

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joshua Robinson	:	
	:	
v.	:	F-2023-3040667
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of an electric service customer for the failure of the customer to appear for the scheduled hearing and prosecute his Complaint. The customer was served notice of the hearing by first-class U.S. mail at the mailing address he provided on his Complaint, in accordance with 52 Pa. Code § 1.53(b)(1).

HISTORY OF THE PROCEEDING

On May 8, 2023, Joshua Robinson (“Complainant”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against PPL Electric Utilities Corporation (“PPL,” “Respondent,” or “Company”). In his Complaint, Mr. Robinson seeks a Commission payment arrangement. This Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Service (“BCS”), dated April 5, 2023, at BCS No. 3897637. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

On June 5, 2023, PPL timely filed an Answer to the Complaint. The Company averred, *inter alia*, that the Complainant is not entitled to another payment arrangement with the

Company, that BCS granted the Complainant a payment arrangement in BCS Case No. 3897637, that the Complainant has not made a payment on his account since September 2022, and that the Complainant's account was in arrears of over \$5,000. PPL requested that the Complaint be denied.

On June 5, 2023, an Initial Call-In Telephonic Hearing Notice ("Hearing Notice") was served on both parties scheduling a call-in telephonic evidentiary hearing on July 27, 2023, at 10:00 a.m., and assigning me as the presiding officer. This Hearing Notice included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing.

On June 21, 2023, a Prehearing Order was served on both parties which, *inter alia*, reminded the parties of the hearing date and time, and the telephone number to call, and the passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the Complaint.

The Formal Complaint form, which was developed by the Commission to aid *pro se* complainants in meeting all the requirements for filing a formal complaint with the Commission, and used by the Complainant in the instant matter, allows the Complainant to choose how he would like to receive his hearing notices, orders and related documents. Since the Complainant did not select any of the three available options (eFiling, email, or first-class mail), the Complainant was served the Hearing Notice and Prehearing Order by First-Class Mail via the U.S. Postal Service at the mailing address he provided on his Complaint, in accordance with 52 Pa. Code § 1.53(b)(1) (providing for First-Class Mail service). Also, the Complaint form stated that if the filer does not select any of the three options, as in the instant case, the Commission "will serve all documents to you [the Complainant] by First-Class Mail." (*See*, Complaint ¶ 2). Neither document served on the Complainant was returned to the Commission as undeliverable.

Notwithstanding the above service by first-class mail consistent with Commission Regulation and instructions on the Complaint form, in an abundance of caution to provide notice, the Hearing Notice and the Prehearing Order were also served on the Complainant via email to the email address he provided on his Complaint.

On July 27, 2023, at 10:00 a.m., the hearing convened as scheduled. Mr. Nicholas A. Stobbe, Esquire, appeared on behalf of PPL, along with a witness, and the Company was prepared to proceed. A court reporter was also present. The Complainant did not appear. I recessed the hearing and convened it again approximately ten minutes later in order to allow time for Complainant to appear. Since the Complainant did not appear after this recess, the hearing proceeded in his absence. No testimony was taken, and no exhibits were introduced for the record.

During the hearing, the Company moved to dismiss the Complaint with prejudice (“Motion”) for the failure of the Complainant to appear and prosecute his Complaint.

I took PPL’s Motion under advisement. The record closed at the conclusion of the hearing pursuant to 52 Pa. Code § 5.431(a) (providing that the record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission).¹

To date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding the Complainant’s absence. This decision grants PPL’s Motion.

FINDINGS OF FACT

1. The Complainant is Joshua Robinson.

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An eight-page transcript of the hearing was filed on August 15, 2023.

2. The Respondent is PPL Electric Utilities Corporation, a jurisdictional Commission public utility which provides electric service to the Complainant.
3. On May 8, 2023, Mr. Robinson filed a Formal Complaint against the Respondent.
4. On June 5, 2023, the Respondent timely filed an Answer to the Complaint.
5. On June 5, 2023, an Initial Call-In Telephonic Hearing Notice was served on both parties scheduling an initial telephonic hearing on July 27, 2023, at 10:00 a.m.
6. On June 21, 2023, a Prehearing Order was served on both parties which, *inter alia*, reminded the parties of the date and time of the scheduled hearing and the telephone number to call, and the passcode to enter, to participate in the hearing.
7. Both the Hearing Notice and the Prehearing Order were served on the Complainant via First-Class Mail at the mailing address he provided on his Formal Complaint. (*See*, Complaint ¶¶ 1, 2). Neither document was returned to the Commission as undeliverable.
8. Both the Hearing Notice and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the Complaint.
9. On July 27, 2023, the Complainant failed to appear and participate in the scheduled hearing.
10. To date, no communication has been received by the undersigned or the Office of Administrative Law Judge explaining why Complainant's failure to appear at the hearing 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) (*Schneider*). This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Id.* As the proponent of any request for relief, the complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, the Commission's decision must be supported by substantial evidence. 2 Pa.C.S. § 704.

The Commission is required to fix the time and place of a hearing in a complaint proceeding and serve notice thereof upon the parties in interest. 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.61(a). As the Commission explained, “[i]t is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” *Mumma v. PPL Elec. Utils. Corp.*, No. C-00014869 at 3 (Opinion and Order entered Jan. 28, 2002) (citing *Schneider*).

In the instant case, the Hearing Notice scheduled a hearing on July 27, 2023, at 10:00 a.m., and included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing. Further, a Prehearing Order was served on both parties which, *inter alia*, reminded the parties of the hearing date and time, and the telephone number, and passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the Complaint.

Both the Hearing Notice and the Prehearing Order were served on the Complainant via First-Class Mail at the mailing address he provided on his Formal Complaint. (*See*, Complaint ¶ 1). Neither document was returned to the Commission as undeliverable. Accordingly, it must be presumed that this mail was received by Complainant. *Berkowitz v.*

Mayflower Sec., Inc., 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982).

Both the Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at a scheduled 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). However, neither of these provisions apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(b). The party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

In the instant case, to date, no communication has been received by the undersigned or the Office of Administrative Law Judge explaining why the Complainant's failure to attend the hearing was unavoidable. Therefore, I find that the Complainant waived the opportunity to participate in a hearing on the matters raised in the Complaint and the Complainant's absence was not unavoidable. Thus, by his failure to appear, the Complainant did not meet his burden of proof.

When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO Energy Co.*, No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. PPL Utils., Inc.*, No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). Consequently, it is appropriate to dismiss Mr. Robinson's Complaint with prejudice. As the Commission has explained, where a

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, e.g., Elliott v. Pa. Elec. Co.*, No. F-2018-3003502 (Opinion and Order entered Feb. 6, 2020).

Accordingly, Respondent's Motion to dismiss the Formal Complaint with prejudice will be granted.

CONCLUSIONS OF LAW

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

2. The Commission is required to provide due process to the parties appearing before them; 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).

3. After being notified, a party who fails to appear at a scheduled 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).

4. When there are no facts in the record that the party's failure to appear 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.*, No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. PPL Utils., Inc.*, No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

5. The Complainant's due process rights have been fully protected and the Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

6. As the party seeking relief, the Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a), *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

7. The Complainant has failed to meet his burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss with prejudice the Formal Complaint of Joshua Robinson, at Docket No. F-2023-3040667, is granted.

2. That the Formal Complaint of Joshua Robinson against PPL Electric Utilities Corporation, at Docket No. F-2023-3040667, is dismissed with prejudice.

3. That the docket at Docket No. F-2023-3040667 be marked closed.

Date: October 17, 2023

/s/
Gail M. Chiodo
Administrative Law Judge