

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kevin Broderick	:	
	:	
v.	:	C-2024-3050307
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
John M. Coogan  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the Formal Complaint of Kevin Broderick against PPL Electric Utilities Corporation with prejudice because Mr. Broderick failed to appear for his hearing and prosecute his Formal Complaint.

**HISTORY OF THE PROCEEDING**

On July 25, 2024, Kevin Broderick (Mr. Broderick or Complainant) filed a Formal Complaint against PPL Electric Utilities Corporation (PPL or Company). The Formal Complaint was served on PPL on July 26, 2024. In his Complaint, Mr. Broderick states that PPL, through a contractor, rebuilt a retaining wall on his property prior to him purchasing the home. Mr. Broderick states that the wall has collapsed again, and PPL refuses to repair the wall. As relief, Mr. Broderick requested that the wall be built correctly.

On August 15, 2024, PPL filed an answer and new matter to Mr. Broderick's Formal Complaint. In its answer, PPL denies that PPL constructed a retaining wall at Complainant's property or hired a contractor to rebuild the referenced wall. In its new matter, which included a notice to plead, PPL states that it has no records in reference to a retaining wall at Complainant's service address. PPL also asserts that Complainant raises allegations barred and/or limited by 66 Pa.C.S. § 3314. No response to PPL's new matter was filed.

On September 13, 2024, the Commission issued an initial telephonic hearing notice setting a call-in telephonic hearing for this matter for October 30, 2024 at 1:30 p.m. In anticipation of that hearing, I issued a prehearing order on September 16, 2024, setting forth various rules that would govern the October 30, 2024 hearing.

The initial hearing convened on October 30, 2024, as scheduled. Nicholas A. Stobbe, Esquire, appeared on behalf of PPL along with three witnesses. 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 Complaint with prejudice.

The record in this case consists of the transcript of nine pages. The record closed on November 21, 2024, upon my receipt of the hearing transcript. For the reasons discussed below, PPL's motion will be granted, and the Formal Complaint will be dismissed with prejudice.

#### FINDINGS OF FACT

1. The Complainant in this case is Kevin Broderick.
2. The Respondent in this case is PPL Electric Utilities Corporation.

3. Mr. Broderick elected to be served electronically in this proceeding.<sup>1</sup>  
Complaint ¶ 9.

4. The September 13, 2024 hearing notice was served electronically on Complainant.

5. The September 13, 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 16, 2024 prehearing order was served electronically on Complainant.

7. The September 16, 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. Broderick did not reach him.

9. The telephonic hearing convened on October 30, 2024, as scheduled.  
Tr. 1-9.

10. PPL appeared at the October 30, 2024, hearing. Tr. 1-9.

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<sup>1</sup> While Complainant selected email as his preferred method of service at paragraph 9 on his Formal Complaint form, he also registered with the Commission's eService service program, in which he also selected to be served all documents from the PUC, including all hearing notices, orders and related documents, by eService.

11. No one appeared on behalf of Mr. Broderick at the October 30, 2024 telephonic hearing. Tr. 1-9.

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 30, 2024 hearing.

13. Complainant did not contact the Office of Administrative Law Judge to explain why his failure to attend the October 30, 2024 hearing was unavoidable.

14. During the October 30, 2024, hearing, counsel for PPL made an oral motion to dismiss Mr. Broderick's Formal Complaint with prejudice. Tr. 6.

### 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. Broderick affirmatively signed up to receive service electronically in this proceeding. The hearing notice and prehearing order were electronically served on Complainant. No correspondence was returned to the Commission as undeliverable. Tr. 5. 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); *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. Broderick did not appear at the October 30, 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 Complaint dismissed with prejudice because Mr. Broderick did not appear. Tr. 6.

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 case, Mr. Broderick did affirmatively agree to accept service electronically. Mr. Broderick did not appear for the evidentiary hearing, despite receiving proper service, and there are no facts in the record to find his failure to appear was unavoidable. Consequently, PPL's motion to dismiss Mr. Broderick's Formal Complaint will be granted, and the Formal Complaint will be dismissed with prejudice.

#### 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. Broderick 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 Complaint filed by Kevin Broderick at Docket No. C-2024-3050307 with prejudice is granted.

