

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Priscilla Dunn	:	
	:	
v.	:	F-2024-3049612
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Alphonso Arnold III
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Priscilla Dunn against PPL Electric Utilities Corporation due to her failure to appear for the telephonic evidentiary hearing to prosecute her Formal Complaint.

HISTORY OF THE PROCEEDING

On June 4, 2024, Priscilla Dunn (“Ms. Dunn” or “Complainant”) filed a Formal Complaint against PPL Electric Utilities Corporation (“PPL” or “Respondent”) with the Pennsylvania Public Utility Commission (“Commission”), alleging that there were incorrect charges on her bills. Ms. Dunn asserted in her Complaint that she has paid her bills in full and that there should not be a balance on her account. Ms. Dunn further

asserted that PPL did not remove her from budget billing when she asked and that her bills are confusing to read. The Complaint was served on PPL on June 18, 2024.¹

On paragraph 9 of the Complaint form titled “Three Options to Receive Documents – Choose One,” Ms. Dunn checked the option indicating that she agreed to open and use an eFiling account and receive service of Commission documents electronically through eService. Complaint ¶ 9.

On July 8, 2024, PPL filed an Answer to the Complaint, wherein it admitted or denied the assertions in the Complaint.

On July 9, 2024, the Commission issued an Initial Call-In Telephonic Hearing Notice scheduling an evidentiary hearing to be held in this matter for August 19, 2024, and assigning the undersigned as Presiding Officer to this proceeding.

On July 29, 2024, the Commission issued my Prehearing Order, which set forth the procedural rules that would govern the evidentiary hearing.

On August 20, 2024, the evidentiary hearing was held as scheduled.² Attorney Megan Rulli appeared on behalf of PPL with a witness and was prepared to

¹ The Complaint is a timely appeal of a decision by the Commission’s Bureau of Consumer Services (BCS) at BCS No. 3966908. The timely appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

² Due to a conflict in my schedule, the Commission issued a Judge Change Notice on August 15, 2024, reassigning the Presiding Officer of this case from the undersigned to Administrative Law Judge (“ALJ”) Dennis Buckley. The Notice further rescheduled the evidentiary hearing from August 19, 2024, to August 20, 2024. The conflict in my schedule was resolved in advance of this hearing. Therefore, I presided over the August 20, 2024, hearing. On September 27, 2024, the Commission issued a Judge Change Notice formally reassigning this matter from ALJ Buckley to me.

proceed. Ms. Dunn did not appear for the hearing, even after the hearing was delayed until 10:10 a.m. Attorney Rulli made a Motion to Dismiss the Complaint for failure of Ms. Dunn to appear and prosecute her Complaint.

On September 10, 2024, a 7-page electronic transcript of the August 20, 2024, evidentiary hearing was filed with the Commission. The record in this matter was closed on this date.

For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. Complainant is Priscilla Dunn.
2. Respondent is PPL Electric Utilities Corporation.
3. On June 4, 2024, Complainant filed a Complaint with the Commission against Respondent.
4. On July 8, 2024, Respondent filed an Answer to the Complaint.
5. On July 9, 2024, the Commission issued an Initial Call-In Telephonic Hearing Notice scheduling an evidentiary hearing to be held in this matter for August 19, 2024, and assigning the undersigned as Presiding Officer to this proceeding.
6. On July 29, 2024, the Commission issued my Prehearing Order, which set forth the procedural rules that would govern the evidentiary hearing.

7. On August 15, 2024, the Commission issued a Judge Change Notice, reassigning the Presiding Officer of this case from ALJ Alphonso Arnold III to ALJ Dennis Buckley. The Notice further rescheduled the evidentiary hearing from August 19, 2024 to August 20, 2024.

8. The August 15, 2024, Judge Change Notice provided the Parties with the conference and PIN numbers for participation in the August 20, 2024, 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.

9. All Commission documents, including the August 15, 2024, Judge Change Notice, in this matter were eServed to the Parties, as both Parties affirmatively agreed to receive eService of Commission documents by registering with the Commission's electronic filing system.

10. The Commission's internal electronic activity indicates that the August 15, 2024, Judge Change Notice was successfully eServed to Complainant.

11. Complainant failed to appear and participate in the August 20, 2024, evidentiary hearing.

DISCUSSION

Legal Standards

Due Process and Notice

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) (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. *Id.*

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). Further, electronic service which is not indicated as undeliverable is presumed to be received by the parties. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Order entered Jan. 27, 2017) (“*Zirkel*”); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Order entered Nov. 16, 2016) (“*Morella*”).

Failure to appear for a hearing

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) (“*Mumma*”).

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).

Moreover, the Commission will exercise its discretion and excuse a complainant’s failure to appear at a hearing if the complainant demonstrates that he/she made a good faith attempt to attend the hearing. *See, e.g., Then v. Phila. Gas Works*, Docket No. F-2012-2318264 (Opinion and Order entered June 13, 2013) (vacating ALJ’s

decision to dismiss complaint with prejudice and remanded for hearing because complainant attempted to attend the scheduled hearing, and appeared in the correct building, but was unable to locate the hearing room in the building due to language challenges).

However, if a complainant's failure to appear was not unavoidable, or if the complainant did not make a good faith attempt to attend the duly scheduled hearing, the Commission has recognized that any further procedural activity in the docket would prejudice the public interest due to the wasteful use of the agency's and the respondent's time and resources in addressing the complaint. *See Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892, at 5 (Order entered Dec. 26, 1995) (“*Jefferson*”). In such instances, to preserve judicial economy, the Commission typically will dismiss a complaint, *with prejudice*, barring the complainant from filing another complaint raising the same claims and issues presented in the dismissed complaint. *Id.*

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 is the “preponderance of the evidence” standard. *Suber v. Pa. Comm’n on Crime and Delinq.*, 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 evidence that is more convincing, by even the smallest amount, than 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, to establish a legally sufficient claim, 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 Commission-approved tariff. 66 Pa.C.S. § 701.

Analysis

Complainant received notice and the opportunity to be heard in this proceeding. Complainant agreed to receive service of Commission documents in this proceeding through eService when she agreed to open and use an electronic filing account through the Commission's website. Complaint ¶ 9. On August 15, 2024, the Commission eServed a Judge Change Notice to Complainant via the email address that she provided to the Commission when opening her electronic filing account. The Commission's internal electronic activity indicates that the document was successfully eServed to Complainant. Therefore, Complainant is presumed to have received the Notice. *Zirkel; Morella*.

The Notice contained the date and time of the August 20, 2024, evidentiary hearing; therefore, Complainant had notice of the date and time of the August 20, 2024, evidentiary hearing. Notably, the Notice indicated that the hearing would take place telephonically, that the Parties would need to call a conference line and then enter a PIN number to participate in the hearing, and that the Complainant would lose her case if she failed to appear for the hearing and present evidence on the issues raised.

As Complainant was provided notice and the opportunity to be heard, it was her responsibility to appear and participate in the hearing. *Mumma*. Complainant failed to appear for the August 20, 2024, evidentiary hearing. To date, Complainant has not contacted the Office of Administrative Law Judge or me to explain her absence from the hearing. Therefore, Complainant's absence from the hearing was not unavoidable,

nor can a finding be made that Complainant made a good faith effort to participate in the hearing.

Complainant, as the party with the burden of proof, failed to meet her burden because she failed to participate in the hearing to proffer evidence in support of her Complaint. Thus, it is appropriate to dismiss the Complaint. *Jefferson*. Respondent's Motion to Dismiss will be granted in the Ordering paragraphs below.

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 them; 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. A Notice eServed 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. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Order entered Jan. 31, 2017).

4. 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).

5. If there are no facts in the record that a party’s failure to appear at a hearing was unavoidable, the complaint should be dismissed. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

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

7. By failing to appear for the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet her burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PPL Electric Utilities Corporation’s Motion to Dismiss the Complaint for failure of Ms. Dunn to appear at hearing and prosecute her Complaint is granted.

2. That the Formal Complaint of Priscilla Dunn in the matter of Priscilla Dunn v. PPL Electric Utilities Corporation, Docket No. F-2024-3049612, is dismissed.

