

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Danielle DeBold	:	
	:	
v.	:	C-2023-3043205
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision grants, with prejudice, 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 notice of the hearing and the opportunity to be heard.

HISTORY OF THE PROCEEDING

On or about September 20, 2023, Danielle DeBold (Complainant or Ms. Debold) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL). In her Formal Complaint, Ms. DeBold requested that she be given an affordable payment arrangement for the payment of outstanding charges on her PPL account.

On October 12, 2023, PPL filed an Answer to Ms. DeBold's Complaint. In its Answer, PPL averred that the Complainant was not entitled to a new payment arrangement. PPL requested that the Complaint be denied.

By Call-In Telephone Hearing Notice dated October 24, 2023, the Commission scheduled a telephonic hearing for December 27, 2023, beginning at 10:00 a.m. and assigning me as the Presiding Officer. Subsequently, by agreement of the parties, the December 27, 2023, hearing was canceled and rescheduled for March 14, 2024. A Call-In Telephone Cancellation/Reschedule Notice was served on the parties on December 1, 2023, confirming the rescheduling of the December 27, 2023, hearing to March 14, 2024. The December 1, 2023, notice instructed the parties that they may lose their case if they did not take part in the hearing and present evidence on the issues raised. The December 1, 2023, notice was eServed on Ms. DeBold via the Commission's eFiling system, to which she was enrolled.¹

Subsequently, on March 1, 2024, the Commission served on the parties a Prehearing Order that contained instructions for participation in the telephonic hearing. The Prehearing Order was eServed on Ms. DeBold via the Commission's eFiling system. The March 1, 2024 Prehearing Order again 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 March 14, 2024. 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. DeBold 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 March 18, 2024, and consists of a brief hearing transcript. No exhibits were admitted into the record. This Initial Decision grants the Motion made by PPL to dismiss, with prejudice, Ms. DeBold's Formal Complaint due to her failure to appear and prosecute her Complaint.

¹ Ms. DeBold indicated on her Formal Complaint form that she agreed to accept service of documents via the Commission's eFiling service and registered for the eFiling service.

FINDINGS OF FACT

1. The Complainant in this case is Danielle DeBold.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. On September 20, 2023, Ms. DeBold filed a Formal Complaint with the Commission against PPL.
4. On October 12, 2023, PPL filed an Answer to Ms. DeBold's Complaint.
5. On October 24, 2023, a Call-In Telephone Hearing Notice was served on the parties scheduling an initial call-in telephonic hearing for December 27, 2023, beginning at 10:00 a.m.
6. Subsequently, by agreement of the parties, the December 27, 2023 hearing was canceled and rescheduled for March 14, 2024.
7. On December 1, 2023, a Call-In Telephone Cancellation/Reschedule Hearing Notice was served on the parties confirming the rescheduling of the hearing from December 27, 2023, to March 14, 2024.
8. On March 1, 2024, a Prehearing Order containing instructions for participation in the telephonic hearing was served on the parties.
9. The Complainant is enrolled with the Commission's eFiling system for electronic service of documents.
10. Both the December 1, 2023, Hearing Notice and the March 1, 2024 Prehearing Order were served on the parties via the Commission's eFiling system.

11. 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.

12. Neither the Hearing Notice nor the Prehearing Order served on the Complainant were returned to the Commission as undeliverable.

13. By electronic mail dated March 7, 2024, 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.

14. The hearing convened as scheduled on March 14, 2024, beginning at 10:00 a.m.

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

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

17. Complainant has not contacted me or the Commission to explain why her failure to appear at the March 14, 2024, 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. DeBold requested an affordable payment arrangement. Therefore, Ms. DeBold 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. DeBold 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) (emphasis original).

The Hearing Notice and the Prehearing Order were served on Ms. DeBold via the Commission's eFiling 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 served to a party without 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).

No one appeared on behalf of Ms. DeBold at the hearing, nor did anyone on her behalf ever request a postponement or continuance of the hearing. As such, Ms. DeBold had notice of the hearing and had an opportunity to be heard in this proceeding but chose not to appear. Therefore, Ms. DeBold'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. DeBold 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. DeBold'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. DeBold'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).

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); 66 Pa.C.S. § 332(a).

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 Danielle DeBold against PPL Electric Utilities Corporation at Docket No. C-2023-3043205 for failure to prosecute is granted.

2. That the Formal Complaint filed by Danielle DeBold in Danielle DeBold v. PPL Electric Utilities Corporation at Docket No. C-2023-3043205 is hereby dismissed with prejudice.

3. That this matter be marked closed.

Date: June 18, 2024

_____/s/_____
Steven K. Haas
Administrative Law Judge