

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Probiton	:	
	:	
v.	:	C-2024-3050147
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

**INTRODUCTION**

This Decision dismisses the Formal Complaint of Jennifer Probiton with prejudice because the Complainant did not participate in the hearing, after initially calling in and then dropping off, and did not provide a reason explaining why her failure to rejoin and participate in the hearing was unavoidable.

**HISTORY OF THE PROCEEDING**

On July 8, 2024, Jennifer Probiton (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent or PPL) regarding her electric service at her residence at 34 South Hoffman Blvd., Ashland PA 17921 (service address). Ms. Probiton checked the boxes on the complaint form indicating that (1) the utility was threatening to terminate her service, or it had already done so, (2) she would like a payment arrangement, and (3) “other,” alleging that “I need a payment plan that I can

afford. I cannot afford anything PPL offers me and I cannot have my power shut off because I will lose my child.” Ms. Prohibition also checked the box indicating that her complaint was an appeal from a decision of the PUC’s Bureau of Consumer Services (BCS).<sup>1</sup> Regarding service, the Complainant marked that she agreed to receive all documents by email. Complaint ¶ 9.

On August 7, 2024, the Respondent filed an Answer in which it denied the material allegations of fact and conclusions of law in the Complaint. The Respondent admitted that the Complainant is seeking a payment arrangement with PPL and that PPL issued a termination notice to the Complainant on July 3, 2024. The Respondent requested that the Complaint be denied with prejudice.

By Initial Call-In Telephonic Hearing Notice dated August 13, 2024, a telephonic hearing was scheduled for October 2, 2024, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the telephonic hearing. The Hearing Notice further stated as follows:

**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.

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<sup>1</sup> The Complaint is an untimely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3985111, which established a payment agreement. A Notification of Intent to Appeal BCS Decision and Request for Formal Complaint Forms was timely filed on May 28, 2024. 52 Pa. Code § 56.172(a). The Formal Complaint was not timely filed, however, as it was due by June 27, 2024, and not received by the Secretary’s Bureau until July 8, 2024. An appeal is considered timely if filed within 30 days of the mailing of the formal complaint form. 52 Pa. Code § 56.172(c).

**CONTINUANCES.** You may request a continuance of the hearing if you have a good reason. All continuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

Also on August 13, 2024, a Prehearing Order was issued. The Prehearing Order reminded the parties of the date and time of the hearing, directed the parties to comply with various procedural requirements, including how to request a continuance, and advised that the Complainant could lose the case for failure to participate in the hearing and present facts on the issues raised.

The Hearing Notice and Prehearing Order were both emailed to the Complainant in the ordinary course of the Commission’s business to the email address provided by her. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

On October 2, 2024, the hearing convened as scheduled. Ms. Prohibition was present. Nicholas A. Stobbe, Esquire, appeared on behalf of PPL. Before going on the record, the parties expressed interest in having a settlement discussion. I explained that either I could step out of the room and let the parties talk among themselves, or I could participate in the settlement discussion as a Settlement Judge with the understanding that if the case did not settle, then I would serve as the Hearing Judge. Both parties indicated that they agreed with me participating in a settlement discussion as a Settlement Judge. At that point, Ms. Prohibition dropped off the call.

We waited for a period of time to see if the Complainant would rejoin the call and, additionally, the Office of Administrative Law Judge called the telephone

number provided by Ms. Prohibition on the Complaint, but no one answered that call. After a short recess to allow time for the Complainant to appear, the hearing reconvened at 10:15 a.m. in the Complainant's absence. No testimony was taken, and no exhibits were introduced into the record. At the hearing, the Respondent moved to dismiss, with prejudice, the Complaint for the Complainant's failure to appear and prosecute her case. I took this motion under advisement.

Given that the Complainant initially called into the hearing, I advised the Respondent that I would wait at least a week before ruling on the motion in case the Complainant contacted me or the Commission's Office of Administrative Law Judge (OALJ) to provide a reasonable explanation for why she dropped off the call and did not reconnect. The Complainant never contacted me or the OALJ. I closed the record on October 21, 2024.

#### FINDINGS OF FACT

1. The Complainant is Jennifer Prohibition.
2. The Respondent is PPL Electric Utilities Corporation.
3. On July 8, 2024, the Complainant filed a Formal Complaint against the Respondent.
4. On August 7, 2024, PPL filed an Answer to the Complaint.
5. By Initial Call-In Telephonic Hearing Notice dated August 13, 2024, a telephonic hearing was scheduled for October 2, 2024, at 10:00 a.m.
6. On August 13, 2024, a Prehearing Order was issued that reminded

the parties of the date and time of the hearing, directed the parties to comply with various procedural requirements, including how to request a continuance, and advised that the Complainant could lose the case for failure to participate in the hearing and present facts on the issues raised.

7. The Hearing Notice and Prehearing Order were both emailed to the Complainant in the ordinary course of the Commission's business to the email address provided by her on her Complaint form.

8. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

9. On October 2, 2024, the hearing convened as scheduled. Tr. 4-10.

10. The Complainant called into the October 2, 2024, hearing by 10:00 a.m. but dropped off the call at the time I asked the court reporter to begin transcribing for the record. Tr. 4, 6.

11. Neither the Complainant nor a representative called back into the hearing by the time the hearing adjourned at 10:25 a.m. Tr. 4-10.

12. The Complainant failed to participate in the scheduled telephonic hearing on October 2, 2024. Tr. 4, 7.

13. Counsel for PPL was present and prepared to proceed at the October 2, 2024, hearing. Tr. 7-10.

14. As of the close of the record, the Complainant has not contacted the Commission to explain why her failure to rejoin and participate in 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. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Id.*

The record shows that Complainant was provided notice and the opportunity to be heard. Ms. Prohibition affirmatively signed up to receive service by email in this proceeding. Complaint ¶ 9. The Hearing Notice and Prehearing Order were served on Complainant by email to the address she provided to the Commission in her Formal Complaint. Tr. 6. No correspondence was returned to the Commission as undeliverable. Moreover, the Complainant actually connected to the October 2, 2024, hearing for a short period of time before she dropped off. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 2024); *Fonzo v. PPL Elec. Utils. Corp.*, Docket No. F-2023-3041304 (Final Order entered Jan. 17, 2024); *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Philadelphia 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). There is no question that she was aware of the date and time of the hearing, since she initially connected to the call at the scheduled time.

The Hearing Notice and the Prehearing Order, in addition to providing instructions for how to connect to the telephonic Hearing, advised the Complainant that the case could be dismissed if she did not call in and participate in the hearing. The Hearing Notice also provided a phone number for the OALJ. After initially connecting, the Complainant dropped off and did not subsequently reconnect and participate in the October 2, 2024, hearing. Tr. 4-10. Once a hearing is scheduled and the parties are duly notified 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. 28, 2002). During the hearing, counsel for PPL moved to have the Complaint dismissed with prejudice because the Complainant did not participate in the hearing. Tr. 9.

Both the Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at and participate in a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing and shall not be permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). However, these provisions do not apply if the presiding officer determines that the party's failure to appear at the hearing 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. *Id.*

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). When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed. *Brown v. PGW Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022) (*Brown*); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022) (*Little*); *Williams v. PGW Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order

entered Mar. 14, 2019) (*Williams*); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995) (*Jefferson*); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

In this case, the Complainant did not participate in the evidentiary hearing, despite receiving proper service and despite the undersigned allowing additional time for the Complainant to reconnect to the hearing. Further, as noted, the OALJ called her telephone number shortly after she dropped off the call, but she did not answer. Accordingly, I have no basis to find that her failure to participate was unavoidable. As of the close of the record, there has been no communication with the OALJ or me by, or on behalf of, the Complainant explaining why the Complainant's failure to appear at and participate in the hearing was unavoidable. Consequently, I find the Complainant waived the opportunity to participate in a hearing on the matters raised in the Complaint, the Complainant's absence was not unavoidable, and the Complaint should be dismissed.

Finally, 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). 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. Philadelphia 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). 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. Complainant has the burden of proof in this proceeding as the party seeking relief.

As the proponent of any request for relief, the Complainant bears the burden of proof. By failing to participate and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Thus, it is appropriate to dismiss the Complaint. *Brown; Williams* (citing *Jefferson*).

Accordingly, the Respondent's motion to dismiss 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 it; 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).

3. Notice served to a party with no notification that service failed is presumed received. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 2024); *Fonzo v. PPL Elec. Utils. Corp.*, Docket No. F-2023-3041304 (Final Order entered Jan. 17, 2024); *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Philadelphia 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).

4. 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 and

shall not be permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

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. *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022); *Brown v. PGW 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. PGW 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).

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

7. 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. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

8. 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); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

