

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kylie Moyer	:	
	:	
v.	:	F-2022-3037243
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Kylie Moyer against PPL Electric Utilities Corporation because she failed to appear for the scheduled hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On December 12, 2022, Kylie Moyer (the Complainant or Ms. Moyer) filed a Formal Complaint (Complaint) against PPL Electric Utilities Corporation (PPL or the Respondent) with the Pennsylvania Public Utility Commission (Commission). On the Complaint form, the Complainant indicated that soon after she opened an account for electric service at an apartment she shared with her sister, Danyelle Kutish,¹ located on North Fourth Street, Allentown, PA (First Service Location), Complainant instructed Ms. Kutish to switch the account to Ms. Kutish's name

¹ The Complainant did not include her sister's name in the Complaint. However, PPL proposed Exhibit 6 "Customer Account History for the Complainant's Account" identified Ms. Kutish as the Complainant's sister. See multiple entries dated May 24, 2022 under the heading "Remarks." Although, PPL proposed Exhibit 6 was not entered into the record, for clarity, Ms. Kutish's name will be used in place of references by the Complainant to "my sister."

and understood that Ms. Kutish had done so.² The Complainant also indicated that she was unaware that the account at the First Service Location remained in her name and had an outstanding balance until shortly before filing the Complaint, when she requested service at her brother's address on North Eighth Street, Allentown, PA (Second Service Location).³

The Complaint is a timely appeal of the Commission's Bureau of Consumer Services (BCS) decision, dated November 22, 2022, at BCS No. 3867710 that dismissed the Complainant's informal complaint.

On January 4, 2023, the Respondent filed an Answer and New Matter denying all material allegations of fact in the Complaint. PPL averred that the Complainant received service at the First Service Location from August 11, 2016, until July 27, 2018, when service at that address was transferred to another party. The Respondent also averred that when the Complainant's account was closed, it had a balance of \$1,957.06. Furthermore, PPL averred that on May 2, 2022, the Complainant requested service at the Second Service Location, which was initiated the following day. The Respondent acknowledged that it transferred the outstanding balance from Complainant's account at the First Service Location to Complainant's account for the Second Service Location when it initiated service at the Second Service Location.

In New Matter, the Respondent argued that the Complainant's claims were barred and her request for a refund of charges accrued prior to July 27, 2018, was unavailable under the statute of limitations, citing Sections 3314 and 1312(a) and of the Public Utility Code (Code).⁴

By Hearing Notice dated February 7, 2023, a call-in telephonic hearing was scheduled for March 30, 2023, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the date and time of the scheduled hearing as well as how to call in and warned of the following:

² Complaint ¶ 4.

³ Complaint ¶ 4.

⁴ 66 Pa.C.S. §§ 1312(a), 3314.

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.

I issued a Prehearing Order on February 17, 2023. The Prehearing Order also advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing. Additionally, the Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. It also explained that the Complainant bears the burden of proof to establish that the Respondent violated its tariff, the Code,⁵ or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

The Hearing Notice and Prehearing Order were electronically served to the Complainant in the ordinary course of the Commission’s business to the email address she provided to the Commission. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

The telephone hearing began as scheduled on March 30, 2023. Counsel for PPL was present with one witness and was prepared to proceed. Ms. Moyer was not present. In light of the Complainant’s absence, the commencement of the hearing was delayed to allow the Complainant additional time to appear. When the hearing convened at 10:15 a.m., the Complainant still had not appeared for the hearing nor did she appear prior to 10:21 a.m., when the hearing was adjourned. The Complainant did not contact my office to explain why her failure to appear at the hearing was unavoidable.

⁵ Public Utility Code (Code), 66 Pa.C.S. §§ 101–3316.

No witnesses were presented, and no exhibits were introduced into the record. At the hearing, Respondent's counsel moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Respondent's Motion to dismiss the Complaint, but the dismissal will be without prejudice.

The record closed on April 4, 2023, upon receipt of the transcript for the hearing.

FINDINGS OF FACT

1. The Complainant is Kylie Moyer.
2. The Respondent is PPL Electric Utilities Corporation.
3. On December 12, 2022, Ms. Moyer filed a Formal Complaint with the Commission against PPL Electric Utilities Corporation.
4. On January 4, 2023, Respondent timely filed an Answer and New Matter to the Complaint.
5. By Initial Telephonic Hearing Notice dated February 7, 2023, a call-in telephonic hearing was scheduled for March 30, 2023, at 10:00 a.m.
6. On February 17, 2023, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.
7. The Hearing Notice and the Prehearing Order were electronically served upon the Complainant to the email address she provided to the Commission.
8. Neither the Hearing Notice nor the Prehearing Order served upon the Complainant was returned to the Commission as undeliverable.

9. On March 30, 2023, counsel and a witness for PPL appeared and were prepared to proceed with the scheduled hearing in this matter.

10. The Complainant did not call into the hearing at the designated date and time as instructed on the Hearing Notice and the Prehearing Order.

11. Additional time was given to allow Ms. Moyer or her representative an opportunity to call in to the hearing.

12. The hearing was convened at 10:15 a.m.; however, neither the Complainant nor a representative called into the hearing by the time the hearing adjourned at 10:21 a.m.

13. The Complainant has not contacted the Commission to explain why her failure to appear was unavoidable.

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). This due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard. *Id.* The Complainant had adequate notice of the time and date of the hearing, yet she failed to appear or explain why she could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

On February 7, 2023, the Commission electronically served Notice of the March 30, 2023, hearing in this case to the Complainant, to the email address she provided in her Complaint.⁶

⁶ Service was made in accordance with *Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered Sept. 15, 2022) (This Order extended the waiver of service requirements first adopted in September 2021 and extended in March 2022. These Orders permitted electronic service by the Commission on all parties, regardless of whether a particular party had agreed to electronic service) (*September 2022 Order*); *See Waiver of Regulations Regarding Service Requirements*, M-2021-3028321 (Order entered Sept. 15, 2021); *See also Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered March 10, 2021).

The Notice informed the parties of the date and time of the hearing, as well as how to call in for the hearing. The Notice was not returned as undeliverable.

In addition, I issued a Prehearing Order dated February 17, 2023, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. The Prehearing Order, which was also served on the Complainant electronically, was not returned as undeliverable. The Notice of Hearing and Order were sent to the Complainant at the electronic address provided to the Commission by her. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *See Hu v. PPL 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 Jan. 27, 2017); *Morella v. PPL Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016).

A customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 28, 2002); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). The Complainant did not call in for the scheduled hearing on February 30, 2023.

Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

- (a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:
 - (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
 - (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.

- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a).

By failing to participate and proffer any evidence to support her Complaint, the Complainant has failed to meet her burden. Under the circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully preserved. *Sentner v. Bell Tel. Co. of Pa.* Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to his requested relief. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The Complainant did not appear for the hearing scheduled for March 30, 2023. Thus, by her failure to appear, the Complainant did not meet her burden of proof.

As the Commission has explained, where the 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 Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995) (*Jefferson*); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016) (*El-Ayazra*). Consequently, it is appropriate to grant PPL's motion to dismiss Ms. Moyer's Complaint, with prejudice. *Brown v. PPL Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Williams v. PPL Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered Mar. 14, 2019) (citing *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995)). However, notwithstanding the aforementioned and the *September 2022 Order*, on May 30, 2023, the Commission entered an order that determined it is inconsistent with due process to dismiss a formal complaint with prejudice where a *pro se* Complainant fails to appear at a hearing when Complainant has not affirmatively agreed to accept service via email. *See Baxter v. West Penn Power Co.*, Docket No.

C-2022-3032225 (Opinion and Order entered May 30, 2023). Consequently, while PGW's motion to dismiss Ms. Dorrell's complaint will be granted, the complaint will be dismissed without prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 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. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. The Commission is required to provide due process to the parties appearing before it. 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).

5. The due process rights of the Complainant have been fully preserved. *Sentner v. Bell Tel. Co. of Pa.* Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

6. After being notified, a party who fails to appear at a scheduled conference or 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).

7. By failing to appear for the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

8. The Respondent's Motion that the Complaint be dismissed for lack of prosecution will be granted. 52 Pa. Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the Complaint of Kylie Moyer at Docket No. F-2022-3037243, for lack of prosecution is granted without prejudice.

2. That the Complaint of Kylie Moyer at Kylie Moyer v. PPL Electric Utilities Corporation at Docket F-2022-3037243, is dismissed, without prejudice.

3. That the Secretary mark the proceeding at Docket F-2022-3037243 closed.

Date: June 28, 2023

/s/
Arlene Ashton
Administrative Law Judge