

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Wyatt Jackson	:	
	:	
v.	:	C-2023-3045133
	:	
PPL Electric Utilities	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision grants the Respondent’s motion to dismiss for failure to prosecute because the Complainant did not appear for the hearing.

HISTORY OF THE PROCEEDING

On December 27, 2023, Wyatt Jackson (Mr. Jackson or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities (PPL or Respondent). On the Formal Complaint form, Mr. Jackson checked the box indicating that the utility is threatening to shut off his service or had shut it off. Under “Other,” Mr. Jackson wrote:

PPL Electric Utilities required that I verify my identity using a government issued photo identification, however the only methods that they provided for sending this identification were fax and mail. Both fax and mail are unencrypted and are therefore unacceptable means of submitting sensitive identifying information. PPL Electric Utilities threatened to shut of my electric service if the identification was not provided. I

sent a fax with my driver's license, with much of the information redacted from the license due to the insecure nature of fax. After receiving this fax, PPL Electric Utilities still disconnected electric service.

The Complainant also stated that he wanted PPL Electric Utilities to cease requiring the sending of personal identification documents via insecure means such as mail or fax and make available a secure, encrypted method of submitting identification, or not require identification at all.

On January 16, 2024, Respondent filed its Answer (Answer). In the Answer, PPL stated that the company disconnected the Complainant's service when he did not provide government-issued photo ID. The company later restored service after Mr. Jackson provided identification. PPL also denied that fax and mail are unacceptable means of submitting sensitive identifying information.

On January 24, 2024, a Hearing Notice was mailed to all parties, setting an Initial Telephonic Hearing for March 21, 2024.

A Prehearing Order was issued on February 23, 2024. The Prehearing Order advised the Complainant of the procedures and stated the date and time of the hearing.

The hearing began as scheduled on March 21, 2024 at 10:00 a.m. Megan E. Rulli, Esquire represented PPL. The Complainant did not call in for the hearing. A recess was taken to allow the Complainant time to call into the hearing.

The hearing resumed at 10:20 a.m. The Complainant had not called in. Counsel for PPL moved that the Complaint be dismissed for failure to prosecute. This decision grants the PPL Motion to Dismiss.

The record closed as of April 11, 2024, when the 7-page transcript was received.

FINDINGS OF FACT

1. The Complainant is Wyatt Jackson, a PPL customer at 111 Mill Road, Narvon, Pennsylvania.
2. PPL is the Respondent.
3. On December 27, 2023, the Complainant filed a Formal Complaint.
4. The Respondent filed an Answer on January 16, 2024.
5. On the Complaint form, Mr. Jackson selected eFiling as the method by which he would receive all documents.
6. On January 24, 2024, a Hearing Notice was issued to all parties, setting an Initial Call-In Telephonic Hearing for March 21, 2024, beginning at 10:00 a.m.
7. The Hearing Notice advised all parties:

You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

8. On February 23, 2024, a Prehearing Order was issued, which advised the Complainant of the procedures and the date and time of the hearing and stated:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

9. Counsel for PPL called in for the March 21, 2024 hearing at 10:00 a.m.
10. The Complainant was not present when the telephonic hearing began as scheduled on March 21, 2024.
11. A recess was taken to allow the Complainant time to call in to the hearing.
12. The hearing resumed at 10:20 a.m. and the Complainant had not called in to the hearing.
13. Counsel for PPL moved to dismiss the Complaint for failure to prosecute.
14. The Complainant had not called into the hearing when the hearing adjourned at 10:25 a.m.
15. On the Formal Complaint form, Mr. Jackson selected to receive documents by eService.
16. Both the Hearing Notice and Prehearing Order were eServed on the Complainant to the email address he registered with the Commission.
17. None of the documents sent to the Complainant were returned to the Office of Administrative Law Judge (OALJ) as undeliverable.
18. Mr. Jackson has not contacted the OALJ to explain why his failure to appear at the hearing was unavoidable.

DISCUSSION

As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the

burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Further, 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). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016). Further, electronic service which is not indicated undeliverable is considered presumed to be received by the parties. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017) (*Morella*).

A Hearing Notice and a Prehearing Order were eServed to the Complainant. The Prehearing Order and the Hearing Notice contained information regarding the date, time and call-in information for the hearing. These documents were served upon the Complainant and none of these documents were returned as undeliverable. It is therefore presumed that the Complainant received these documents and had notice of the date and time of the scheduled hearing. *Zirkel; Morella*.

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, Docket No. C-2017-2633043, p. 6 (Opinion and Order entered July 18, 2018), "[o]nce 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," (citing, *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 October 25, 1993). The Complainant was notified of the scheduled hearing and did not appear. To date, the Complainant has not

contacted the Commission or the undersigned to explain why his failure to appear was unavoidable.¹ The Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, 1995 Pa.P.U.C. LEXIS 159 (Opinion and Order entered Dec. 26, 1995).

Finally, as the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief. 66 Pa.C.S. § 332(a). By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. The Complaint will be dismissed. *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 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. 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).

¹ 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).

5. 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).

6. The Complainant's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered Oct. 25, 1993); 52 Pa. Code § 5.245(a).

7. The Complainant failed to appear and failed to carry his burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities to dismiss the formal Complaint of Wyatt Jackson at Docket No. C-2023-3045133 is granted.

2. That the formal Complaint filed by Wyatt Jackson against PPL Electric Utilities at Docket No. C-2023-3045133 is dismissed for failure to prosecute.

3. That the Secretary's Bureau should mark this matter closed.

Date: July 8, 2024

_____/s/
Darlene Davis Heep
Administrative Law Judge