

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephen Schwika	:	
	:	
v.	:	C-2023-3044518
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Decision dismisses the Formal Complaint for the failure of Complainant to appear for the hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

On November 29, 2023, Stephen Schwika (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent or PPL). The Complaint alleges that the utility was threatening to shut off or has already shut off his service and that there were incorrect charges on his bills.

In his Complaint, Complainant selected the option to receive all communications from the Commission via email at the email address provided by Complainant on the Complaint. Complaint ¶ 9.

On December 20, 2023, Respondent filed an Answer in which it denied the material allegations of fact and conclusions of law in the Complaint. Respondent requested that the Complaint be dismissed.

On January 2, 2024, an Initial Call-In Telephonic Hearing Notice was sent to the parties which indicated an Initial Hearing would be held on March 7, 2024 at 10:00 a.m. and the matter was assigned to me.

On January 30, 2024, I issued a Prehearing Order which indicated the procedures involved for the hearing, as well as how to request a continuance or postponement of the hearing.

On March 7, 2024, a Hearing Cancellation/Reschedule Notice was issued and the hearing on March 7, 2024 was cancelled and rescheduled for an initial hearing on April 30, 2024. The hearing was cancelled at the request of Complainant due to ongoing medical issues.

On April 17, 2024, I issued a second Prehearing Order. The Prehearing Order stated the potential consequences if a party failed to appear at the hearing. Additionally, the Prehearing Order informed the parties about the applicable procedural rules, and again included the procedure to follow for hearing continuances.

On April 30, 2024, the hearing convened as scheduled. Respondent was present and represented by counsel, Peter J. Kramer, Esquire, and had one potential

witness. The Court reporter was also present. Complainant failed to appear for the hearing.

Following the conclusion of the April 30, 2024 hearing, Complainant contacted my office to indicate that he was still experiencing ongoing medical issues and was not able to attend the hearing on April 30, 2024. Complainant contacted my office on a number of occasions to assert that he was still having medical issues which made his attendance at a hearing impossible.

After the Complainant stopped communicating with my office, on December 11, 2024, a Further Telephonic Hearing Notice was issued and served on the parties for a further hearing on February 19, 2025.

On February 18, 2025, Complainant contacted my office to request another postponement of the hearing due to an incident which caused him additional injuries. I granted the request at that time.

On February 21, 2025, a Cancellation/Reschedule Further Telephonic Hearing Notice was served on the parties rescheduling a further telephonic hearing on March 20, 2025, at 10:00 a.m. The Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the telephonic hearing. The Hearing Notice further stated as follows:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. All continuances will be

granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

The Hearing Notices and Prehearing Order were electronically served to Complainant in the ordinary course of the Commission’s business to the email address he provided to the Commission. Neither the Hearing Notices nor the Prehearing Order were returned to the Commission as undeliverable.

On March 20, 2025, I convened the hearing as scheduled. Peter J. Kramer, Esquire, appeared on behalf of Respondent along with one witness and was ready to proceed. The court reporter was also present. Complainant was not present at the start of the hearing. After a short recess to allow time for Complainant to appear, the hearing proceeded in Complainant’s absence. No testimony was taken, and no exhibits were introduced into the record. At the hearing, Respondent moved to dismiss the Complaint for Complainant’s failure to appear and prosecute his Complaint. I took this motion under advisement.

Complainant has not contacted the Commission to explain why his failure to appear at the rescheduled hearing was unavoidable.

The record closed on March 31, 2025, when I received my copy of the hearing transcript. This Decision grants Respondent's Motion to Dismiss the Complaint.

FINDINGS OF FACT

1. Complainant is Stephen Schwika.

2. Respondent is PPL Electric Utilities Corporation.
3. On November 29, 2023, Complainant filed a Formal Complaint against Respondent.
4. On December 20, 2023, Respondent filed an Answer to the Complaint.
5. On January 2, 2024, an Initial Call-In Telephonic Hearing Notice was sent to the parties which indicated an Initial Hearing would be held on March 7, 2024, at 10:00 a.m.
6. On January 30, 2024, I issued a Prehearing Order which indicated the procedures involved for the hearing, as well as how to request a continuance or postponement of the hearing.
7. On March 7, 2024, a Hearing Cancellation/Reschedule Notice was issued and the hearing on March 7, 2024, was cancelled and reschedule for an initial hearing on April 30, 2024. The hearing was cancelled at the request of Complainant due to ongoing medical issues.
8. On April 17, 2024, a Prehearing Order for Telephone Hearing was served on Complainant providing additional information to the parties regarding the hearing.
9. On April 30, 2024, the hearing convened as scheduled. Respondent was present but Complainant failed to appear for the hearing.

10. Complainant contacted my office after the hearing to indicate that he was still experiencing ongoing medical issues and was not able to attend the hearing on April 30, 2024. Complainant contacted my office on a number of occasions to assert that he was still having medical issues which made his attendance at a hearing impossible.

11. On December 11, 2024, a Further Telephonic Hearing Notice was issued and served on the parties for a further hearing on February 19, 2025.

12. On February 18, 2025, Complainant contacted my office to request another postponement of the hearing due to an incident which caused him additional injuries. I granted the request at that time.

13. On February 21, 2025, a Cancelled/Rescheduled Further Telephonic Hearing Notice was served on the parties scheduling the further telephonic hearing on March 20, 2025, at 10:00 a.m.

14. Both the Hearing Notice and Prehearing Order were served on Complainant by electronic mail to the email address Complainant provided to the Commission.

15. Both the Hearing Notice and Prehearing Order provided the Complainant with the toll-free bridge telephone number and PIN to call and participate in the hearing, and, *inter alia*, the procedure for requesting a continuance and the possible consequences of failing to appear at the hearing.

16. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

17. Complainant failed to appear and participate in the rescheduled telephonic hearing on March 20, 2025.

18. The court reporter, Counsel for Respondent and its witness were present and prepared to proceed at the March 20, 2025, hearing.

19. Complainant has not contacted the Commission to explain why his failure to appear at the hearing was unavoidable.

DISCUSSION

Due Process and Notice

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 and the opportunity to be heard. *Id.*

The record shows that Complainant was provided notice and the opportunity to be heard. On February 21, 2025, the Commission served Complainant a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. On April 17, 2024, the Commission served Complainant a Prehearing Order which reminded the parties of how to participate. Further, both documents advised the parties, *inter alia*, how to request a continuance prior to the hearing if needed. Finally, both documents advised Complainant that failure to appear may result in the dismissal of the Complaint with prejudice, which means that Complainant would be barred from filing another complaint raising the same claim(s) and issues(s) presented in the dismissed complaint.

Both the Hearing Notice and Prehearing Orders were electronically served to the email address provided by Complainant to the Commission. None of these documents was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Complainant were received by 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).

Complainant had notice of the hearing and an opportunity to be heard in this proceeding. Therefore, Complainant'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).

Failure to Appear, Waiver and the "Unavoidable" Standard

Once a hearing is scheduled and the parties are duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 28, 2002). 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). 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).

Complainant failed to appear for the hearing despite receiving notice and despite the undersigned allowing additional time for Complainant to appear. To date, there has been no communication to the Office of Administrative Law Judge or me by, or on behalf of, Complainant explaining why Complainant's failure to appear at the hearing was unavoidable.

Consequently, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the Complaint, Complainant's absence was not unavoidable, and the Complaint should be dismissed.

Burden of Proof and Dismissal of Complaint

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, a 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).

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. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered Mar. 14, 2019) (citing *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995)). Accordingly, the merits of the Complaint will not be addressed.

Respondent's Motion to Dismiss will be granted.

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 Commission is required to provide due process to the parties appearing before them; this due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

3. Notice electronically served to a party with no notification that service failed is presumed received. *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).

4. 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).

5. 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); *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).

6. Complainant's due process rights have been fully protected and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. As the party seeking relief, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

8. By failing to participate in the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PPL Electric Utilities Corporation's Motion to Dismiss the Formal Complaint of Stephen Schwika, at Docket Number C-2023-3044518 is granted.
2. That the Formal Complaint filed by Stephen Schwika in Stephen Schwika v. PPL Electric Utilities Corporation, Docket Number C-2023-3044518, is hereby dismissed.
3. That the Secretary's Bureau shall mark Docket No. C-2023-3044518 as closed.

Date: June 17, 2025

/s/
Marta Guhl
Administrative Law Judge