

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|------------------------------------|---|----------------|
| Ruby Colon | : | |
| | : | |
| v. | : | C-2024-3051803 |
| | : | |
| PPL Electric Utilities Corporation | : | |

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of Ruby Colon against PPL Electric Utilities Corporation with prejudice because Ms. Colon failed to appear for her hearing and prosecute her Formal Complaint.

HISTORY OF THE PROCEEDING

On October 25, 2024, Ruby Colon (Ms. Colon or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Company). In her Complaint, Ms. Colon alleges that the utility is threatening to shut off her service or has already shut off her service, she would like a payment agreement, and that she does not have enough money for a payment arrangement. As relief, Ms. Colon would like the Commission to stop a scheduled shut off so that she may have more time to get more money.

On November 14, 2024, PPL filed an answer to Ms. Colon's Formal Complaint. In its answer, PPL admitted that it issued a 10-day termination notice to Complainant. However, PPL averred that service was not terminated, and PPL denies that the issuance of a termination notice violated the Public Utility Code, the Commission's regulations, a Commission order, or the Company's Commission approved tariff. PPL admitted that Complainant is seeking a new payment agreement, but denied that Complainant is entitled to a new payment agreement.

On November 19, 2024, the Commission issued an initial telephonic hearing notice, setting a call-in telephonic hearing for this matter for February 4, 2025, at 10:00 a.m. Also on November 19, 2024, I issued a prehearing order, setting forth various rules that would govern the February 4, 2025 hearing. On January 7, 2025, the Commission issued a corrected initial telephonic hearing notice, and on January 8, 2025, I issued a corrected prehearing order. The corrected hearing notice and corrected prehearing order were identical to the previously issued hearing notice and prehearing order but provided updated telephone conference and PIN numbers.

The initial hearing convened on February 4, 2024, as scheduled. Nicholas A. Stobbe, 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 Complaint with prejudice.

The record in this case consists of the transcript of ten pages. The record closed on February 19, 2025, 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 Ruby Colon.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. Ms. Colon elected to be served electronically in this proceeding.¹
Complaint ¶ 9.
4. The January 7, 2025 corrected hearing notice was eServed on Complainant.
5. The January 7, 2025 corrected 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 January 8, 2025 corrected prehearing order was eServed on Complainant.
7. The January 8, 2025 corrected 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 Ms. Colon did not reach her.

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

9. The telephonic hearing convened on February 4, 2025, as scheduled.
Tr. 1-9.

10. PPL appeared at the February 4, 2025 hearing. Tr. 1-9.

11. No one appeared on behalf of Ms. Colon at the February 4, 2025 telephonic hearing. Tr. 1-9.

12. Complainant did not file a motion for continuance or otherwise notify the Office of Administrative Law Judge that she was unavailable for the February 4, 2025 hearing.

13. Complainant did not contact the Office of Administrative Law Judge to explain why her failure to attend the February 4, 2025 hearing was unavoidable.

14. During the February 4, 2025 hearing, counsel for PPL made an oral motion to dismiss Ms. Colon'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. 66 Pa.C.S. § 332(a).

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.*

Ms. Colon affirmatively signed up to receive eService in this proceeding. The hearing notice and prehearing order were eServed on Complainant. No correspondence was returned to the Commission as undeliverable. 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. Ms. Colon did not appear at the February 4, 2025 hearing. During the hearing, counsel for PPL moved to have the Formal Complaint dismissed with prejudice because Ms. Colon did not appear.

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). 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). However, these provisions in the Code and in the Commission's regulations 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. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(b).

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) (*Brown*); *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) (*Williams*); *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).

Further, as the proponent of any request for relief, Complainant bears the burden of proof. By failing to participate and proffer any evidence to support the complaint, Complainant has failed to meet this burden. Thus, it is appropriate to dismiss the complaint with prejudice. *Brown*; *Williams*.

In this case, Ms. Colon affirmatively agreed to accept eService. Ms. Colon did not appear for the evidentiary hearing, despite receiving proper service, and there are no facts in the record to find her failure to appear was unavoidable. Consequently, PPL's

motion to dismiss Ms. Colon'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 was properly notified of the evidentiary 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).

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

9. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the Formal Complaint filed by Ruby Colon at Docket No. C-2024-3051803 with prejudice is granted.

