

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Hickey	:	
	:	
v.	:	C-2024-3050188
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Decision denies the Formal Complaint of David Hickey because he failed to appear at the scheduled hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On July 18, 2024, David Hickey (Mr. Hickey or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL, Company, or Respondent) alleging that the utility is threatening to shut off or has already shut off his electric service and that he would like a payment agreement. As relief, the Complaint requests that the Commission review his bill to confirm that the charges are correct and establish a payment arrangement on his behalf.

On August 8, 2024, the Company filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

An Initial Call-in Telephonic Hearing Notice issued August 21, 2024, notified the parties that an initial call-in telephone hearing was scheduled on October 8, 2024, at 1:00 p.m., and that the matter was assigned to me. The Hearing Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

On August 26, 2024, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing and provided instructions for calling in to the hearing. In addition, the Prehearing Order warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”** (Emphasis in the original).

The Initial Call-in Telephonic Hearing Notice and the Prehearing Order were served electronically upon the Complainant at the email address that he provided to and registered with the Commission.¹ Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

¹ On the Formal Complaint form, the Complainant checked the box to receive all documents by eService.

When Complainant registered for an eFiling account he agreed to the following terms and conditions:

I agree that I will accept electronic service in the Commission proceeding in which I am a party of record. By creating this account, notification of filings via electronic mail shall constitute valid service of Commission documents. I understand that such electronic service of any and all documents will be substituted for service by mail.

The hearing convened as scheduled on October 8, 2024. Nicholas Stobbe, Esq. appeared representing the Respondent, with two witnesses prepared to participate in the hearing. The Complainant failed to call in. A recess was taken to allow the Complainant approximately an additional ten minutes to call in, but he failed to do so.

At the hearing, counsel for the Company moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. The Motion was held in abeyance.

The record in this matter closed on October 23, 2024, upon receipt of the hearing transcript. To date, there has been no contact or communication from Mr. Hickey with me or anyone else at the Commission regarding his failure to appear at the October 8, 2024 hearing.

FINDINGS OF FACT

1. The Complainant is David Hickey.
2. The Respondent is PPL Electric Utilities Corporation.

agree to be served via email with all subsequent filings. I agree that email notices will be sent on the same day the document is posted.

By clicking on the 'Create Account' button below, [I am] agreeing to all the Terms and Agreements listed above.

eFiling Registration Page, <https://efiling.puc.pa.gov/Accounts/Create?accountType=I> (last visited January 2, 2025).

3. On July 18, 2024, Mr. Hickey filed a Formal Complaint against the Company alleging that the utility is threatening to shut off or has already shut off his electric service and that he would like a payment agreement.

4. Complainant selected to receive all documents from the Commission electronically through the Commission's eService program. Complaint ¶ 9.

5. As relief, the Complaint requests that the Commission review his bill to confirm that the charges are correct and establish a payment arrangement on his behalf.

6. On August 8, 2024, PPL filed an Answer.

7. An Initial Call-in Telephonic Hearing Notice dated August 21, 2024, notified the parties that an initial call-in telephone hearing was scheduled for October 8, 2024, at 1:00 p.m.

8. The Initial Call-In Hearing Notice stated, "You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised." August 21, 2024 Initial Call-In Hearing Notice, p. 1.

9. A Prehearing Order dated August 26, 2024, directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing and provided instructions for calling in to the hearing.

10. The August 26, 2024 Prehearing Order warned in bold type: "**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**" August 26, 2024 Prehearing Order, ¶ 1 (emphasis in the original).

11. The Hearing Notice and the Prehearing Order were served electronically upon the Complainant via eService to the email address he provided to and registered with the Commission.

12. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

13. The Complainant failed to appear at the October 8, 2024 hearing.

14. The Complainant did not request a continuance, withdraw the Complaint, or otherwise contact the Commission to explain why his failure to appear at the October 8, 2024, hearing was unavoidable.

DISCUSSION

In this Complaint, the Complainant alleges that the Company is threatening to shut off or has already shut off his electric service. As relief, the Complaint requests that the Commission review his bill to confirm that the charges are correct and establish a payment arrangement on his behalf.

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

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard.

Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa. Cmwlth. 1984). Both the Hearing Notice and Prehearing Order were served via eService to the email address registered with the Commission by the Complainant. Neither was returned to the Commission as

undeliverable. Accordingly, it must be presumed that these documents sent to the Complainant were received by the Complainant. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017) (*Morella*).

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, Docket No. C-2017-2633043 at 6 (Opinion and Order entered July 18, 2018), "[o]nce 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." (citing, *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

The Complainant was notified of the scheduled hearing and did not appear for the hearing. Additionally, the August 21, 2024, Hearing Notice and the August 26, 2024 Prehearing Order advised the Complainant that the case could be dismissed for failure to call in and participate in the hearing. Both the Public Utility 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 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). Thus, the Complainant waived the opportunity to participate in the hearing by failing to appear. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

Furthermore, the party who failed to appear at the hearing has the burden of explaining why the 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. 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). There are no facts on the record that suggest that Complainant's failure to appear was unavoidable. Therefore, the Complaint will be dismissed, with prejudice.

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Consequently, the Complaint will be dismissed on this basis as well. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

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 Complainant received notice of the hearing. *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).

3. The due process rights of the Complainant have been fully protected in this proceeding and the Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 52 Pa. Code § 5.245(a).

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

5. The Complainant did not participate in the hearing, failed to appear for the hearing, did not present any evidence and, therefore, failed to meet the Complainant's burden of proving eligibility for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

6. 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. *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); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the Formal Complaint filed by David Hickey at Docket No. C-2024-3050188 is granted.

