaint. As the Commission has explained, where a complainant fails to appear for a scheduled hearing without good cause, the public interest is prejudiced by the wasteful use of the agency’s and the respondent’s time and resources. *See, e.g., Elliott v. Pa. Elec. Co.*, No. F-2018-3003502

(Opinion and Order entered Feb. 6, 2020) and the cases cited therein. Consequently, Respondent's motion to dismiss the complaint with prejudice will be granted.

CONCLUSIONS OF LAW

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

2. The Commission is required to provide due process to the parties appearing before them; this due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

3. 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, 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).

4. 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(b).

5. Complainant's due process rights have been fully protected and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984), 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(a).

6. As the party seeking relief, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a), *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

7. The Complainant has failed to meet the burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the complaint with prejudice of April Liao at Docket No. C-2022-3032973 is granted.
2. That the complaint of April Liao against PPL Electric Utilities Corporation at Docket No. C-2022-3032022 is dismissed with prejudice for the failure of the Complainant to appear at the hearing and prosecute the complaint.
3. That the docket at Docket No. C-2022-3032973 be marked closed.

Date: September 19, 2022

/s/
Gail M. Chiodo
Administrative Law Judge