

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jason R. Paul	:	
	:	
v.	:	C-2022-3032008
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
John M. Coogan  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants a motion to dismiss Complainant’s Formal Complaint with prejudice 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 April 20, 2022, Jason R. Paul (Mr. Paul or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL). In his Formal Complaint, Mr. Paul avers that he is having a reliability, safety, or quality problem with his utility service. Specifically, Mr. Paul claims PPL affixed power lines to trees on his property and refuses to detach them. Mr. Paul asserts trees cannot be used to support power lines as a means of transportation and there is no right of way to use his trees as PPL facilities for power lines. Mr. Paul alleges PPL told him they would remove trees and place a pole, but they never did. As relief, Mr. Paul requests that PPL either detach the lines from the trees or remove the trees and install power poles to support the power lines.

On May 10, 2022, PPL filed an answer and new matter to Mr. Paul's Formal Complaint. PPL's answer and new matter included a notice to plead. In its answer and new matter, PPL admits or denies the various averments in the Formal Complaint. In particular, PPL denies Complainant is a customer of PPL, or that PPL provides electric service to the mailing address listed in Mr. Paul's Formal Complaint.<sup>1</sup> PPL also asserts it is without sufficient knowledge or information as to whether there are power lines installed at Mr. Paul's mailing address, and PPL denies it either installed or refused to detach power lines on trees located at Mr. Paul's mailing address. PPL further states it does not possess a right of way to construct, maintain, and operate power lines at Mr. Paul's mailing address, and PPL cannot remove any alleged trees or install a power pole at Mr. Paul's mailing address. PPL denies it told Complainant that PPL would remove trees and place a pole at his mailing address. In its new matter, PPL alleges Mr. Paul lacks the standing required to bring a complaint about the service of PPL. Specifically, PPL alleges Mr. Paul lacks standing because he is neither a customer of PPL nor does PPL provide electric distribution service to Mr. Paul at the mailing address, and therefore his Formal Complaint should be dismissed.

Also on May 10, 2022, PPL filed preliminary objections in response to Mr. Paul's complaint. On May 16, 2022, Mr. Paul filed a response to PPL's preliminary objections.

On June 14, 2022, a motion judge assignment notice was issued, assigning me as the presiding officer.

On June 30, 2022, I issued an order, denying PPL's preliminary objections, and setting the date of August 17, 2022, beginning at 10:00 a.m. for a hearing regarding Mr. Paul's Formal Complaint.

On June 30, 2022, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for Wednesday, August 17, 2022 at

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<sup>1</sup> PPL asserted Mr. Paul incorrectly supplied an address for a PPL service center in the portion of the complaint form where a complainant may identify a different address than the mailing address.

10:00 a.m. and assigning me as the presiding officer. In anticipation of that hearing, I issued a prehearing order on June 30, 2022 setting forth various rules that would govern that proceeding.

On August 10, 2022, I received a motion for continuance from PPL, asking for a continuance due to unavailability of a witness. By email sent August 11, 2022, Mr. Paul indicated he did not object to the request for a continuance. Without objection, I informally granted the motion for continuance via email on August 11, 2022 and canceled the August 17, 2022 hearing. By email sent August 15, 2022, Mr. Paul stated he was available for a rescheduled hearing on September 1, 2022, beginning at 10 a.m. On August 16, 2022, I issued a formal order, continuing the August 17, 2022 hearing to September 1, 2022. Also, a revised initial telephonic hearing notice was issued on August 16, 2022, canceling the August 17, 2022 hearing, and providing instructions to participate in the September 1, 2022 telephonic hearing.

The initial hearing convened on September 1, 2022, as scheduled. Garrett P. Lent, Esquire, appeared on behalf of PPL along with two witnesses. The court reporter was also present. No one appeared on behalf of Mr. Paul. At the hearing, Counsel for PPL, made an oral motion to dismiss the Formal Complaint with prejudice for failure of the Complainant to prosecute his claims. Tr. 7-9.

The record in this case consists of the transcript of 10 pages. The record closed on September 20, 2022, upon my receipt of the hearing transcript. For the reasons discussed below, PPLs' motion will be granted and the Formal Complaint will be dismissed.

#### FINDINGS OF FACT

1. The Complainant in this case is Jason R. Paul.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. Mr. Paul signed up for eService with the Commission. Tr. 5.

4. The August 16, 2022 hearing notice states that a party may lose the case and the case may be dismissed with prejudice if it does not take part in the hearing and present facts on the issues raised. Tr. 5.

5. The August 16, 2022 hearing notice was eServed on Mr. Paul at the e-mail address provided in his Formal Complaint. Tr. 5.

6. The June 30, 2022 prehearing order states that a party may lose the case and the case may be dismissed with prejudice if it does not take part in the hearing and present facts on the issues raised. Tr. 5-6.

7. The June 30, 2022 prehearing order was eServed on Mr. Paul at the e-mail address provided in his Formal Complaint. Tr. 5.

8. No electronic mail delivery failure notification was received by the Commission indicating that the documents eServed on Mr. Paul did not reach him. Tr. 6.

9. Mr. Paul confirmed by e-mail that he was available for a hearing on September 1, 2022, beginning at 10 a.m. Tr. 5.

10. The rescheduled telephonic hearing convened on September 1, 2022, as scheduled. Tr. 1-10.

11. PPL appeared at the September 1, 2022 hearing, ready and willing to proceed. Tr. 1-10.

12. No one appeared on behalf of Mr. Paul at the September 1, 2022 telephonic hearing. Tr. 1-10.

13. Complainant did not file a motion for continuance or otherwise notify the OALJ that he was unavailable for the September 1, 2022 hearing. Tr. 6.

14. During the September 1, 2022 hearing, PPL made an oral motion to dismiss Mr. Paul's Formal Complaint with prejudice. Tr. 7.

### 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). To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. Mr. Paul has the burden of proof in this proceeding as the party seeking relief.

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 afforded notice and the opportunity to be heard. *Id.*

Mr. Paul signed up for eService with the Commission, and the hearing notices and prehearing order were served upon Complainant by email to the address he provided to the Commission. No correspondence was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Mr. Paul were received by Mr. Paul and he had adequate notice of the hearing. *See Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017). Of note, the hearing

notices and the prehearing order states 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.

The September 1, 2022 hearing was scheduled to begin at 10:00 a.m., but Mr. Paul was not present at 10:00 a.m. To provide Mr. Paul additional time to appear, the hearing did not begin until 10:15 a.m. However, Mr. Paul was also not present at 10:15 a.m., and no one appeared on behalf of Mr. Paul at the time of the hearing. Also, neither Mr. Paul nor anyone on his behalf ever requested a postponement or continuance of the September 1, 2022 hearing, despite notice of the hearing having been provided to Mr. Paul. As such, Mr. Paul had notice and opportunity to be heard in this proceeding but chose not to appear. Therefore, Mr. Paul's due process rights have been fully protected. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002).

During the hearing, counsel for PPL moved to have the Formal Complaint dismissed for lack of prosecution. Tr. 7-9. By failing to appear and present any evidence in support of his complaint, Mr. Paul has failed to carry his burden. 66 Pa.C.S. § 332(a). Thus, it is appropriate to dismiss the Formal Complaint, and the merits of the Formal Complaint will not be addressed in this Initial Decision. See *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995) (*Jefferson*).

Additionally, PPL's motion to dismiss included the request that Mr. Paul's Formal Complaint be dismissed with prejudice. Tr. 7-9. PPL cited the language in the prehearing order and telephonic hearing notices that state a complaint may be dismissed with prejudice if the complainant fails to appear for a hearing. Tr. 7-8. PPL also cited *Center v. Bell Telephone Co. of Pennsylvania.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993) and 52 Pa. Code § 5.245(a)(1) to support its position. Tr. 8.

A party who fails to attend a scheduled hearing has waived the opportunity to participate in that hearing and shall not be permitted to later reopen the matter. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245. If there are no facts in the record that a party's failure to appear at a hearing was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO*

*Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson*.

Here, there are no facts in the record to show that Mr. Paul's failure to appear at the September 1, 2022 hearing was unavoidable. To the contrary, Mr. Paul confirmed by email that he was available for the September 1, 2022 hearing, and I have received no communications from him since then explaining why he did not appear at the September 1, 2022 hearing. Therefore, Mr. Paul's Formal Complaint will be dismissed with prejudice.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S. § 701.
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. To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).
4. The degree of proof required to satisfy the burden of proof is a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).
5. A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

6. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. This due process requirement is satisfied when the parties are afforded notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

7. Notice electronically served to a party with no notification that service failed is presumed received. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017)

8. Once a hearing is scheduled and the parties are duly notified by the Commission, 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 24, 2002).

9. A party who fails to attend a scheduled hearing has waived the opportunity to participate in that hearing and shall not be permitted to later reopen the matter. 66 Pa.C.S § 332(f); 52 Pa. Code § 5.245.

10. If there are no facts in the record that a party's failure to appear at a hearing was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered April 22, 2022); *Little v. Pittsburgh Water and Sewer Authority*, Docket No. F-2021-3027107 (Opinion and Order entered February 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered March 14, 2019).

11. Mr. Paul has failed to carry his burden of proof in this proceeding. 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 Jason R. Paul at docket number C-2022-3032008 for failure to prosecute is granted.
2. That the Formal Complaint filed by Jason R. Paul at Jason R. Paul v. PPL Electric Utilities Corporation, docket number C-2022-3032008 is hereby dismissed with prejudice.
3. That the Secretary's Bureau shall mark docket number C-2022-3032008 as closed.

Date: October 26, 2022

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/s/  
John M. Coogan  
Administrative Law Judge