

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held August 22, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Robert Brady

C-2023-3044862

v.

Borough of Point Marion

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Robert Brady (Complainant), on June 18, 2024,¹ to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Katrina L. Dunderdale, which was issued on June 12, 2024. No Reply Exceptions have been

¹ On June 18, 2024, the Secretary's Bureau served the Exceptions on All Parties of Record stating that its review of the filing revealed that no Certificate of Service or other indication that the Parties of Record to the case were served with the Exceptions.

filed. For the reasons stated below, we shall deny the Exceptions of the Complainant and dismiss the Formal Complaint (Complaint).

I. History of the Proceeding

On November 27, 2023, the Complainant filed the instant Complaint with the Commission against the Borough of Point Marion (Point Marion or Respondent).² The Complainant alleged that his water bill increased \$50 per month, from \$34 to \$84, and that he only receives water from the Respondent because he uses a septic tank for sewage. The Complainant stated that a \$50 increase per month is too high for undrinkable water that needs to be filtered, and he asked how Point Marion is allowed to increase his bill by \$50 without the Commission knowing. Complaint at 2-3.

On January 9, 2024,^{3,4} Point Marion filed an Answer which admitted, in part, and denied, in part, various material allegations of the Complaint. Point Marion

² We note that a similar Formal Complaint alleging customer service and billing concerns against Point Marion is currently pending before the Office of Administrative Law Judge. *See Mallorie Oswald v. Borough of Point Marion*, Docket No. C-2024-3047510.

³ On December 14, 2023, the Commission's Secretary served a Formal Complaint Notice on the Respondent via Certified Mail, explaining that the Complaint was filed against Point Marion and that the Respondent had twenty (20) days to respond to the Commission by filing an Answer to the Complaint in accordance with 52 Pa. Code § 5.61 or satisfy the Complaint via settlement and submitting proof of a settlement to the Commission. Although the Respondent's Answer was not filed within the twenty (20) day time period, we will exercise our discretion and consider the Answer to be timely filed in order to achieve the just, speedy, and inexpensive determination of this matter. *See* 52 Pa. Code § 1.2.

⁴ On January 10, 2024, the Commission's Secretary issued a letter to the Respondent indicating that its Answer is being returned because it contained deficiencies. Specifically, the Respondent was directed to return its pleading including an original signature with the Verification in order to continue the formal process. The signature on

admitted that it provides water service to the Respondent and that it raised the water bills for the residents of Point Marion in order to raise additional funds to continue to provide water service to Point Marion. However, the Respondent stated that it is subject to the Borough Code, set forth in 8 Pa.C.S.A. § 2401(c), rather than Commission Regulations, and it is not required to have a Commission hearing. The Respondent further stated that its rates are not any greater, and are less, than some nearby boroughs. The Respondent averred that the water rate increase is within the scope of Point Marion's powers under 8 Pa.C.S.A. § 2401(c), and that the rate increase was made at a regular monthly meeting of Point Marion where a quorum was established and a majority of Point Marion's Borough Council voted to raise the water rate, in addition to garbage and sewage rates. In an attachment to the Answer, it states that the water base rate was increased by \$10. Point Marion requested that the Complaint be dismissed with prejudice. Answer at 1-3; Answer Att. at 4.

By Initial Call-In Telephone Hearing Notice (Hearing Notice) dated February 1, 2024, an Initial Call-In Telephone Hearing was scheduled for March 18, 2024, at 10:00 a.m., and the matter was assigned to the ALJ. The Hearing Notice advised the Parties of the date, time, and call-in directions for the scheduled hearing and warned of the consequences of failing to appear, which includes the dismissal, with prejudice, and loss of the case if a Party does not take part in the hearing and present evidence on the issue(s) raised. Hearing Notice at 1-2.

In addition, the ALJ issued a Prehearing Order for Telephone Hearing (Prehearing Order) on February 1, 2024, which reminded the Parties of the date, time, and call-in directions for the scheduled hearing. The Prehearing Order informed the Parties about the applicable procedural rules and guidelines for the proceeding, including

the Answer, the attached Verification, and the Certificate of Service are all dated January 22, 2024.

the procedure to request a continuance of the scheduled hearing. Furthermore, the Prehearing Order warned of the consequences of a Party failing to appear; specifically, that a Party may lose the case if it does not take part in the hearing and present evidence on the issue(s) raised. Prehearing Order at 1-6.

Although the Complainant, in the Complaint, selected the option to receive all communications from the Commission via First Class Mail at the address provided by him on the Complaint form, he also registered an eFiling account with the Commission, thereby choosing eService. Accordingly, the Hearing Notice and the Prehearing Order were eServed on the Complainant in the ordinary course of the Commission's business to the email address provided by the Complainant and registered with the Commission. Hearing Notice at 4; Prehearing Order at 7. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable. I.D. at 2.

The evidentiary hearing convened on March 18, 2024. Counsel for Point Marion was present along with one (1) potential witness. The Complainant was not present or represented by counsel. The Complainant did not call into the hearing conference bridge and the ALJ took a recess to provide the Complainant additional time and opportunity to call into the hearing conference bridge to join the telephonic hearing. The ALJ also checked to see if the Complainant contacted the Commission to indicate that he was not available for the hearing. Upon the ALJ reconvening the hearing, the Complainant continued to be absent. The Complainant did not contact the ALJ or the Office of Administrative Law Judge (OALJ) to explain whether some impediment had caused his untimely appearance to be unavoidable or to communicate that he was unavailable to attend the hearing. I.D. at 2-3; Tr. at 4, 6-7.

Point Marion made an oral Motion to Dismiss with prejudice for the Complainant's failure to appear and prosecute the Complaint. The ALJ advised the Respondent that the Motion to Dismiss would be taken under advisement and concluded

the hearing. The record closed on March 18, 2024, upon the conclusion of the telephonic hearing, pursuant to 52 Pa. Code § 5.431(a). Tr. at 7-8; I.D. at 3.

On June 12, 2024, the Commission issued the Initial Decision of ALJ Dunderdale which granted the Respondent's oral Motion to Dismiss and dismissed the Complaint for failure of the Complainant to appear at the hearing, prosecute the Complaint, and sustain the burden of proof. I.D. at 1, 7, 9.

As noted, *supra*, the Complainant filed Exceptions on June 18, 2024. No Reply Exceptions were filed.

II. Discussion

A. Legal Standards

1. Due Process

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (*Schneider*). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980).

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See* 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a). Notice mailed to a party's last known address and not returned

by the post office is presumed to have been received. *See Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974) (*Mayflower*); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944, 946 (Pa. Cmwlth. 1994), *appeal denied*, 653 A.2d 1234 (Pa. 1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered September 16, 2010).

Once a hearing is scheduled and duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002) (*Mumma*); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993) (*Sentner*).

A party to a proceeding has the right to request a continuance of the hearing, which may be considered and granted by the presiding officer “only for good cause shown.” *See* 52 Pa. Code § 1.15(b). The party making the request must file a motion at least five (5) days prior to the hearing date stating the facts on which the request is made, except that during a hearing, an oral request for hearing continuance may be made before the presiding officer in the hearing room. 52 Pa. Code § 1.15(b).

If a party fails to appear at a scheduled and duly notified hearing, the party will be deemed to have waived the opportunity to participate in a hearing in the matter. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). This result is not applied to the party, however, if the presiding officer determines that the party’s failure to appear was “unavoidable” and the interests of the other party (or parties) and the public will not be “prejudiced” by permitting the reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). Also, this result may not be applied if the presiding officer of the Commission determines that the complainant demonstrated a good faith attempt to attend the hearing. *See, e.g., Yomari Then v. Philadelphia Gas Works*, Docket No.

F-2012-2318264 (Opinion and Order entered June 13, 2013); *see also*, *Windell C. Wiggins v. PECO Energy Company*, Docket No. C-2010-2190335 (Opinion and Order entered October 27, 2011).

The public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources in addressing a complaint. *See Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995) (*Jefferson*); *see also*, e.g., *Charles Nichols III v. Bell-Atlantic-Pennsylvania*, Docket No. C-00956667 (Opinion and Order entered August 4, 1995).

2. Burden of Proof

As the party seeking affirmative relief from the Commission, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant, as the party seeking relief, must show that the Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by Point Marion. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, to rebut the

evidence of the Complainant, shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant now has to provide some additional evidence to rebut that of the Respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

B. Initial Decision

The ALJ made six (6) Findings of Fact and reached nine (9) Conclusions of Law. I.D. at 3-4, 7-8. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

In granting the Respondent's Motion to Dismiss and dismissing the Complaint, the ALJ found that the Complainant was unable to sustain his burden of proof because he failed to take advantage of the opportunity to appear and prosecute the Complaint by presenting evidence to support the allegations. The ALJ stated that the Complainant did not appear at the time scheduled for the March 18, 2024, hearing and no one appeared to represent the Complainant at the hearing. I.D. at 5, 7.

The ALJ explained that the OALJ served both the Hearing Notice and the Prehearing Order by eService at the email address the Complainant provided to and registered with the Commission, and the documents were not returned as undeliverable. Therefore, the ALJ noted that it must be presumed that these documents sent to the

Complainant were received by the Complainant. I.D. at 5, citing *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Opinion and Order entered December 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*).

Furthermore, the ALJ stated that once a notice of hearing and the opportunity to be heard was provided, it was the responsibility of the Complainant to appear and participate in the hearing. I.D. at 5, citing *Sentner; Mumma*. The ALJ continued that it was the responsibility of the Complainant to notify the ALJ about any impediment or dilemma that would prevent the Complainant from appearing at the hearing. I.D. at 5, citing *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered March 14, 2019).

The ALJ found that the Complainant did not call into the telephonic hearing as specified in the Hearing Notice and the Prehearing Order. The ALJ concluded that the Hearing Notice clearly indicated the toll-free conference bridge number and PIN number to call into the hearing, the address and telephone number where the Complainant could reach the ALJ prior to the hearing for additional information or a continuance, if needed, and notice of the consequences if the Complainant did not appear and participate in the hearing. I.D. at 6.

The ALJ noted the party who fails to appear at the hearing has the burden of explaining why the failure to appear was unavoidable. I.D. at 6, citing 66 Pa.C.S. § 332(a); *Herr v. West Duquesne Light Co.*, Docket No. C-2021-3028202 (Opinion and Order entered September 15, 2022). The ALJ further explained that when there are no facts in the record to support a party's failure to appear was unavoidable, a complaint should be dismissed with prejudice. I.D. at 6-7, citing *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered April 22, 2022); *Volgstadt v.*

UGI Penn Nautral Gas, Docket No. F-02266429 (Opinion and Order entered September 12, 2008); *Jefferson; El-Ayazra v. West Duquesne Light Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016). The ALJ stated that there was no communication to the ALJ or the OALJ by, or on behalf of, the Complainant explaining why his failure to appear at the hearing was unavoidable. Since the Complainant did not contact the ALJ or the OALJ to explain his absence or to explain why he was unavailable at the time of the hearing, the ALJ found that the Complainant failed to appear at the hearing and prosecute his Complaint. I.D. at 7.

C. Exceptions⁵

The Complainant's Exceptions consist of a one-page, type-written letter. The Complainant states although he accepted eFiling and electronic delivery of documents, all the other documents in this proceeding were received by Priority Mail except for the Hearing Notice. The Complainant avers that when the email came with the Hearing Notice, he was not able to open the document, and he assumed that he did not need to open the file in the email since he expected the document to arrive via the U.S. Mail as well because all other notices and information had been received through the U.S. Mail. The Complainant further notes that he was only able to download and open the file in the email recently with the help of his son. The Complainant requests an exception to the general rule regarding the dismissal of a case for failure to appear because he was not able to open the file in the email and, therefore, did not actually receive the notice included therein. Exc. at 1.

⁵ We note that the format of the Exceptions does not strictly comply with Section 5.533(b) of our Regulations, which requires that each exception be numbered and identify the finding of fact and conclusion of law to which exception is taken and cite to the relevant pages of the Initial Decision. 52 Pa. Code § 5.533(b). Nevertheless, recognizing that the Complainant is appearing *pro se*, we will accept the Exceptions as filed, pursuant to Section 1.2(a) of our Regulations, and consider the merits.

D. Disposition

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In *Hoyt v. Columbia Gas of PA, Inc.*, Docket No. F-2022-3032680 (Opinion and Order entered April 20, 2023) (*Hoyt*), the Commission explained:

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest.

Hoyt at 4–5 (internal citations omitted).

Where a party fails to appear at a hearing, the failure to appear is deemed to be a waiver of the right to present evidence to support claims in the complaint if the party was afforded due process, and the reason for failing to appear was not established as unavoidable. We also note that it is within the sound discretion of the ALJ to decide whether a complainant’s failure to appear was unavoidable and whether permitting a hearing would prejudice the public interest or the interest of the other party. *See* 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a), (b). Upon a complainant’s failure to appear, it is for the ALJ to weigh whether that failure should be deemed the complainant’s waiver

of the opportunity to participate in a hearing in a complaint proceeding, pursuant to 66 Pa.C.S. § 331(d) (pertaining to authority of the ALJ as presiding officer). In so doing, the ALJ must, as a preliminary matter, ensure that the complainant has been afforded due process. The ALJ must ensure that notice and opportunity to be heard has been afforded, both in the proceeding in general and specifically, with respect to the hearing at which the Complainant has failed to appear. *See Schneider, Mayflower.*

On this point, we agree with the ALJ that the Complainant's due process rights to notice and opportunity to be heard were accommodated and preserved throughout the underlying proceeding. The Hearing Notice dated February 1, 2024, advised the Parties of the date, time, and call-in instructions for the scheduled hearing and warned of the consequences of failing to appear:

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.

Hearing Notice at 2 (emphasis in original).

In addition, the Prehearing Order issued by the ALJ on February 1, 2024, again reminded the Parties of the date, time, and location for the scheduled hearing. The Prehearing Order also included the following warning to the Parties for failing to appear:

2. FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues 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.

Prehearing Order at 1 (emphasis in original).

The ALJ correctly found that both the Hearing Notice and the Prehearing Order were served on the Complainant, and neither was returned as undeliverable. Further, at no time did the Complainant claim that he did not receive these documents or that they were erroneously served. In fact, the Complainant admitted that he did receive the email with the attached Hearing Notice, but he averred that he was unable to open the attached notice. Exc. at 1. These documents advised the Parties of the date, time, and call-in instructions for the scheduled hearing, contained instructions on how to contact the ALJ and proceed during the hearing, and informed the Parties how to request a change of the scheduled hearing date. Importantly, each of these documents also identified that the Complainant could lose the case through dismissal as a consequence of failing to appear.

As the ALJ noted in the Initial Decision, the Complainant selected the option to receive all communications from the Commission via First Class Mail at the address provided by the Complainant on the Complaint form. However, the Complainant also registered an eFiling account, thereby electing eService. When the 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. I 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.

I.D. at 2, citing *eFiling Registration Page*,

<https://efiling.puc.pa.gov/Accounts/Create?accountType=I> (last visited June 5, 2024).

We note the Complainant’s assumption that he did not need to open the files attached to the February 1, 2024 emails serving the Hearing Notice and Prehearing Order, based on his expectation that those documents would be provided to him by regular mail. However, a significant period of time (almost seven (7) weeks) elapsed between eService of the Hearing Notice and Prehearing Order (February 1, 2024) and the date of the telephonic hearing (March 18, 2024), and during that time, Respondent did not make any attempt to contact the Commission regarding the files that he claims he was unable to open. In fact, it was not until June 18, 2024, (over five (5) months after eService of the Hearing Notice and Prehearing Order) that the Complainant first notified the Commission, by way of Exceptions, of his inability to open the files.

Therefore, we find the circumstances presented in this case to be similar to the considerations in the Commission’s decisions in *Zirkel* and *Morella* concerning due process and service. In *Zirkel* and *Morella*, the Commission determined that due process is satisfied and the complainant is presumed to have received notice of the date and time of a scheduled hearing when the Commission serves electronic notice on the complainant in accordance with the complainant’s selection to receive electronic service of all documents and the record contains no notification that the notice failed to be delivered electronically to the email address provided by the complainant.⁶

⁶ The Commission distinguished *Hoyt* from *Zirkel* and *Morella* when determining that *Zirkel* and *Morella* do not apply when a complainant does not select eService but simply provides an email address because the complaint form stated that one was required. *Hoyt* at 8.

We find that the Complainant had notice and was reminded of the scheduled hearing date through several different documents. The Complainant failed to appear for the hearing and prosecute his Complaint, nor did he make any attempt to notify the ALJ that he did not plan to participate in the scheduled hearing. The Complainant's due process rights have been preserved and protected.

The ALJ also properly found that, having been provided notice and an opportunity to be heard, but failing to appear and proffer any evidence to support the Complaint, the Complainant failed to meet his burden of proof. We agree with the ALJ's conclusion that the failure of the Complainant to appear at the scheduled hearing is unexcused, and that by failing to attend the hearing and present evidence on the issue raised, the Complainant failed to sustain his burden of proof. Furthermore, we note that the Complainant agreed to use electronic service to receive documents and notices in this proceeding via email after registering for an eFiling account with the Commission, and the Complainant appears to have been able to view other documents, such as the Initial Decision, which were served electronically, as demonstrated by his timely filing of Exceptions in this matter.

For the reasons set forth above, we agree with the ALJ that the Complainant waived the opportunity to participate in the hearing by failing to appear. By failing to appear and offer evidence to support his Complaint, the Complainant has failed to meet the burden of proof that is placed on him under the Code to satisfy his request for relief. Consequently, the ALJ's decision to dismiss the Complaint is affirmed. Accordingly, the Complainant's Exceptions shall be denied.⁷

⁷ We note that Conclusion of Law No. 1 of the Initial Decision states: "The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S. § 701." As discussed, *supra*, the Respondent's Answer argues that Point Marion "is subject to Borough Code and is not subject to PUC [R]egulations;" however, the Respondent did not file a Motion to Dismiss under 52 Pa. Code §§ 5.101 or 5.103 for lack of jurisdiction. Answer at 1-2. Moreover, in response to a question by the ALJ at

III. Conclusion

Based on our review of the Exceptions and the Initial Decision, we shall deny the Exceptions of Robert Brady and adopt the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Robert Brady, filed on June 18, 2024, at Docket No. C-2023-3044862, to the Initial Decision of Administrative Law Judge Katrina L. Dunderdale are denied, consistent with this Opinion and Order.

the hearing regarding whether Point Marion is a certificated public utility, counsel for the Respondent indicated that it is not, but stated that Point Marion does provide water and wastewater service to approximately twenty-one (21) customers in Springhill Township that are assumed to be within the municipality's limits but are actually adjacent to it. Tr. at 4-5. The Commission's Case Management System (InfoMap) and a Utility Authority Search on the Commission's website indicates that the Commission issued an Order on February 9, 1989, at Docket A-222875, to issue a Certificate of Public Convenience pursuant to 66 Pa.C.S. § 1102(a)(5) authorizing Point Marion to furnish water service to certain customers outside the Borough limits in a portion of Springhill Township, Fayette County. *See Application of the Borough of Point Marion to Furnish Water to the Public Outside the Borough Limits in Fayette County*, Docket No. A-222875 (Order entered February 16, 1989). InfoMap indicates that Point Marion's Utility Status is currently "Active." InfoMap and the Commission's website also show that Point Marion filed Annual Reports with the Commission in the past, pursuant to 66 Pa.C.S. § 504 and 52 Pa. Code § 65.19; however, it does not appear that Point Marion has recently filed the statutorily required Annual Reports with the Commission. Finally, it is not clear in the record whether the Complainant's service address is located within or outside of Point Marion's borough limits. Nonetheless, we conclude that any further review with respect to the Commission's jurisdiction over Point Marion's water service to the Complainant is moot here because we are adopting the ALJ's Initial Decision to deny and dismiss the Complaint for the Complainant's failure to appear and prosecute his Complaint. However, based upon the information above, we shall serve a copy and refer this Opinion and Order to the Commission's Bureau of Investigation and Enforcement for its review and any further action deemed to be warranted.

2. That the Initial Decision of Administrative Law Judge Katrina L. Dunderdale, issued on June 12, 2024, at Docket No. C-2023-3044862, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Robert Brady on November 27, 2023, against the Borough of Point Marion at Docket No. C-2023-3044862, is denied and dismissed, consistent with this Opinion and Order.

4. That the Commission's Secretary shall serve a copy of this Opinion and Order on the Commission's Bureau of Investigation and Enforcement for its review and any further action as deemed to be warranted.

5. That this proceeding be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 22, 2024

ORDER ENTERED: August 22, 2024