

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mark Yaskowea	:	
	:	
v.	:	F-2024-3049460
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Alphonso Arnold III
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Mark Yaskowea against PPL Electric Utilities Corporation due to his failure to appear for the telephonic evidentiary hearing to prosecute his Formal Complaint.

HISTORY OF THE PROCEEDING

On May 28, 2024, Mark Yaskowea (“Mr. Yaskowea” or “Complainant”) filed a Formal Complaint against PPL Electric Utilities Corporation (“PPL” or “Respondent”) with the Pennsylvania Public Utility Commission (“Commission”),

alleging that PPL billed him illegally and fraudulently. The Complaint was served on PPL on June 7, 2024.¹

On paragraph 9 of the Complaint form titled “Three Options to Receive Documents – Choose One,” Mr. Yaskoweak checked the option indicating that he agreed to receive service of Commission documents by email. Complaint ¶ 9.

On June 27, 2024, PPL filed an Answer to the Complaint, wherein it admitted or denied the allegations in the Complaint.

On July 8, 2024, the Commission served an Initial Telephonic Hearing Notice (“Notice”) scheduling an evidentiary hearing to be held in this matter for September 12, 2024, and assigning me as Presiding Officer to this proceeding. The Notice provided the conference and PIN numbers for participation in the hearing. The Notice also 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 August 19, 2024, the Commission served my Prehearing Order (“Order”), which reminded the Parties of the date and time of the evidentiary hearing, set forth the procedural rules that would govern the evidentiary hearing, and provided the Parties with the conference and PIN numbers for participation in the hearing. The Order also 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 September 12, 2024, the evidentiary hearing was held as scheduled. Attorney Nicholas A. Stobbe 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. 3955048. The timely appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

proceed. Mr. Yaskowweak did not appear for the hearing, even after the hearing was delayed until 10:11 a.m. Attorney Stobbe made a Motion to Dismiss the Complaint for failure of Mr. Yaskowweak to appear and prosecute his Complaint. The hearing concluded without Mr. Yaskowweak calling in to participate in the hearing.

On September 24, 2024, a 7-page electronic transcript of the September 12, 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 Mark Yaskowweak.
2. Respondent is PPL Electric Utilities Corporation.
3. On May 28, 2024, Complainant filed a Complaint with the Commission against Respondent.
4. On June 27, 2024, Respondent filed an Answer to the Complaint.
5. On July 8, 2024, the Commission served an Initial Telephonic Hearing Notice scheduling an evidentiary hearing to be held in this matter for September 12, 2024, and assigning me as Presiding Officer to this proceeding.
6. On August 19, 2024, the Commission served my Prehearing Order, which set forth the procedural rules that would govern the evidentiary hearing.

7. The Notice and Order contained the date of the evidentiary hearing, the conference and PIN numbers for participation in the hearing, and a warning to 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 Notice and Order were served by the Commission to Complainant by email, as Complainant chose to receive service of Commission documents by email on his Complaint form. Complaint ¶ 9.

9. The Commission's internal docketing system contains no indication that the Notice or Order failed to be served to Complainant's email address.

10. Complainant failed to appear and participate in the September 12, 2024, evidentiary hearing.

11. Complainant has not contacted the Commission to explain why his failure to appear at the hearing was unavoidable.

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, service made by email which is not returned as undeliverable is presumed to be received. *Skow v. Met-Ed*, Docket No. F-2023-3042228 (Order entered May 7, 2024) (“*Skow*”).

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 December 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 Delinquency*, 885 A.2d 678, 682 (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 email as he selected that option for Commission service on his Complaint form. Therefore, the Notice and Order issued in this matter were served to Complainant to his email address. The Commission's internal docketing system contains no indication that the Notice or Order failed to be served to Complainant's email address. Therefore, Complainant is presumed to have received the Notice. *Skow*.

The Notice and Order contained the date and time of the September 12, 2024, evidentiary hearing; therefore, Complainant had notice of the date and time of the September 12, 2024, evidentiary hearing. Notably, the Notice and Order 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 his case if he 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 his responsibility to appear and participate in the hearing. *Mumma*. Complainant failed to appear for the September 12, 2024, evidentiary hearing. To date, Complainant has not contacted the Office of Administrative Law Judge or me to explain his 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 his burden because he failed to participate in the hearing to proffer evidence in support of his 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 emailed to a party's email address provided to the Commission with no notification that service failed to be delivered to that email address is presumed to have been received. *Skow v. Met-Ed*, Docket No. F-2023-3042228 (Order entered May 7, 2024).
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 his burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Mark Yaskowek in the matter of Mark Yaskowek v. PPL Electric Utilities Corporation, Docket No. F-2024-3049460, is dismissed.

2. That the Secretary's Bureau shall mark Docket No. F-2024-3049460 as closed.

Date: December 19, 2024

/s/
Alphonso Arnold III
Administrative Law Judge