

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kathleen McCullough	:	
	:	
v.	:	C-2024-3051066
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint due to Complainant’s failure to appear at the evidentiary hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDINGS

On September 9, 2024, Kathleen McCullough (Ms. McCullough) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania-American Water Company (PAWC, Company, or Respondent), regarding service at 107 Fairway Landings Drive, Canonsburg, Pennsylvania (service location). Ms. McCullough indicated her Complaint pertained to her wastewater service, checking the box next to this option. Complaint ¶ 3. She checked boxes on the complaint form, indicating the utility was threatening to shut off her service and there were incorrect charges on her bill. Ms. McCullough also checked

the “other” box averring the Company “had an agreement with the Cecil Township Municipal Authority (CTMA) who terminated [her] water service from 7-13-2021 through 7-30-2022” when she had a “legal medical exemption.” Complaint ¶ 4. She alleged,

[E]ven though there were Pennsylvania Department of State grants available, the CTMA, with PA American Water, who was complicit, the CTMA although I did not have water, took my less than \$100 outstanding balance to a welfare fraud theft of \$1,041.57. On 9-4-2024, I received a notice that my account is past due of \$46.40, and a threatening to do that same to me as they did from 7-13-2021 to 7-30-2022.

Complaint ¶ 4.

As relief, Ms. McCullough requested the Commission prohibit PAWC from “participating in this ongoing CTMA harassment.” *Id.* She further requested that “if PA American Water Company refuses to participate, this time, i.e. for \$46.40, this welfare fraud will not happen again, and the CMTA officials... can face the criminal charges of [this] welfare fraud and criminal harassment.” *Id.* Ms. McCullough further averred that PAWC is “criminally complicit with CTMA.” Complaint ¶ 7. Regarding “Methods of Communication by the Commission,” Ms. McCullough selected service via eService,¹ checking the box next to this option. Complaint ¶ 9.

¹ When Complainant registered for an eFiling account she 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

Attached to her Complaint was a copy of a CTMA wastewater bills dated September 15, 2022, reflecting a past due amount of \$82.07; July 15, 2022, reflecting a past due amount of \$622.62; and August 15, 2022, reflecting a past due amount of \$640.62. What appears to be a screen shot of a text message is also attached to the Complaint.

On September 30, 2024, PAWC filed an answer and new matter. The Company explained that it does not provide wastewater service to Complainant, denied there are incorrect charges on her bill, and denied issuing a notice to Complainant that her water or wastewater service would be terminated. It explained that it terminated her water service in 2021, at the request of CTMA, but denied it did so improperly or in violation of the Commission’s rules. PAWC also denied it is complicit in any welfare fraud, that any of its employees are harassing Complainant, or that any of its employees are “criminally complicit” with CMTA.

In its new matter, Respondent argues that, to the extent Complainant is complaining about the actions of CTMA, those claims rest outside the Commission’s jurisdiction. Further, PAWC argues the Complaint fails to state a claim for which relief can be granted because it does not allege any violation of the Public Utility Code (Code) or a regulation or order of the Commission.

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.

eFiling Registration Page, <https://efiling.puc.pa.gov/Accounts/Create?accountType=I> (last visited Jan. 2, 2025).

The new matter contained a notice to plead, directing Complainant to file a response in 20 days. Complainant did not file a response.

On October 30, 2024, Chief Administrative Law Judge Charles E. Rainey, Jr. issued an Interim Order setting a resolution conference.

The parties did not settle this matter. Therefore, on February 19, 2025, the Commission issued a Hearing Notice, assigning this matter to me and scheduling an evidentiary hearing for April 15, 2025. The hearing notice was eServed on Ms. McCullough, consistent with her service selection on the Complaint.

I issued a Prehearing Order on February 19, 2025, setting forth the procedures for the conduct of hearings, including the consequences of failing to appear as well as instructions for requesting a continuance. The Prehearing Order was eServed on Ms. McCullough, consistent with her service selection on the Complaint.

The hearing convened as scheduled on April 15, 2025. Mr. Michael Gruin, Esq., counsel for PAWC, appeared and was on the line, as were Respondent's witnesses. Complainant did not appear and was not on the line. On the record, Mr. Gruin advised he has had no contact with Complainant since a prior hearing in a separate matter docketed at No. C-2024-3048179 before Administrative Law Judge Mary D. Long (ALJ Long). He explained Complainant sought a payment arrangement in the prior case, but ALJ Long dismissed that Complaint. He further advised that Complainant reported to the Company she had been evicted in October 2024. He reported that Complainant's water service account was closed on October 29, 2024, and as of the date of the hearing, she was no longer a PAWC customer.

Mr. Gruin made a motion to dismiss the Complaint due to Complainant's failure to appear at the hearing. I took the motion to dismiss under advisement and adjourned the hearing.

The record closed upon the conclusion of the hearing.

This matter is now ripe for disposition.

FINDINGS OF FACT

1. Complainant is Kathleen McCullough.
2. The Respondent, Pennsylvania-American Water Company, is a jurisdictional public utility.
3. On September 9, 2024, Complainant filed a Formal Complaint against PAWC, regarding issues with her wastewater service.
4. Under "Methods of Communication by the Commission" on the Complaint, Ms. McCullough selected eService, checking the box next to this option. Complaint ¶ 9.
5. Attached to her Complaint were wastewater bills issued by the CTMA.
6. On September 30, 2024, PAWC filed an answer and new matter, denying the material averments in the Complaint, averring it does not provide wastewater service to Complainant, and arguing that, to the extent Complainant's claims relate to actions of CTMA, those claims lie outside the Commission's jurisdiction.

7. The new matter contained a notice to plead, directing Complainant to file a response in 20 days.
8. Complainant did not file a response to the new matter.
9. By hearing notice dated February 19, 2025, the Complaint was set for hearing on April 15, 2025.
10. The hearing notice was eServed on Ms. McCullough, consistent with her service selection on her Complaint.
11. A Prehearing Order was issued on February 19, 2025, setting forth the procedures for the conduct of hearings, including the consequences of failing to appear as well as instructions for requesting a continuance.
12. The Prehearing Order was eServed on Ms. McCullough, consistent with her service selection on her Complaint.
13. Ms. McCullough did not appear at the evidentiary hearing.
14. Ms. McCullough did not withdraw or settle this matter.
15. Ms. McCullough did not request a continuance of this matter, nor has she contacted the Commission to explain why her failure to appear was unavoidable.

DISCUSSION

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.*

The hearing notice and Prehearing Order were eServed on Ms. McCullough, consistent with her service selection on the Complaint. Nothing was returned to the Commission as undeliverable. Notice eServed to a party's registered email address with no notification that service failed is presumed to have been received. *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).

Ms. McCullough filed the instant Complaint seeking, *inter alia*, relief related to impending termination of wastewater service and incorrect charges on her bill. Ms. McCullough must prove that she is entitled to this relief from the Commission. 66 Pa.C.S. § 332. The hearing notice scheduling the hearing on April 15, 2025, was eServed on her, consistent with her selection regarding service by the Commission on her Complaint. The hearing notice and Prehearing Order issued in this case gave clear instructions regarding how to request a continuance. Ms. McCullough had an opportunity to appear at the hearing and voluntarily chose not to do so. Under the circumstances, the due process rights of Complainant have been fully protected.

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 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) (*Little*); *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) (*Jefferson*); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

Complainant failed to appear for the hearing despite receiving notice. To date, there has been no communication to the Office of Administrative Law Judge or to me by, or on behalf of, Ms. McCullough explaining why her failure to appear at the hearing was unavoidable.

Consequently, I find that Ms. McCullough waived the opportunity to participate in a hearing on the matters raised in the Complaint and her absence was not unavoidable.

Finally, 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).

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; Williams* (citing *Jefferson*). Accordingly, the merits of the Complaint will not be addressed.

As such, the Complaint is dismissed due to Complainant's failure to appear and prosecute the Complaint. While Commission precedent would support dismissing the Complaint with prejudice, I am exercising my discretion to dismiss without prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of 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 eServed to a party's registered email address with no notification that service failed to be delivered to that email address is presumed to have been received. *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. The due process rights of Ms. McCullough have been fully protected in this proceeding and her failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 52 Pa. Code § 5.245(a).

5. By failing to appear for the hearing and proffer any evidence to support the Complaint, Ms. McCullough has failed to meet her burden of proving she is eligible for the relief she seeks from the Commission. 66 Pa.C.S. § 332(a); 52 Pa. Code § 5.245(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That motion of Pennsylvania-American Water Company to dismiss the Formal Complaint of Kathleen McCullough at Docket No. C-2024-3051066 is granted.

2. That the Formal Complaint of Kathleen McCullough filed in Kathleen McCullough v. Pennsylvania-American Water Company at Docket No. C-2024-3051066 is dismissed without prejudice.

3. That the Secretary's Bureau shall mark Docket No. C-2024-3051066 as closed.

Date: April 28, 2025

_____/s/
Emily I. DeVoe
Administrative Law Judge