

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gary E. Phillips	:	
	:	
v.	:	C-2024-3046516
	:	
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 his Complaint despite having notice and an opportunity to be heard.

**HISTORY OF THE PROCEEDING**

On February 13, 2024, Gary E. Phillips (“Complainant”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission” or “PUC”) against PPL Electric Utilities Corporation (“PPL” or “Company”). Mr. Phillips checked the box “other” as the reason for his Complaint, and averred that his December 2022 bill was estimated. As relief, Mr. Phillips wanted the PUC to investigate this bill and all his other bills since then. In his Complaint, Mr. Phillips selected the option to receive all communications from the Commission via eService through an eFiling account he registered with the Commission.

On March 11, 2024, PPL timely filed an Answer. PPL admitted that the Company issued the Complainant an estimated bill on December 22, 2022, which overestimated Complainant's actual electric consumption for that billing period by 22 kWh (kilowatt hours). PPL averred Complainant's subsequent bill issued on January 20, 2023, was adjusted to "true-up" the overestimation from the previous bill. PPL also averred that all disputed bills were based off of actual meter readings, with the exception of the overestimated December 2022 bill, which was adjusted to reflect actual consumption on his subsequent January 2023 bill.

On March 13, 2024, an Interim Order was issued by the Chief Administrative Law Judge setting a resolution conference and referring this matter to a Mediator for informal resolution, if possible. Informal resolution was not successful.

On April 23, 2024, a Call-in Telephonic Hearing Notice was eServed on both parties scheduling an evidentiary hearing on Friday, June 6, 2024, and assigning me as the presiding officer. This same day, a corrected Hearing Notice was eServed on the parties correcting the date so that the hearing was scheduled for Friday, June 7, 2024.

On May 1, 2024, a Prehearing Order was eServed on both parties which, *inter alia*, reminded the parties of the June 7, 2024 hearing date and time. 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. On May 8, 2024, a corrected Prehearing Order was issued, which indicated that it was only correcting the proper name of the Company.

On May 23, 2024, I received an email from counsel for PPL, Peter J. Kramer, Esquire, copying the Complainant, explaining that PPL was requesting a continuance of the June 7, 2024 hearing date due to the unavailability of its witness on

that date. Attorney Kramer also indicated that after discussions with the Complainant, that he understood that the Complainant was not in agreement with PPL's continuance request. By email to both parties on May 24, 2024, I granted PPL's first request for a continuance.

On June 4, 2024, a Hearing Cancellation Notice was eServed on both parties cancelling the June 7, 2024 hearing.

On July 8, 2024, a Hearing Notice was eServed on both parties scheduling an evidentiary hearing on August 30, 2024, at 10:00 a.m. Like the prior Hearing Notice, this Hearing Notice provided the parties with the Toll-Free Bridge Number to call and the PIN to enter, for the parties to participate in the telephonic hearing, and explained the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint. Specifically, the Notice explained:

**FAILURE TO APPEAR:** 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.

July 8, 2024, Telephonic Evidentiary Hearings Notice.

On August 30, 2024, at 10:00 a.m., the hearing convened as scheduled. Attorney Kramer appeared on behalf of PPL, along with a witness, and the Company was prepared to proceed. The court reporter was also present. The Complainant did not appear at the start of the hearing. I recessed the hearing for approximately ten minutes to allow time for the Complainant to appear. However, since the Complainant did not subsequently appear, the hearing proceeded in his absence. No testimony was taken, and no exhibits were introduced for the record. At the hearing, Respondent moved to dismiss

the Complaint with prejudice for the Complainant's failure to appear and prosecute the Complaint. I took this 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).<sup>1</sup>

To date, no communication has been received by the undersigned or the Office of Administrative Law Judge ("OALJ") regarding the Complainant's absence to explain why his failure to appear at the hearing was unavoidable.

For the reasons discussed below, this decision grants PPL's oral motion made during the hearing to dismiss the Complaint with prejudice.

#### FINDINGS OF FACT

1. The Complainant is Gary Phillips, a customer who receives electric service from PPL Electric Utilities Corporation at his residence in Muncy, Pennsylvania (service address). Complaint ¶ 1.

2. The Respondent is PPL Electric Utilities Corporation, a jurisdictional Commission utility.

3. On February 13, 2024, Mr. Phillips filed a Formal Complaint against the Company, and the Company timely filed an Answer on March 11, 2024.

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<sup>1</sup> An eight-page hearing transcript was filed with the Commission on September 13, 2024.

4. In his Complaint, Mr. Phillips selected the option to receive all communications from the Commission via eService through an eFiling account he registered with the Commission. Complaint ¶ 9.

5. On April 23, 2024, a corrected Call-In Telephonic Hearing Notice was eServed on both parties scheduling an evidentiary hearing on June 7, 2024.

6. On May 1, 2024, a Prehearing Order was eServed on both parties which, *inter alia*, reminded the parties of the date and time of the scheduled hearing and the telephone number to call, and the passcode to enter, to participate in the hearing.

7. On June 4, 2024, a Hearing Cancellation Notice was eServed on both parties cancelling the June 7, 2024 hearing.

8. On July 8, 2024, a Hearing Notice was eServed on both parties scheduling an evidentiary hearing on August 30, 2024, at 10:00 a.m.

9. Both the Hearing Notices 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. Neither the Hearing Notices nor the Prehearing Order was returned to the Commission as undeliverable.

11. On August 30, 2024, at 10:00 a.m., the hearing convened as scheduled.

12. Counsel for the Company appeared on behalf of PPL, along with a witness, and the Company was ready to proceed at the August 30, 2024, hearing. A court reporter appeared as well.

13. The Complainant failed to appear and participate in the scheduled hearing on August 30, 2024.

14. The Complainant has not contacted the undersigned or the OALJ to explain why his 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. PUC*, 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*).

The record shows that the Complainant was provided notice and the opportunity to be heard. On July 8, 2024, the Complainant was eServed a Hearing Notice which advised the parties of the date and time of the hearing and with the Toll-Free Bridge Number to call and the PIN to enter, for the parties to participate. The Complainant was also eServed a Prehearing Order which provided various procedures that would govern the hearing. Both the Hearing Notice and Prehearing Order advised the parties, *inter alia*, how to request a continuance prior to the hearing if needed. Finally, both documents advised Complainant that failure to appear may result in dismissal with prejudice, explaining that Complainant would be barred from filing another complaint raising the same claim(s) and issues(s) presented in the dismissed complaint.

Further, the Commission's docketing system shows that the Complainant was successfully eServed the Hearing Notice and Prehearing Order, which was the method of service that the Complainant selected to receive all communications from the Commission. No document eServed on the Complainant was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Complainant were received by Complainant. *Hu v. PECO Energy Co.*, No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

Both the Public Utility Code (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, the Complainant failed to appear for the hearing despite receiving notice and the undersigned allowing additional time for the Complainant to appear. To date, no communication has been received by the undersigned or OALJ 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 his failure to appear, the Complainant did not meet his 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. 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. UGI Utils., Inc.*, No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

Accordingly, consistent with the Code, Commission regulation and precedent, the Company's oral 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. PUC*, 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. 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).
  
5. 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. 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. UGI Utils., Inc.*, No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

6. The Complainant's due process rights have been fully protected and the Complainant's failure to appear was not unavoidable. *Schneider v. Pa. PUC*, 479 A.2d 10 (Pa. Cmwlth. 1984); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. 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).

8. The Complainant has failed to meet his burden of proof.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of PPL Electric Utilities Corporation to dismiss with prejudice the Formal Complaint of Gary Phillips at Docket No. C-2024-3046516 is granted.

2. That the Formal Complaint of Gary Phillips, filed against PPL Electric Utilities Corporation, at Docket No. C-2024-3046516, is dismissed with prejudice.

3. That the docket at Docket No. C-2024-3046516 be marked closed.

Date: October 24, 2024

\_\_\_\_\_/s/  
Gail M. Chiodo  
Administrative Law Judge