

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Albina Fonzo	:	
	:	
v.	:	F-2023-3041304
	:	
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 her Complaint. The customer was served notice of the hearing and related order by e-mail, which was the manner affirmatively selected by the customer to receive service of all hearing notices, orders, and related documents in this matter.

**HISTORY OF THE PROCEEDING**

On June 5, 2023, Albina Fonzo (“Complainant”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against PPL Electric Utilities Corporation (“PPL,” “Respondent,” or “Company”). In her Complaint, Ms. Fonzo alleges that there are incorrect charges on her bill because her bill is too high. This Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (“BCS”), at BCS No. 3890726, which dismissed her informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a). As relief, Ms. Fonzo requested an explanation as to why her bills were so high. (Complaint ¶ 6).

On July 5, 2023, PPL timely filed an Answer to the Complaint. The Company denied that the Complainant was billed incorrectly. Further, the Company averred, *inter alia*, that PPL billed the Complainant consistent with its Commission-approved tariff, the Public Utility Code and Commission Regulations. (Answer ¶ 6).

On July 7, 2023, an Interim Order was issued in which Chief Judge Charles E. Rainey, Jr., referred this matter to the Mediation Unit of the Office of Administrative Law Judge (“OALJ”) for possible resolution. Mediation was unsuccessful.

On August 10, 2023, an Initial Call-In Telephonic Hearing Notice (“Hearing Notice”) was served on both parties scheduling a call-in telephonic evidentiary hearing on September 28, 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 August 28, 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 a complainant to choose how to receive the hearing notices, orders and related documents from the Commission. Ms. Fonzo affirmatively selected to be served by e-mail, as indicated by her initials immediately following the instruction: “Initial here if you are electing E-mail service.” (Complaint ¶ 2). In accordance with this selection, Ms. Fonzo was served the Hearing Notice and Prehearing Order to the e-mail address she provided on the Complaint form. Neither document served on the Complainant was returned to the Commission as undeliverable.

On September 28, 2023, at 10:00 a.m., the hearing convened as scheduled. The Complainant did not appear. Mr. Nicholas A. Stobbe, Esquire, appeared on behalf of PPL, along with two witnesses, and the Company was prepared to proceed. A court reporter was also present. The Complainant did not appear. The hearing proceeded in the Complainant's 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 her Complaint. Further, Attorney Stobbe noted that, in an effort to resolve this matter, and as directed by the Prehearing Order,<sup>1</sup> he contacted the Complainant prior to the hearing. Attorney Stobbe explained that he and the Complainant exchanged e-mails concerning this matter, and in an e-mail from Ms. Fonzo to Attorney Stobbe dated August 1, 2023, Ms. Fonzo stated she had no intention of attending the hearing. (Tr. at 6).

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). On October 11, 2023, an eleven-page hearing transcript was filed with the Secretary's Bureau.

To date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding the Complainant's absence. For the reasons discussed below, this decision grants PPL's Motion.

### FINDINGS OF FACT

1. The Complainant is Albina Fonzo.

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<sup>1</sup> See, Prehearing Order at ¶ 10 which, after citing the Commission's policy to encourage settlements, the utility was instructed to contact the Complainant at least one week before the hearing to talk over a possible settlement of this matter.

2. The Respondent is PPL Electric Utilities Corporation, a jurisdictional Commission public utility which provides electric service to the Complainant.

3. On June 5, 2023, Ms. Fonzo filed a Formal Complaint against PPL.

4. On July 5, 2023, PPL timely filed an Answer to the Complaint.

5. On August 10, 2023, an Initial Call-In Telephonic Hearing Notice was served on both parties scheduling an initial telephonic hearing on September 28, 2023, at 10:00 a.m., and assigning me as the presiding officer.

6. On August 28, 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 again provided the telephone number to call, and the passcode to enter, to participate in the hearing.

7. Ms. Fonzo affirmatively selected to be served hearing notices, orders and related documents by e-mail, as indicated by her initials “A.F.” on the Complaint immediately following the instruction: “Initial here if you are electing E-mail service.” (Complaint ¶ 2).

8. Both the Hearing Notice and the Prehearing Order were served on the Complainant at the e-mail address she provided on her Complaint. (*See*, Complaint ¶¶ 1, 2). Neither document was returned to the Commission as undeliverable.

9. 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.

10. On September 28, 2023, the Complainant failed to appear and participate in the scheduled hearing.

11. To date, no communication has been received by the undersigned or the Office of Administrative Law Judge explaining why the 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 September 28, 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 by e-mail, which was the manner affirmatively selected by Ms. Fonzo to receive service of all hearing notices, orders, and related documents in this matter. (*See*, Complaint ¶ 2, where Ms. Fonzo affirmatively indicated this selection by placing her initials immediately following the instruction: “Initial here if you are electing E-mail service.”) Neither document served on the Complainant was returned to the Commission as undeliverable.

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 regarding the Complainant’s absence. 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 her failure to appear, the Complainant did not meet her 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. Pgh 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 Ms. Fonzo'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 her 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 Albina Fonzo, at Docket No. F-2023-3041304, is granted.

2. That the Formal Complaint of Albina Fonzo against PPL Electric Utilities Corporation, at Docket No. F-2023-3041304, is dismissed with prejudice.

3. That the docket at Docket No. F-2023-3041304 be marked closed.

Date: December 15, 2023

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/s/  
Gail M. Chiodo  
Administrative Law Judge