

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Arcadio Rodriguez	:	
	:	
v.	:	C-2022-3036767
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision dismisses the Complaint filed in this matter with prejudice due to Complainant’s failure to appear and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On November 14, 2022, Arcadio Rodriguez (Complainant) e-filed a Formal Complaint against PPL Electric Utilities Corporation (PPL or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging PPL is threatening to shut off his service or has already shut off his service and that he would like a payment arrangement.

On December 5, 2022, PPL filed its answer to the Complaint. PPL denied Complainant is entitled to another payment arrangement and averred that his balance is \$9,635.04. PPL requested that the Complaint be denied in its entirety and with prejudice.

Complainant signed up for the Commission’s e-service program.

On December 13, 2022, a Call-In Telephone Hearing Notice was e-served on both parties scheduling a hearing for January 31, 2023, at 10:00 a.m. and providing the instructions for calling into the hearing. On December 14, 2022, a Prehearing Order for Telephone Hearing was e-served on the parties. The Prehearing Order included the date and time of the scheduled hearing as well as call-in instructions for participating in the hearing. Paragraph 1 of the Prehearing Order for Telephone Hearing informed Complainant that if he failed to participate in the hearing and present evidence in support of his Complaint, the Complaint may be dismissed with prejudice.¹

On January 31, 2023, the hearing was held as scheduled. Complainant failed to appear for the hearing and failed to present any evidence that his absence was unavoidable. Complainant did not request a continuance and his absence was unexplained. PPL was represented at the hearing by Lindsay A. Berkstresser, Esquire. Attorney Berkstresser made a motion to dismiss the complaint with prejudice for failure to appear and prosecute the complaint. Tr. 6. The motion was taken under advisement.

The hearing record was closed by interim order dated February 7, 2023, after receipt of the hearing transcript. The Interim Order Closing the Hearing Record was e-served on the parties.

FINDINGS OF FACT

1. Complainant in this case is Arcadio Rodriguez.
2. Respondent in this case PPL.
3. A hearing notice and prehearing order noting the date and time of the scheduled telephone hearing were e-served on December 13, 2022, and December 14, 2022, respectively, and were not returned as undeliverable.

¹ See also, 52 Pa. Code § 5.245.

4. Complainant did not call the conference number at 10:00 a.m. on January 31, 2023, to participate in the scheduled hearing.

5. Complainant did not contact the Commission to explain his failure to appear for the hearing.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.² However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.³ Complainant had adequate notice of the time and date of the hearing, yet he failed to appear or explain why he could not attend the hearing at the scheduled time.⁴ Complainant failed to present evidence that his absence was unavoidable.⁵ Therefore, it is appropriate to dismiss the Complaint with prejudice.⁶

By hearing notice dated and e-served December 13, 2022, the Commission scheduled this matter for a telephone hearing to be held on January 31, 2023, at 10:00 a.m. A prehearing order e-served on December 14, 2022, also advised the parties of the date and time of the scheduled hearing.

² *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

³ *Id.*

⁴ 52 Pa. Code § 5.245.

⁵ 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

⁶ *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 v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

Neither the hearing notice nor the prehearing order were returned as undeliverable; therefore, it is presumed that Complainant received both documents and had adequate notice of the scheduled January 31, 2023, hearing.⁷

Paragraph 1 of the prehearing order, e-served on December 14, 2022, informed Complainant that if he failed to participate in the hearing and present evidence in support of his Complaint, the Complaint may be dismissed with prejudice.⁸ The prehearing order also provided instructions for contacting the Commission to request a change of the scheduled hearing date.

Section 332(a) of the Public Utility Code⁹ places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of demonstrating that the facts alleged in his Complaint are true and that he is entitled to the relief that he requested. By not appearing for the scheduled hearing to present evidence, Complainant failed to meet this burden of proof. Consequently, the Complaint is dismissed with prejudice.

In conclusion, Complainant was notified of the scheduled hearing call-in procedure, date and time, as well as how to contact the Office of Administrative Law Judge, but he failed to appear without explanation. Under these circumstances, Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. The due process rights of the Complainant have been fully protected. The Complaint is dismissed with prejudice in the ordering paragraphs below.

CONCLUSIONS OF LAW

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

⁷ *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017).

⁸ *See also*, 52 Pa. Code § 5.245.

⁹ 66 Pa.C.S. § 332(a).

2. Notice e-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); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

3. The due process rights of Complainant have been fully protected in this proceeding. 52 Pa. Code § 5.245(a).

4. 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 v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

5. By failing to appear for the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet his burden of proving he is entitled to the relief she seeks from the Commission. 66 Pa.C.S. § 332(a); 52 Pa. Code § 5.245(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PPL Electric Utilities Corporation to dismiss with prejudice the Complaint of Arcadio Rodriguez at Docket No. C-2022-3036767 for failure to appear and prosecute is granted.

2. That the Complaint of Arcadio Rodriguez in Acadio Rodriguez v. PPL Electric Utilities Corporation at Docket No. C-2022-3036767, is dismissed with prejudice.

3. That the Secretary's Bureau shall mark Docket No. C-2022-3036767 as closed.

Date: May 3, 2023

_____/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge