

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lemire and Mia Brown	:	
	:	
v.	:	C-2022-3036406
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This Initial Decision grants PPL’s motion to dismiss Complainants’ Formal Complaint with prejudice because the Complainants failed to appear for the hearing at the designated date and time despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On October 27, 2022, Lemire and Mia Brown (the Browns or Complainants) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL, Company, or Respondent). In their Formal Complaint, Complainants aver that the utility is threatening to shut off their service or has already shut off their service, and that they would like a payment arrangement. As relief, Complainants request a payment arrangement.

On November 16, 2022, PPL filed an answer to the Browns’ Formal Complaint. In its answer, PPL admits or denies the various averments in the Formal Complaint. In

particular, PPL admits that it has threatened to terminate service at the Complainants' service address. PPL averred that Complainants have defaulted on several prior payment agreements with PPL, and that BCS dismissed a complaint by the Browns on September 23, 2022, without issuing a decision because the Complainants had a prior unsatisfied payment agreement with the Company.

On November 30, 2022, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for January 24, 2023, at 10:00 a.m. and assigning me as the presiding officer. In anticipation of that hearing, I issued a prehearing order on November 30, 2022, setting forth various rules that would govern that proceeding.

The initial hearing convened on January 24, 2023, as scheduled. Nicholas A. Stobbe, Esquire, appeared on behalf of PPL along with one witness. The court reporter was also present. Complainants did not appear and no one appeared on behalf of Complainants. At the hearing, Counsel for PPL made an oral motion to dismiss the Formal Complaint with prejudice.

The record in this case consists of the transcript of nine pages. The record closed on February 2, 2023, upon my receipt of the hearing transcript. For the reasons discussed below, PPL's motion will be granted and the Formal Complaint will be dismissed with prejudice.

FINDINGS OF FACT

1. The Complainants in this case are Lemire and Mia Brown.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. Complainants signed up for eService with the Commission. Tr. 5.
4. The November 30, 2022, hearing notice was eServed on Complainants at the e-mail address they provided in their Formal Complaint. Tr. 5.

5. The November 30, 2022, hearing notice states that a party may lose the case and the case may be dismissed with prejudice if they do not take part in the hearing and present facts on the issues raised. Tr. 5.

6. The November 30, 2022, prehearing order was eServed on Complainants at the e-mail address they provided in their Formal Complaint. Tr. 5.

7. The November 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.

8. No electronic mail delivery failure notification was received by the Commission indicating that the documents eServed on the Browns did not reach them. Tr. 5.

9. The telephonic hearing convened on January 24, 2023, as scheduled. Tr. 1-9.

10. PPL appeared at the January 24, 2023, hearing, ready and willing to proceed. Tr. 1-9.

11. No one appeared on behalf of the Browns at the January 24, 2023, telephonic hearing. Tr. 1-9.

12. Complainants did not file a motion for continuance or otherwise notify the Office of Administrative Law Judge that they were unavailable for the January 24, 2023, hearing. Tr. 6.

13. During the January 24, 2023, hearing, PPL made an oral motion to dismiss the Browns' Formal Complaint with prejudice. Tr. 6.

14. Complainants have not contacted the Commission to explain why their failure to appear at the hearing was unavoidable.

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). 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. Complainants have 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.*

Complainants signed up for eService with the Commission, and the hearing notice and prehearing order were served upon Complainants by email to the address they provided to the Commission. Tr. 5. No correspondence was returned to the Commission as undeliverable. Tr. 5. Accordingly, it must be presumed that these documents sent to Complainants were received by Complainants and they had adequate notice of the hearing. *See Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *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). Of note, the hearing notice

and the prehearing order state 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 January 24, 2023, hearing was scheduled to begin at 10:00 a.m., but the Browns were not present at 10:00 a.m. To provide Complainants additional time to appear, the hearing did not begin until 10:16 a.m. However, Complainants also were not present at 10:16 a.m., and no one appeared on behalf of Complainants at the time of the hearing. Tr. 1-9. Also, neither Complainants nor anyone on their behalf ever requested a postponement or continuance of the January 24, 2023, hearing, despite notice of the hearing having been provided to Complainants. Tr. 5. As such, Complainants had notice and opportunity to be heard in this proceeding but chose not to appear. Therefore, Complainants' due process rights have been fully protected. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002).

During the hearing, counsel for PPL moved to have the Formal Complaint dismissed. Tr. 6. By failing to appear and present any evidence in support of their Complaint, the Browns have failed to carry their burden of proof. 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 the Browns' Formal Complaint be dismissed with prejudice. 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 Complainants' failure to appear at the January 24, 2023, hearing was unavoidable. I have received no communications from Complainants explaining why they did not appear at the January 24, 2023, hearing. Therefore, the Browns' 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. 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).

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 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 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 Jan. 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 Apr. 22, 2022); *Little v. Pittsburgh Water and 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).

11. The Browns have failed to carry their burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

