

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Kowalski Jr.	:	
	:	
v.	:	C-2024-3049830
	:	
PPL Electric Utilities Corporation	:	

William Kowalski Jr.	:	
	:	
v.	:	C-2024-3050487
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaints of William Kowalski Jr. against PPL Electric Utilities Corporation with prejudice because Mr. Kowalski failed to appear for his hearing and prosecute his Formal Complaints. PPL’s request that Mr. Kowalski be barred from filing further informal and formal complaints with the Commission is denied.

HISTORY OF THE PROCEEDING

On June 28, 2024, William Kowalski Jr. (Mr. Kowalski or Complainant) filed a Formal Complaint against PPL Electric Utilities Corporation (PPL or Company) regarding his PPL account ending in 7016. The Formal Complaint was served on PPL on July 1, 2024 and docketed at C-2024-3049830. In his Complaint, Mr. Kowalski states that he has a payment agreement with PPL and he requests an extension to make a payment from July 1, 2024 until July 6, 2024. Mr. Kowalski states that he has been unable to speak with PPL regarding his requested extension and he has been current and paid timely on his agreement with PPL.

On July 22, 2024, PPL filed an answer to Mr. Kowalski's Formal Complaint at Docket No. C-2024-3049830. In its answer, PPL admits that Mr. Kowalski entered into a payment agreement with the Company to resolve a previously filed formal complaint. PPL denies that Complainant has been current on the payment agreement or that he has spoken with a customer service representative of PPL to request an extension.

On August 5, 2024, the Commission issued an initial telephonic hearing notice setting a call-in telephonic hearing for this matter for October 11, 2024 at 10:00 a.m. In anticipation of that hearing, I issued a prehearing order on August 6, 2024, setting forth various rules that would govern the October 11, 2024 hearing.

On July 31, 2024, Mr. Kowalski filed a second Formal Complaint against PPL regarding his PPL account ending in 7016. The Formal Complaint was served on PPL on August 1, 2024 and docketed at C-2024-3050487. In his Complaint, Mr. Kowalski states that he has a payment agreement with PPL and he tried contacting the Company numerous times. Mr. Kowalski also states that he recently lost his job and he requests that a representative of PPL contact him regarding a new payment agreement.

On August 21, 2024, PPL filed an answer to Mr. Kowalski's second Formal Complaint at Docket No. C-2024-3050487. In its answer, PPL admits that Mr. Kowalski entered into a payment agreement with the Company to resolve a previously filed formal complaint. PPL denies that it has not provided the Complainant with reasonable customer service or that the Complainant has contacted the Company during normal business hours to request a new payment agreement.

Also on August 21, 2024, PPL filed a motion to consolidate the proceedings at Docket Nos. C-2024-3049830 and C-2024-3050487. On August 21, 2024, the Commission issued a motion judge assignment at Docket No. C-2024-3050487, assigning me to decide PPL's motion to consolidate. No response was filed to PPL's motion to consolidate. On September 11, 2024, I issued an order granting PPL's motion to consolidate.

On September 11, 2024, the Commission issued an initial telephonic hearing notice setting a call-in telephonic hearing for this consolidated matter for October 11, 2024 at 10:00 a.m. In anticipation of that hearing, I issued a prehearing order on September 11, 2024, setting forth various rules that would govern the October 11, 2024 hearing.

The initial hearing convened on October 11, 2024, as scheduled. Megan E. Rulli, Esquire, appeared on behalf of PPL along with one witness. Complainant did not appear, and no one appeared on behalf of Complainant. At the hearing, Counsel for PPL made an oral motion to dismiss the Formal Complaints with prejudice. Counsel also requested that Mr. Kowalski be barred from filing further informal and formal complaints with the Commission.

The record in this proceeding consists of the transcript of thirteen pages. The record closed on October 25, 2024, upon my receipt of the hearing transcript. For

the reasons discussed below, PPL's motion will be granted, and the Formal Complaints will be dismissed with prejudice. However, PPL's request that Mr. Kowalski be barred from filing further informal and formal complaints with the Commission will be denied.

FINDINGS OF FACT

1. The Complainant in this proceeding is William Kowalski Jr.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. Mr. Kowalski elected to be served via eService in this proceeding. Complaint ¶ 9.
4. The September 11, 2024 hearing notice was eServed on Complainant.
5. The September 11, 2024 hearing notice states that a party may lose the case if they do not take part in the hearing and present facts on the issues raised.
6. The September 11, 2024 prehearing order was eServed on Complainant.
7. The September 11, 2024 prehearing order indicated what needed to be done to request a continuance of a hearing and stated that a party may lose the case if they do not take part in the hearing and present facts on the issues raised.
8. No electronic mail delivery failure notification was received by the Commission indicating that the documents served on Mr. Kowalski did not reach him.

9. The telephonic hearing convened on October 11, 2024, as scheduled. Tr. 1-13.

10. PPL appeared at the October 11, 2024, hearing. Tr. 1-13.

11. No one appeared on behalf of Mr. Kowalski at the October 11, 2024 telephonic hearing. Tr. 1-13.

12. Complainant did not file a motion for continuance or otherwise notify the Office of Administrative Law Judge that he was unavailable for the October 11, 2024 hearing.

13. Complainant did not contact the Office of Administrative Law Judge to explain why his failure to attend the October 11, 2024 hearing was unavoidable.

14. During the October 11, 2024, hearing, counsel for PPL made an oral motion to dismiss Mr. Kowalski's Formal Complaints with prejudice. Tr. 5.

DISCUSSION

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. 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). 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.

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 afforded notice and the opportunity to be heard. *Id.*

Mr. Kowalski affirmatively signed up to receive service by eService in this proceeding. The hearing notice and prehearing order were served on Complainant by eService. No correspondence was returned to the Commission as undeliverable. Tr. 4-5. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *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).

The hearing notice and the prehearing order served on the parties to this proceeding state that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. Mr. Kowalski did not appear at the October 11, 2024 hearing. Once notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); 66 Pa.C.S. § 332(f). During the hearing, counsel for PPL moved to have the Formal Complaints dismissed with prejudice because Mr. Kowalski did not appear. Tr. 5.

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). The Commission has held that 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.*, 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. PECO 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); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

In this proceeding, Mr. Kowalski did affirmatively agree to accept service via eService. Mr. Kowalski did not appear for the evidentiary hearing, despite receiving proper service, and there is no evidence in the record to find his failure to appear was unavoidable. Consequently, PPL's motion to dismiss Mr. Kowalski's Formal Complaints will be granted, and the Formal Complaints will be dismissed with prejudice.

During the October 11, 2024 hearing, counsel for PPL additionally requested that Mr. Kowalski be barred from filing further complaints with the Commission, either formal or informal, because Complainant allegedly has a pattern of filing both informal and formal complaints that is a misuse of the Company's customer complaint procedures and is an abuse of the administrative process. To support PPL's position, counsel stated that Mr. Kowalski has filed 25 informal complaints with the Commission's Bureau of Consumer Services since 2007. Tr. 7-8. Counsel for PPL also cites to the Formal Complaints at Docket Nos. C-2023-3043264 and C-2024-3048154 to support the Company's request. Tr. 8.

The Commission has consistently held that a party can be precluded from filing additional formal or informal complaints if there is an abuse of the administrative process. *See Sanford v. Phila. Gas Works*, Docket No. C-2019-3009831 (Final Order entered Aug. 10, 2020); *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered Apr. 23, 2014); *see also, Argento's Pizza v. Phila. Gas Works*, Docket No. C-2009-2138055 (Final Order entered Oct. 1, 2010) (*Argento's Pizza*). In *Seidenstricker v. Metropolitan Edison Co.*, Docket No. F-2008-2019388 (Final Order entered July 28, 2009), the Commission precluded the filing of further complaints pertaining to the same account until the arrearage was paid in full after finding that complainant had abused the administrative process by using the Commission's procedures to prevent termination of service while receiving utility service and accruing a large outstanding balance. Similarly, in *Manu v. The Bell Telephone Co. of Pennsylvania*, Docket No. F-09029141 (Final Order entered May 9, 1994), the Commission found an abuse of process had occurred and it precluded Complainants from filing further complaints, formal or informal, until their arrearages were paid in full. The factors to be considered as put forth in the *Argento's Pizza* case include the following: 1) the number and nature of complaints; 2) the number of defaulted payments; 3) the use of tactics to avoid payments and service terminations that became due; and 4) the history of payments.

Based on the record of this proceeding, I decline to grant PPL's request that Mr. Kowalski be barred from filing further complaints with the Commission. Although PPL does not have the burden of proof in this proceeding, Commission decisions must still be supported by substantial evidence. 2 Pa.C.S. ¶ 704; *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980). Counsel for PPL alleges that Mr. Kowalski has filed 25 informal complaints with the Commission since 2007. However, there is no evidence in the record of these informal complaints other than counsel's unsworn assertions. Similarly, there is no evidence in the record to show that the two Formal Complaint proceedings cited by counsel for PPL show an abuse of process.

Counsel's assertions may be proven true through presentation of evidence as contemplated by Commission regulations, but, absent substantial record evidence of the same, I cannot grant PPL's request to bar Mr. Kowalski from filing further complaints with the Commission.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in 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. 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).

4. The degree of proof required to satisfy the burden of proof is a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

5. 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).

6. 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 afforded notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

7. Complainant's due process rights have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

8. By failing to participate in the hearing and proffer any evidence to support the complaint, Mr. Kowalski has failed to carry his burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the Formal Complaints filed by William Kowalski Jr. at Docket Nos. C-2024-3049830 and C-2024-3050487 with prejudice is granted.

2. That the Formal Complaints of William Kowalski Jr. in *William Kowalski Jr. v. PPL Electric Utilities Corporation* at Docket Nos. C-2024-3049830 and C-2024-3050487 are dismissed with prejudice.

