

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephanie Boston	:	
	:	
v.	:	F-2022-3034056
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision dismisses the Complaint filed in this matter for Complainant’s failure to appear for the hearing to prosecute the Complaint.

HISTORY OF THE PROCEEDING

On July 14, 2022, Complainant Stephanie Boston (Complainant or Ms. Boston) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent). Complainant seeks timely review of the Commission’s Bureau of Consumer Services’ (BCS) decision entered on July 8, 2022, at BCS No. 3845845. Under the BCS decision and based upon a \$3,238.42 gross monthly household income for a family of 2 adults and 1 child, Complainant was granted a LEVEL 1 payment arrangement (BCS PAR). The BCS PAR required Complainant to pay a monthly budget bill of \$179.00 plus \$235.00 on a \$14,065.96 account balance beginning in August 2022.¹

¹ The terms of the BCS PAR are set forth in Respondent’s Answer. Pursuant to the Commission’s regulations at 52 Pa. Code §§ 5.408(a) and (b), during the hearing, I took judicial notice of the Complaint, Answer, and the BCS decision, which was proposed as Respondent’s preserved Exhibit 11.

In her Complaint, Ms. Boston alleged (1) the utility was threatening to terminate her electric service and (2) she would like a payment arrangement. Complaint ¶ 4. As relief, Complainant asserted the BCS PAR was unreasonable, and she needed a more reasonable payment arrangement. Complaint ¶ 5.

PPL filed an Answer on August 15, 2022. PPL admitted the company had threatened service termination due to non-payment of the service account. Answer ¶ 4. PPL alleged, “The Complainant has not made any payments under that [BCS] arrangement. Indeed, the Complainant has not made a single payment since prior to October, 2018.” *Id.* For relief, PPL requested that the Complaint be dismissed with prejudice. Answer ¶ 5.

By Call-In Telephone Hearing Notice dated August 19, 2022, the Parties were informed that a call-in telephonic hearing on the Complaint would be convened by me on October 13, 2022, at 10:00 a.m. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing to participate in the telephonic hearing. The Hearing Notice further stated as follows:

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.

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. All continuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

(Emphasis in original).

On August 22, 2022, I issued a Prehearing Order reminding the Parties to call-in, on the date and at the time of the hearing scheduled for October 13, 2022, at 10:00 a.m., the Toll-Free Bridge Number and enter the PIN to participate in the telephonic hearing. The Prehearing

Order again stated the **FAILURE TO APPEAR** warning. Additionally, the Prehearing Order informed the Parties about the applicable procedural rules, and again included the procedure to follow for hearing **CONTINUANCES**.

The Hearing Notice and Prehearing Order informing the Parties of the manner, date and time of the hearing, were eServed upon the Parties in the ordinary course of the Commission's business to the email addresses provided by them to the Commission. The Commission did not receive a return electronic message that delivery of the Hearing Notice or the Prehearing Order to Ms. Boston's email address had failed.

On October 6, 2022, PPL in accordance with the Hearing Notice and Prehearing Order emailed copies of its proposed exhibits to Ms. Boston.

On October 13, 2022, by 10:00 a.m., counsel for PPL, Nicholas A. Stobbe, Esquire, together with his witness had dialed-in to participate in the telephonic hearing. The court reporter was also present. However, Ms. Boston was not present when the hearing convened at 10:02 a.m. Attorney Stobbe represented that he had spoken with Ms. Boston a few days prior to the hearing to discuss resolution of the Complaint. According to Attorney Stobbe, Ms. Boston indicated she would be present for the hearing.

I briefly recessed the hearing at 10:06 a.m., to permit additional time for Ms. Stobbe to appear or to contact the Office of Administrative Law Judge (OALJ) to explain her absence. The telephonic proceeding remained open with counsel for PPL and the court reporter in the telephonic hearing, and I waited for Ms. Boston to join the hearing. When the hearing reconvened at 10:25 a.m., Ms. Boston had not dialed into the hearing nor contacted the OALJ to explain her absence.

Accordingly, the hearing proceeded in Ms. Boston's absence. As a result, counsel for PPL moved for dismissal of the Complaint with prejudice for lack of prosecution. I informed counsel that the motion would be taken under advisement and an Initial Decision would be

issued. The record was closed, and the hearing adjourned at approximately 10:32 a.m. on October 13, 2022.

FINDINGS OF FACT

1. Complainant in this proceeding is Stephanie Boston.
2. Respondent PPL Electric Utilities Corporation is a jurisdictional public utility providing electric service to Pennsylvania customers including Complainant.
3. On July 14, 2022, Ms. Boston filed a Complaint against Respondent with the Commission.
4. On August 15, 2022, PPL filed an Answer to the Complaint.
5. By Call-In Telephone Hearing Notice dated August 19, 2022, the Parties were informed that a call-in telephonic hearing in this proceeding would convene on October 13, 2022, at 10:00 a.m.
6. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing to participate in the telephonic hearing.
7. The Hearing Notice informed the Parties that failure to participate in the hearing may result in dismissal of their case.
8. The Hearing Notice was eServed upon Ms. Boston at the email address provided by her to the Commission.
9. There is no indication in the record that there was an electronic failure in the delivery of the Hearing Notice to Ms. Boston.

10. Respondent's counsel and witness were present on October 13, 2022, when the telephonic hearing convened at 10:02 a.m.

11. By approximately 10:25 a.m. on October 13, 2022, Ms. Boston had not appeared for the telephonic hearing.

12. There is nothing in the record to indicate that Ms. Boston's failure to appear for the telephonic hearing was unavoidable.

13. When Ms. Boston did not appear for the telephonic hearing, Respondent's counsel moved for dismissal of the Complaint with prejudice for lack of prosecution.

DISCUSSION

Due Process

The Commission satisfies the requirement of affording a complainant with administrative due process, by providing timely notice of the hearing on the complaint and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

On August 19, 2022, the Call-In Telephone Hearing Notice was eServed upon Complainant at the email address she provided to the Commission. The Commission did not receive a return electronic message that delivery of the Hearing Notice to Ms. Boston's email address had failed. Accordingly, there is a presumption that Ms. Boston received electronic notice of the hearing and elected not to participate in the hearing. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017). Therefore, Complainant's due process rights have been fully protected.

Burden of Proof and Grounds for Dismissal of the Complaint

Pursuant to Section 332(a) of the Code, 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the proponent of a rule or order. Therefore, Ms. Boston had the burden of proving she was entitled to the relief requested in her Complaint. PPL was present for the hearing through its attorney and witness. However, Ms. Boston was not present for the hearing.

Section 332(f) of the Code, 66 Pa.C.S. § 332(f), provides in pertinent part:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat,

Since Ms. Boston failed to appear and participate by telephone in the scheduled hearing, her Complaint may be dismissed with prejudice. *See Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245. There is nothing in the record to indicate that Ms. Boston's failure to appear for the telephonic hearing was unavoidable. Accordingly, in the ordering paragraphs below the Complaint will be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Complainant as the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).

