

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Whitney Stock	:	
	:	
v.	:	C-2023-3039630
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision grants a Motion to Dismiss a Formal Complaint for failure to prosecute because the Complainant failed to appear for the hearing at the designated date and time despite having been given notice of the hearing and the opportunity to be heard.

HISTORY OF THE PROCEEDING

On or about April 6, 2023, the Complainant, Whitney Stock, filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL). In her Formal Complaint, Ms. Stock challenged an estimated bill issued to her by PPL, alleging that it was excessive and that she didn't use the amount of electricity for which she was being charged. She requests that the incorrect charges be voided.

On April 26, 2023, PPL filed an Answer to Ms. Stock's Complaint. In its Answer, PPL admitted that it issued to Ms. Stock an estimated bill for the period from December 2, 2022, through January 6, 2023. PPL averred that an estimated bill, rather than a bill

based on an actual meter reading, was issued due to a system problem involving customer billing data. PPL avers that it issued a subsequent bill to Ms. Stock on February 3, 2023, which included charges for her actual usage during January 2023, and corrected the estimated charges billed to her on the January 6, 2023, bill. Accordingly, PPL avers that Complainant has been billed correctly for her actual electricity usage. PPL requests that Ms. Stock's Complaint be denied in its entirety.

On June 6, 2023, the Commission issued an initial Telephonic Hearing Notice scheduling a call-in telephonic hearing on August 2, 2023, beginning at 10:00 a.m. and assigning me as the Presiding Officer.¹ The Hearing Notice instructed the parties that they may lose their case if they did not take part in the hearing and present facts on the issues raised. The Hearing Notice was electronically served on Ms. Stock via the Commission's eService system, to which she was enrolled.

Subsequently, on July 17, 2023, the Commission served on the parties a Prehearing Order that contained instructions for participation in the telephonic hearing. The Hearing Notice was electronically served on Ms. Stock via the Commission's eService system. The Prehearing Order instructed the parties that they may lose their case if they did not take part in the hearing and present facts on the issues raised.

The telephonic hearing was convened as scheduled on August 2, 2023. Nicholas A. Stobbe, Esquire, appeared on behalf of PPL. No one appeared on behalf of the Complainant. The hearing was delayed until approximately 10:12 a.m. to give the Complainant additional time to appear in case she was running late. Ms. Stock never connected to the call to participate in the hearing. At the hearing PPL's attorney moved for dismissal of the Complaint, with prejudice, for failure of the Complainant to appear and prosecute her case.

The record in this case was closed on August 2, 2023, and consists of a brief hearing transcript. No exhibits were admitted into the record. This Initial Decision grants the

¹ By e-mail dated July 31, 2023, the parties were informed that, due to a scheduling conflict with my schedule, Judge Chad Allensworth would serve as the hearing judge.

Motion made by PPL to dismiss, with prejudice, Ms. Stock's Formal Complaint due to her failure to appear and prosecute her Complaint.

FINDINGS OF FACT

1. The Complainant in this case is Whitney Stock.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. On April 6, 2023, Ms. Stock filed a Formal Complaint with the Commission against PPL.
4. On April 26, 2023, PPL filed an Answer to Ms. Stock's Complaint.
5. On June 6, 2023, an Initial Telephonic Hearing Notice was served on the parties scheduling an Initial Call-In Telephonic Hearing for August 2, 2023, beginning at 10:00 a.m.
6. On July 17, 2023, a Prehearing Order containing instructions for participation in the telephonic hearing was served on the parties.
7. Both parties are enrolled with the Commission's eService system for electronic service of documents.
8. Both the Hearing Notice and the Prehearing Order were served on the parties via the Commission's eService system.
9. Both the Hearing Notice and the Prehearing Order instructed the parties that they may lose their case if they did not appear and take part in the hearing.
10. Neither the Hearing Notice nor the Prehearing Order served on the Complainant were returned to the Commission as undeliverable.

11. By electronic mail dated July 26, 2023, PPL sent to the Complainant and me proposed hearing exhibits. In its e-mail, PPL restated the date and time scheduled for the telephonic hearing.

12. The hearing convened as scheduled on August 2, 2023, beginning at 10:00 a.m.

13. The hearing was delayed approximately 10 minutes to accommodate any delay of anyone appearing on behalf of Ms. Stock.

14. No one connected to the hearing on behalf of Ms. Stock at the designated date and time as instructed on the Hearing Notice.

15. Complainant has not contacted the Commission to explain why her failure to appear at the August 2, 2023, telephonic 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). “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). As a matter of law, a Complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa.P.U.C. 196 (1990). 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. In this proceeding, Ms. Stock questioned certain PPL bills received by her and is requesting that the Commission void the incorrect charges. Therefore, Ms. Stock has the burden of proof in this proceeding.

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 of the hearing and the opportunity to be heard. Id.; see also, J.P. v. Dep't of Human Servs., 150 A.3d 173 (Pa. Cmwlth. 2016).

No one appeared on behalf of Ms. Stock at the date and time set for the hearing in this case despite notice of the hearing having been provided to her. 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).

The Hearing Notice and the Prehearing Order were served on Ms. Stock via the Commission's eService system, since she was enrolled in the service. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable. Both instructed the parties that they may lose their case if they fail to appear and present evidence on the issues raised. Notice eServed to a party with no notification that service has 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).

Further, once notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of parties to appear and participate in the hearing. Strydio v. PPL Elec. Utils. Corp., Docket No. C-2017-2633043 (Opinion and Order entered July 18, 2018). No one appeared on behalf of Ms. Stock at the time of the hearing, nor did anyone on her behalf ever request a postponement or continuance of the hearing. As such, Ms. Stock had notice of the hearing and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Ms. Stock's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). By failing to appear and present any evidence in support of her Complaint, Ms. Stock failed to carry her burden of proof. 66 Pa.C.S. § 332(a).

During the hearing, counsel for PPL moved for dismissal, with prejudice, of the Complaint for lack of prosecution. A party who fails 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., Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022). When there are no facts in the record that the Complainant'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., 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).

There are no facts in the record that would allow the Commission to reach the conclusion that Complainant's failure to attend the hearing was unavoidable. Accordingly, PPL's Motion will be granted, and Ms. Stock's Formal Complaint will be dismissed with prejudice. Williams v. PECO Energy Co., Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

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 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. 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).
5. This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa. Cmwlth. 1984).
6. 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; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).
7. Ms. Stock's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); 52 Pa. Code § 5.245(a).

8. A party who fails to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. Herr v. West Penn Power Co., Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

9. When there are no facts in the record that the Complainant'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., 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).

10. By failing to participate in the hearing and proffer any evidence to support the complaint, Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss, with prejudice, the Formal Complaint of Whitney Stock against PPL Electric Utilities Corporation at Docket No. C-2023-3039630 for failure to prosecute is granted.

2. That the Formal Complaint filed in Whitney Stock v. PPL Electric Utilities Corporation at Docket No. C-2023-3039630 is hereby dismissed with prejudice.

3. That this matter be marked closed.

Date: October 23, 2023

/s/
Steven K. Haas
Administrative Law Judge