

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kyle Brown	:	
	:	
v.	:	F-2023-3042301
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision grants a Motion to Dismiss, with prejudice, a Formal Complaint for failure to prosecute because the Complainant failed to appear for the hearing at the designated date and time despite having been given notice of the hearing and the opportunity to be heard.

HISTORY OF THE PROCEEDING

On August 4, 2023, the Complainant, Kyle Brown, filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket No. F-2023-3042301.¹ In his

¹ The Formal Complaint is a timely appeal from the decision of the Commission's Bureau of Consumer Services (BCS) at BCS No. 3891370. A review of a

Complaint, Mr. Brown alleged that he was overbilled by PPL during certain months. He requested that his bills be corrected.

On September 5, 2023, PPL filed an Answer to Mr. Brown's Complaint in which it denied that it overbilled him and requested that the Complaint be dismissed.

On October 18, 2023, the Commission issued an Initial Telephonic Hearing Notice scheduling a telephonic hearing for Tuesday, November 7, 2023, beginning at 10:00 a.m., and assigning me as the Presiding Officer. Also on October 18, 2023, I issued a Prehearing Order in which I provided instructions to the parties for participation in the telephonic hearing. Both the Hearing Notice and my Prehearing Order provided the call-in numbers to connect to the telephonic hearing and informed the parties that they may lose the case if they do not participate in the hearing. Both the Hearing Notice and the Prehearing Order were sent to the Complainant by first-class mail and electronic mail at the addresses provided by him on his Formal Complaint form.² Neither were returned to the Commission as undeliverable.

The telephonic hearing was convened as scheduled on November 7, 2023, at 10:00 a.m. Nicholas Stobbe, Esquire, appeared on behalf of PPL along with one witness. No one connected to the hearing on behalf of Mr. Brown. I delayed the start of the hearing approximately ten minutes in case Mr. Brown was running late. Mr. Brown never connected to the hearing. Mr. Stobbe moved for dismissal, with prejudice, of Mr. Brown's Complaint due to the failure of the Complainant to appear and prosecute his

BCS decision is de novo, meaning that the review is based on the evidentiary record created at the hearing. 52 Pa. Code § 56.173(a).

² The Complainant selected on his Formal Complaint form that he agreed to be served all hearing notices, orders, and related documents in this proceeding by first-class mail. Complaint ¶ 2.

Complaint. As further explained below, I will grant PPL's motion and dismiss the Complaint.

FINDINGS OF FACT

1. The Complainant in this case is Kyle Brown.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. On August 4, 2023, Mr. Brown filed a Formal Complaint with the Commission against PPL at Docket No. F-2023-3042301.
4. On September 5, 2023, PPL filed an Answer to Mr. Brown's Formal Complaint.
5. On October 18, 2023, an Initial Telephonic Hearing Notice was served on the parties scheduling an Initial Call-In Telephonic Hearing for November 7, 2023, beginning at 10:00 a.m.
6. October 18, 2023, a Prehearing Order containing instructions for participation in the telephonic hearing was served on the parties.
7. Both the Telephonic Hearing Notice and the Prehearing Order were sent to Mr. Brown via first-class mail and electronic mail to the addresses provided by him on his Complaint form.

8. Both the Telephonic Hearing Notice and the Prehearing Order instructed the parties that they may lose their case if they did not appear and take part in the hearing.

9. Neither the Telephonic Hearing Notice nor the Prehearing Order served on the Complainant were returned to the Commission as undeliverable.

10. The hearing convened as scheduled on November 7, 2023, beginning at 10:00 a.m.

11. The hearing was delayed approximately ten minutes to accommodate any delay of anyone appearing on behalf of Mr. Brown.

12. No one connected to the hearing on behalf of Mr. Brown at the designated date and time as instructed on the Telephonic Hearing Notice.

13. Complainant never contacted the Commission after the hearing to explain why his failure to appear for the telephonic hearing was unavoidable.

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). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). As a matter of law, a Complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa.P.U.C. 196 (1990). 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. In this proceeding, Mr. Brown questioned certain PPL bills received by him and requests that the Commission correct the challenged charges. Therefore, Mr. Brown has the burden of proof in this proceeding.

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 of the hearing and the opportunity to be heard. Id.; see also, J.P. v. Dep't of Human Servs., 150 A.3d 173 (Pa. Cmwlth. 2016).

No one appeared on behalf of Mr. Brown at the date and time set for the hearing in this case despite notice of the hearing having been provided to him. Commission regulations address circumstances when a party fails to appear in a proceeding.

Section 5.245 provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

- (a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:
 - (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
 - (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
 - (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a).

The Telephonic Hearing Notice and the Prehearing Order were served on Mr. Brown via both first-class mail and electronic mail to the addresses provide by him on his complaint form. Neither the Telephonic Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable. Both instructed the parties that they may lose their case if they fail to appear and present evidence on the issues raised. Notice served to a party with no notification that service has failed is presumed received. Berkowitz v. Mayflower Sec., Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mut. Ins. Co., 449 A.2d 658 (Pa. Super. 1982).

No one appeared on behalf of Mr. Brown at the time of the hearing, nor did anyone on his behalf ever request a postponement or continuance of the hearing. Accordingly, Mr. Brown had notice of the hearing and an opportunity to be heard in this proceeding but chose not to appear. Mr. Brown's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). Further, once notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of parties to appear and participate in the hearing. Strydio v. PPL Elec. Utils. Corp., Docket No. C-2017-2633043 (Opinion and Order entered July 18, 2018). By failing to appear and present any evidence in support of his Complaint, Mr. Brown failed to carry his burden of proof. 66 Pa.C.S. § 332(a).

During the hearing, counsel for PPL moved for dismissal, with prejudice, of Mr. Brown's complaint for lack of prosecution. A party who fails 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 Complainant'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).

There are no facts in the record that would allow the Commission to reach the conclusion that Complainant's failure to attend the hearing was unavoidable. Accordingly, PPL's Motion will be granted, and Mr. Brown's Formal Complaint will be dismissed with prejudice. Williams v. PECO Energy Company, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

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 party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

4. 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).

5. This due process requirement is satisfied when the parties are provided with notice and the opportunity to be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa. Cmwlth. 1984).

6. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

7. Mr. Brown's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); 52 Pa. Code § 5.245(a).

8. A party who fails to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. Herr v. West Penn Power Co., Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

9. When there are no facts in the record that the Complainant'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).

10. By failing to participate in the hearing and proffer any evidence to support his complaint, Complainant has failed to meet the burden of proof. 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 of Kyle Brown against PPL Electric Utilities Corporation at Docket No. F-2023-3042301 for failure to prosecute is granted.
2. That the Formal Complaint filed by Kyle Brown in Kyle Brown v. PPL Electric Utilities Corporation at Docket No. F-2023-3042301 is hereby dismissed with prejudice.
3. That this proceeding be marked closed.

Date: May 23, 2025

/s/
Steven K. Haas
Administrative Law Judge