

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kitia Stafford	:	
	:	
v.	:	F-2023-3041769
	:	
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, and also because she failed to provide an explanation, despite having been specifically asked to do so, as to why her failure to appear was unavoidable.

**HISTORY OF THE PROCEEDING**

On July 10, 2023, the Complainant, Kitia Stafford, filed a Formal Complaint (complaint) with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket No. F-2023-3041769.<sup>1</sup> In her complaint, Ms. Stafford questioned her PPL billing and requested an affordable payment arrangement.

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<sup>1</sup> The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 3912229, which dismissed Complainant's informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

On August 7, 2023, PPL filed an answer to Ms. Stafford's complaint. In its answer, PPL averred that the Complainant was billed correctly. It further averred that Ms. Stafford defaulted on thirteen company payment arrangements and one Bureau of Consumer Services payment arrangement. PPL averred that she is not entitled to another payment arrangement and requested that her complaint be denied in its entirety.

On August 8, 2023, the Commission issued a telephonic hearing notice scheduling a telephonic hearing for October 10, 2023, and assigning me as the Presiding Officer. This hearing was subsequently canceled and, by notice dated November 16, 2023, a new hearing was scheduled for December 7, 2023. Also on November 16, 2023, I issued to the parties a prehearing order in which I provided instructions to the parties for participation in the telephonic hearing. Among other things, the prehearing order provided the call-in numbers to connect to the telephonic hearing and informed the parties that they may lose the case if they do not participate in the hearing. Ms. Stafford indicated on her formal complaint form that she agreed to accept service of documents by electronic mail. Accordingly, both the hearing notice and the prehearing order were sent to her via electronic mail to the e-mail address provided by her on her complaint form. The Commission received no indication that either notice was not delivered to her.

The telephonic hearing was convened as scheduled on December 7, 2023, at 10:00 a.m. Nicholas Stobbe, Esquire, appeared on behalf of PPL along with one witness. No one connected to the hearing on behalf of Ms. Stafford. I delayed the start of the hearing approximately ten minutes in case Ms. Stafford was running late. She never connected to the hearing. Attorney Stobbe moved for dismissal of the complaint due to the failure of the Complainant to appear and prosecute her case. I informed PPL that I would take its motion under advisement.

Subsequently, at 10:46 a.m. on December 7, 2023, I was copied on an e-mail sent by Ms. Stafford to Attorney Stobbe in which she stated, "I just got this login for this conference.

I called in [no]one was on.” In response to receiving a copy of Ms. Stafford’s e-mail to Mr. Stobbe, I sent to her an e-mail at 12:56 p.m. on December 7, 2023, that stated:

Ms. Stafford:

The hearing in this case was scheduled for today at 10:00 a.m. The toll-free number and PIN were included on the November 16, 2023 Telephone Hearing Notice and the November 16, 2023 Prehearing Order, both of which were e-mailed to you.

I was on the call at 10:00 a.m. along with representatives from PPL.

Please provide an explanation as to why you did not, or were unable to, join the call at 10:00 a.m.

Thank you.

Judge Haas

As of the date of this Initial Decision, I have not received a response from Ms. Stafford to my e-mail. Accordingly, as explained further below, I will grant PPL’s motion and dismiss her complaint.

#### FINDINGS OF FACT

1. The Complainant in this case is Kitia Stafford.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. On July 10, 2023, Ms. Stafford filed a Formal Complaint against PPL with the Commission at Docket No. F-2023-3041769.
4. On August 7, 2023, PPL filed an answer to Ms. Stafford’s Formal Complaint.

5. By Initial Call-In Telephone Hearing Notice dated August 8, 2023, a telephonic hearing was scheduled for October 10, 2023.

6. The October 10, 2023 hearing was subsequently canceled and, by notice dated November 16, 2023, a new telephonic hearing was scheduled for December 7, 2023, to begin at 10:00 a.m.

7. On November 16, 2023, a Prehearing Order containing instructions for participation in the telephonic hearing was served on the parties.

8. Both the telephonic hearing notice and the prehearing order were served on Ms. Stafford via electronic mail to the e-mail address provided by her on her complaint form.

9. Both the telephonic 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. The Commission received no indication that either the telephonic hearing notice or the prehearing order served on the Complainant were not received by her.

11. The telephonic hearing convened as scheduled on December 7, 2023, beginning at 10:00 a.m.

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

13. No one connected to the hearing on behalf of Ms. Stafford at the designated date and time as instructed on the hearing notice and prehearing order.

14. At 10:46 a.m. on December 7, 2023, I was copied on an e-mail from Ms. Stafford to attorney Stobbe in which she stated, "I just got this login for this conference. I called in [no]one was on."

15. In response to my receiving a copy of Ms. Stafford's e-mail to Mr. Stobbe, I sent to her an e-mail at 12:56 p.m. on December 7, 2023, that stated:

Ms. Stafford:

The hearing in this case was scheduled for today at 10:00 a.m. The toll-free number and PIN were included on the November 16, 2023 Telephone Hearing Notice and the November 16, 2023 Prehearing Order, both of which were e-mailed to you.

I was on the call at 10:00 a.m. along with representatives from PPL.

Please provide an explanation as to why you did not, or were unable to, join the call at 10:00 a.m.

Thank you.

Judge Haas

16. As of the date of this Initial Decision, I never received a response from Ms. Stafford to my e-mail.

17. Ms. Stafford never otherwise contacted either me or the Commission after the hearing to explain why her failure to appear at the December 7, 2023, telephonic hearing was unavoidable, despite my having specifically requested that she do so.

### 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. Stafford requested payment arrangement for outstanding charges on her PPL account. Therefore, Ms. Stafford has the burden of proof.

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. Stafford 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. Stafford via electronic mail to the address provide by her on her complaint form. This is the method of service she requested on her complaint form. The Commission never received any indication that either notice was not received by her. Both notices instructed the parties that they may lose their case if they fail to appear and present evidence on the issues raised. Notice served to a party with no notification that service has failed is presumed received. Psut v. PECO Energy Co., Docket No. C-2022-3035383 (Opinion and Order entered Aug. 3, 2023); 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).

No one appeared on behalf of Ms. Stafford at the time of the hearing, nor did anyone on her behalf ever request a postponement or continuance of the hearing. As such, Ms. Stafford had notice of the hearing and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Ms. Stafford'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). 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). By failing to appear and present any evidence in support of her complaint, Ms. Stafford failed to carry her burden of proof. 66 Pa.C.S. § 332(a).

During the hearing, counsel for PPL moved for dismissal 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. 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). In my e-mail to Ms. Stafford following the hearing, I requested that she provide an explanation as to why she did not or was unable to appear for the hearing as scheduled. She never responded to my request. Accordingly, 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. PPL's motion, therefore, will be granted, and Ms. Stafford's Formal Complaint will be dismissed. 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 provided with notice and the opportunity to be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa. Cmwlth. 1984).

6. Notice served to a party with no notification that service has failed is presumed received. Psut v. PECO Energy Co., Docket No. C-2022-3035383 (Opinion and Order entered Aug. 3, 2023); 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).

7. 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).

8. Ms. Stafford'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).

9. 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).

10. When there are no facts in the record demonstrating that the Complainant's failure to appear was unavoidable, the complaint should be dismissed. 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).

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

12. Despite having been explicitly asked to do so, the Complainant failed to provide an explanation as to why her failure to appear for the hearing was unavoidable. Herr v. West Penn Power Co., Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PPL Electric Utilities Corporation to dismiss the Formal Complaint of Kitia Stafford in Kitia Stafford v. PPL Electric Utilities Corporation at Docket No. F-2023-3041769 for failure to prosecute is granted.

2. That the Formal Complaint filed in Kitia Stafford v. PPL Electric Utilities Corporation at Docket No. F-2023-3041769 is hereby dismissed.

3. That this proceeding be marked closed.

Date: March 20, 2024

\_\_\_\_\_/s/  
Steven K. Haas  
Administrative Law Judge