

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anthony Jackson	:	
	:	
v.	:	F-2023-3043590
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Alphonso Arnold III  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of Anthony Jackson against PPL Electric Utilities Corporation due to Mr. Jackson’s failure to appear for the telephonic evidentiary hearing to prosecute his Complaint.

**HISTORY OF THE PROCEEDINGS**

On October 2, 2023, Anthony Jackson (“Complainant”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against PPL Electric Utilities Corporation (“Respondent”) stating that his bills were too high and that he wanted a lower payment plan. The Complaint was served on Respondent on October 18, 2023.<sup>1</sup>

On November 7, 2023, Respondent filed an Answer to the Complaint admitting or denying the averments of the Complaint and requesting that the Complaint be denied in its entirety.

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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. 3927973. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

Also on November 7, 2023, the Commission issued an Initial Telephonic Hearing Notice to the parties, scheduling a telephonic evidentiary hearing in this matter for January 18, 2024, at 10:00 a.m. and assigning this matter to the undersigned. The Notice provided the parties with the method by which they could call in to a conference line to participate in the hearing and warned the parties that they may lose their case if they do not participate in the hearing and present evidence on the issues raised.

On December 1, 2023, the undersigned issued a Prehearing Order to the parties, setting forth the procedures for the conduct of hearings. The Order provided the parties with the method by which they could call in to a conference line to participate in the hearing and warned the parties that they may lose their case if they do not participate in the hearing and present evidence on the issues raised.

On the Complaint form, under paragraph 2 titled “Methods of Communication by the Commission,” Complainant selected the option agreeing to be served all Commission documents from the Commission by email by signing his initials next to that option. Because Complainant affirmatively agreed to receive electronic service of Commission documents, the service of all Commission documents in this matter, including the Hearing Notice and Prehearing Order, were served to the Complainant at the email address that he listed on his Complaint form.

On January 18, 2024, at 10:00 a.m., the evidentiary hearing was held as scheduled. Complainant did not call in to the conference line to participate in the hearing. Counsel for Respondent, Megan Rulli, Esquire, called in to the conference line with a witness and was prepared to proceed. The hearing was delayed until 10:15 a.m. to give the Complainant additional time to call in. The Complainant failed to call in.

No witnesses were presented, and no exhibits were admitted into the record. During the hearing, Respondent made a Motion to Dismiss the Complaint with prejudice for failure of the Complainant to appear at the hearing to prosecute his Complaint. Respondent was informed that the Motion would be taken under advisement.

The record closed on January 31, 2024, upon the filing of the electronic hearing transcript with the Commission. For the reasons discussed below, Respondent's Motion will be granted, and the Complaint will be dismissed with prejudice.

### FINDINGS OF FACT

1. The Complainant is Anthony Jackson.
2. The Respondent is PPL Electric Utilities Corporation.
3. On October 2, 2023, Complainant filed a Complaint with the Commission against Respondent.
4. On November 7, 2023, Respondent filed an Answer to the Complaint.
5. On November 7, 2023, the Commission issued an Initial Telephonic Hearing Notice to the parties, scheduling an evidentiary hearing in this matter for January 18, 2024, at 10:00 a.m. and assigning the matter to the undersigned.
6. On December 1, 2023, the undersigned issued a Prehearing Order to the parties, setting forth the procedures for the conduct of hearing.
7. The November 7, 2023, Hearing Notice and the December 1, 2023, Prehearing Order provided the parties with the date and time of the telephonic evidentiary hearing, the method by which the parties were to call in to a conference line to participate in the hearing, and warned the parties that they may lose their case if they do not participate in the hearing and present evidence on the issues raised.
8. The November 7, 2023, Hearing Notice and the December 1, 2023, Prehearing Order were served to Complainant electronically at the email address he listed on his Complaint form, as Complainant affirmatively agreed to receive electronic service of Commission documents.

9. There is no notification that the November 7, 2023, Hearing Notice or the December 1, 2023, Prehearing Order failed to be electronically served to Complainant's email address.

10. Complainant did not call in to the conference line to participate in the January 18, 2024, evidentiary hearing.

11. Complainant did not settle or withdraw his Complaint against Respondent.

12. Complainant did not request a continuance of the January 18, 2024, evidentiary hearing, nor did he contact the Commission to explain why his failure to appear for the hearing was unavoidable.

## DISCUSSION

### *Administrative Due Process and Waiver of Hearing*

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984) (*Schneider*) (citing *Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794 (Pa. Cmwlth. 1978)). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider* at 15.

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See* 66 Pa.C.S. § 703(a)–(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a). A Notice electronically served to a party's registered email address with no notification that service failed to be delivered to that email address is presumed to have been received. *Fonzo v. PPL Elec. Utils. Corp.*, Docket No. F-2023-3041304 (Final Order entered Jan. 17, 2024) (*Fonzo*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017) (*Zirkel*);

*Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017) (*Morella*).

Once notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

If a party fails to attend a scheduled hearing, such failure to appear will be deemed a waiver of the party's opportunity to participate in a hearing, unless the presiding officer determines that such failure was "unavoidable" and that the interests of the other parties and of the public would not be "prejudiced" by permitting such reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)–(b).

#### *Burden of Proof*

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa.C.S. § 332(a). The evidentiary burden of proof for actions before the Commission is the "preponderance of the evidence" standard. *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. *Se-Ling Hosiery, Inc. 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 Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

## *Analysis*

Complainant in this matter affirmatively elected to receive electronic service of Commission documents by signing his initials next to that method of service option on his Complaint form. Therefore, all Commission documents in this matter, including the November 7, 2023, Hearing Notice and the December 1, 2023, Prehearing Order were served to Complainant to the email address that he listed on his Complaint form.

There is no notification that the November 7, 2023, Hearing Notice or the December 1, 2023, failed to be delivered to Complainant's email address; therefore, Complainant is presumed to have received both the Hearing Notice and Prehearing Order. *Fonzo; Zirkel; Morella*. The Hearing Notice and Prehearing Order provided the date and time of the January 18, 2024, telephonic evidentiary hearing, the method by which the parties could call in to a conference line to participate in the hearing, and the consequences of failing to appear for the hearing (*i.e.*, dismissal of the Complaint). Accordingly, Complainant is deemed to have had sufficient notice of the day, date, and time of the scheduled hearing, as well as how to participate in the telephonic hearing.

As Complainant had notice of the hearing, Complainant had ample opportunity to appear and be heard in this proceeding but chose not to call in to the conference line to participate in the hearing. Complainant did not request a continuance of the hearing date, nor did he contact the Commission following the hearing to explain why his failure to appear at the hearing was unavoidable.<sup>2</sup> Therefore, the due process rights of the Complainant have been fully protected in this proceeding. *Schneider*; 52 Pa. Code § 5.245(a).

Section 332(a) of the Public Utility Code places the burden of proof upon the proponent of any request for relief. 66 Pa.C.S. § 332(a). By failing to appear and proffer any evidence to support the Complaint, Complainant has failed to meet this burden. As the

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<sup>2</sup> 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.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

Complainant failed to appear, the Complainant is not permitted to reopen the disposition of this matter. 52 Pa. Code § 5.245(a)(2). Consequently, the Respondent's Motion to Dismiss the Complaint will be granted, and the Complaint will 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); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter 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 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) (citing *Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794 (Pa. Cmwlth. 1978)).

3. Notice electronically served to a party's registered email address with no notification that service failed to be delivered to that email address is presumed to have been received. *Fonzo v. PPL Elec. Utils. Corp.*, Docket No. F-2023-3041304 (Final Order entered Jan. 17, 2024); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016).

4. The due process rights of Complainant have been fully protected in this proceeding and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 52 Pa. Code § 5.245(a).

5. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the Formal Complaint of Anthony Jackson at Anthony Jackson v. PPL Electric Utilities Corporation, Docket Number F-2023-3043590, is granted.

2. That the Formal Complaint of Anthony Jackson at Anthony Jackson v. PPL Electric Utilities Corporation, Docket Number F-2023-3043590, is dismissed with prejudice.

3. That the Secretary's Bureau shall mark Docket Number F-2023-3043590 as closed.

Date: April 24, 2024

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/s/  
Alphonso Arnold III  
Administrative Law Judge