

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deborah Engisch-Platt and Kim Platt	:	
	:	
v.	:	C-2019-3013745
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Mary D. Long
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 PROCEEDINGS

The Complainants, Deborah Engisch-Platt and Kim Platt, filed a Formal Complaint on October 17, 2019. In their complaint, the Platts allege that they did not want a smart meter installed at their home. Specifically, they stated that Mr. Platt has an irregular heart rate that is compounded by electromagnetic sensitivity and their daughter also has a sensory disorder affected by high pitched electrical humming sounds and pulsations. As relief, the Platts requested that the analog meter remain on their home,

citing Sections 1501 and 1502 of the Public Utility Code.¹ The Complainants receive eService through an eFiling account they registered with the Commission.

Metropolitan Edison Company,² responded to the claims made by the Platts in an answer filed on November 12, 2019.³ The complaint was assigned to Deputy Chief Administrative Law Judge Joel H. Cheskis.

On January 21, 2020, the Platts requested that the hearing be conducted entirely in writing because Mr. Platt has hearing loss, and he believed that a telephone hearing would compromise his ability to understand what is being said and to respond properly. Judge Cheskis granted the request and by interim order entered February 11, 2020, set a litigation schedule which memorialized the agreement of the parties to exchange written direct, rebuttal and surrebuttal testimony rather than the usual hearing format for consumer hearings.

In the following months, the Commission issued a general stay of all smart meter proceedings. The Platts' complaint was reassigned to me.⁴ Following the Supreme

¹ 66 Pa.C.S. §§ 1501, 1502.

² On January 1, 2024, FirstEnergy's Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies' tariffs were consolidated into a single tariff, with each former operating company's rates becoming its own rate district. As such, the customers of the former Metropolitan Edison Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company's tariff.

³ The Company also filed preliminary objections. By order entered January 7, 2020, the preliminary objections were dismissed. Later in the proceedings the Company filed a motion for summary judgment. By order entered August 18, 2020, Judge Cheskis denied the motion for summary judgment, denied the Platts' March 16, 2020, motion for stay, and an amended schedule for the exchange of written testimony.

⁴ Judge Change Notice dated November 22, 2022.

Court's decision in *Povacz II*,⁵ which resolved outstanding legal issues regarding smart meters, the Commission lifted the stay on November 14, 2023.⁶

Following the end of the Commission stay on smart meter proceedings, I issued an order on December 6, 2023, which directed the parties to confer with each other and submit a joint status report which included a schedule which revised the due dates for the exchange of the remaining written testimony.

The Company filed a status report as directed and proposed a schedule for written supplemental direct testimony by the Platts, as well as written Company rebuttal and written surrebuttal by the Platts. The Platts did not object⁷ to the Company's proposal and I memorialized the revised schedule by Interim Order entered February 14, 2024.⁸

The Platts did not file supplemental direct testimony. However, the Company filed written rebuttal testimony of David R. Villao.⁹ The Platts thereafter filed a set of documents titled as "Reply Brief."

On July 25, 2024, I issued a prehearing order to schedule "for a brief hearing . . . so that each party may request that their written testimony be authenticated

⁵ *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022) (*Povacz II*).

⁶ *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered Nov. 14, 2023).

⁷ The status report did not indicate whether the Company had contacted the Platts to secure their agreement to the schedule. The Platts did not provide an alternate schedule.

⁸ I granted a short extension to the service deadlines by Interim Order entered February 26, 2024.

⁹ Mr. Villao's testimony included two exhibits identified as FE PA -1 and FE PA-2.

and admitted into the evidentiary record.”¹⁰ In my prehearing order which scheduled a hearing on September 11, 2024, consistent with Judge Cheskis’ conclusion regarding the Platts’ March 30, 2020 Brief of Complainant, I concluded that the Platts intended their Reply Brief to serve as surrebuttal to the written testimony of Mr. Villao.

By email dated August 27, 2024, the Platts emailed a Motion for Recusal of ALJ.¹¹ I directed the Company to file a response to the motion by September 4, 2024. I issued an order on August 28, 2024, which memorialized those instructions.

On September 3, 2024, I received emailed copies of proposed exhibits from the Company. These proposed exhibits included additional documents that were not included with the written testimony of Mr. Villao that the Company had served in May 2024. Also on September 3, 2024, I discovered that the Platts had eFiled a copy of their Motion for Recusal of ALJ. However, the eFiled version of the motion included a letter from Giovanni Catalano, DO, and a photograph. The Platts’ motion stated that I “ignored the Platts’ exhibits” and that “Mr. Platt’s physician’s affidavit shall be submitted later.”

Upon review of the documents submitted by the Company and the Platts, as well as the orders issued by Judge Cheskis, I concluded that my orders in this matter may have been unclear and that neither the Platts nor the Company were prepared to proceed with the hearing. Therefore, on September 5, 2024, I issued a detailed order which cancelled the September 11, 2024, hearing. That order further explained the *Povacz II* decision and burden of proof for smart meter complaints, including the necessity for expert testimony. I also explained the role and requirements for written testimony, noting that served testimony was not part of the record until it is admitted into evidence.

¹⁰ The “Reply Brief” included six pages of mixed testimony and legal argument and attached 546 pages of other documents.

¹¹ The Complainants claim that they served this motion in July. Commission records do not indicate that a motion was received from the Complainants in July.

Finally, the order provided the Platts with an additional opportunity to serve written expert testimony.

By Interim Order entered September 6, 2024, I denied the Motion to Recuse ALJ.

The Platts did not serve written expert testimony. At the expiration of the deadlines set forth on September 5, 2024, Interim Order, on January 6, 2025, a Call-In Telephone Hearing Notice was eServed on the parties scheduling a telephonic hearing on March 12, 2025. The Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the telephonic hearing.

On January 7, 2025, I issued an Interim Order Confirming Requirements for Evidentiary Hearing which explained that the purpose of the hearing was to provide each party with the opportunity to offer written testimony for admission into the record. The January 7, 2025, order identified the written testimony that had been served to-date, provided the date and time for the hearing and provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the telephonic hearing.

I convened the hearing on March 12, 2025, as scheduled. The Platts did not appear. Attorney James Meehan appeared representing the Company, along with an expert witness, David R. Villao. The Platts did not appear. No testimony was taken, and no exhibits were introduced into the record. The Company moved to dismiss the complaint with prejudice because the Platts did not appear. I took the motion under advisement. The record closed on March 18, 2025, following the receipt of the transcript. This decision grants the Company's motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainants are Deborah Engisch-Platt and Kim Platt.
2. The Respondent is Metropolitan Edison Company.
3. On January 6, 2025, a Call-In Hearing Notice was served on the Complainants scheduling a hearing on March 12, 2025, at 10:00 a.m.
4. On January 7, 2025, an Interim Order Confirming Requirements for Evidentiary Hearing was served on the Complainants providing additional information to the parties regarding the hearing, including the date and time of the hearing.
5. Both the Hearing Notice and Interim Order were eServed on Complainants at the email address Complainants provided to and registered with the Commission.
6. Both the Hearing Notice and Interim Order provided the Complainants with the toll-free bridge telephone number and PIN to call and participate in the hearing, and, among other things, the procedure for requesting a continuance and the possible consequences of failing to appear at the hearing.
7. Neither the Hearing Notice nor the Interim Order were returned to the Commission as undeliverable.
8. The Complainants failed to appear and participate in the scheduled telephone hearing on March 12, 2025, at 10:00 a.m.

9. The Complainants did not contact the Commission to explain why their failure to appear at the hearing was unavoidable.

DISCUSSION

The Complainants filed a Formal Complaint seeking relief from the Commission because they do not want a smart meter installed at their residence. The Complainants must prove that they are entitled to this relief from the Commission.¹² The Complainants did not appear at the hearing scheduled for their benefit and therefore did not take the opportunity to explain why the Commission should find in their favor.

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.¹³ The fundamental tenets of due process are notice and an opportunity to be heard.¹⁴ However, the right to due process is not absolute.¹⁵ The Commonwealth Court has consistently held that where a party fails to avail themselves of the opportunity to be heard without good cause, the proceeding may be dismissed and there is no violation of due process.¹⁶ The Commission has codified this principle in its regulations:

(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.

¹² 66 Pa.C.S. § 332.

¹³ *Pa. Bankers Ass'n v. Pa. Dep't of Banking*, 965 A.2d 956 (Pa. 2008) (*Pa. Bankers Ass'n*); *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

¹⁴ *Pa. Bankers Ass'n*.

¹⁵ *Goetz v. Dep't of Env't Res.*, 613 A.2d 65 (Pa. Cmwlth. 1992).

¹⁶ *See Fountain Cap. Fund, Inc. v. Pa. Sec. Comm'n*, 948 A.2d 208 (Pa. Cmwlth. 2008), and the cases cited therein.

(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.

(b) Subsection (a)(1)—(3) does not apply if the presiding officer determines that the failure to be represented 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. Counsel shall be expected to go forward with the examination of witnesses at the hearing under § 5.242 (relating to order of procedure), or as has been otherwise stipulated or has been directed by the presiding officer.^[17]

Complainants received adequate notice of the date and time of the hearing. Complainants elected to receive service by eService and registered their email address with the Commission. Commission records do not indicate that service to Complainants was unsuccessful. Accordingly, the Commission presumes that they received the hearing notice and order that the Commission eServed in connection with the hearing.¹⁸

Complainants also had notice of the consequences if they did not appear and participate in the hearing. The Hearing Notice 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.

¹⁷ 52 Pa. Code § 5.425.

¹⁸ *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).

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).

(Emphasis in original).

The party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable.¹⁹ When there are no facts in the record that the party’s failure to appear was unavoidable, the complaint should be dismissed.²⁰

The Complainants failed to appear for the hearing despite receiving notice. To date, there has been no communication to the Office of Administrative Law Judge or me by, or on behalf of, the Complainants explaining why the Complainants’ failure to appear at the hearing was unavoidable. Consequently, I find that the Complainants waived the opportunity to participate in a hearing on the matters raised in the complaint, the Complainants’ absence was not unavoidable, and the complaint should be dismissed.

¹⁹ 66 Pa.C.S. § 332(f); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

²⁰ *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).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 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. 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. Complainants' due process rights have been fully protected and Complainants' 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).
6. As the party seeking relief, Complainants bear 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).

7. By failing to participate in the hearing and proffer any evidence to support the complaint, Complainants have failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Metropolitan Edison Company's motion to dismiss the Formal Complaint of Deborah Engisch-Platt and Kim Platt at Docket C-2019-3013745, is granted.

2. That the Formal Complaint of Deborah Engisch-Platt and Kim Platt v. Metropolitan Edison Company, C-2019-3013745, is hereby dismissed.

3. That the Secretary mark the docket closed.

Date: May 7, 2025

/s/
Mary D. Long
Administrative Law Judge