

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jason James Heckendorn	:	C-2024-3051643
	:	C-2024-3051644
v.	:	C-2024-3051645
	:	C-2024-3051646
FirstEnergy Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Erin L. Gannon
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On October 2, 2024, Jason James Heckendorn (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Penelec).^{1,2} The Complaint alleged that his electric service was improperly terminated to his home in Lewistown,

¹ Mr. Heckendorn filed one Complaint, which listed four different account numbers. Each account was assigned a separate PUC docket number.

² On January 1, 2024, Penelec was merged into FirstEnergy Pennsylvania Electric Company.

Pennsylvania (Service Location) in June and in September 2024 and there are incorrect charges on his bill.

In his Complaint, the Complainant selected the option to receive all communications from the Commission via First-Class Mail at the address provided by Mr. Heckendorn on the Complaint. Complaint ¶ 9.

On November 5, 2024, FirstEnergy Pennsylvania Electric Company (FirstEnergy or Respondent), on behalf of its Penelec Rate District, filed a timely answer to the Complaint (Answer).³ The Respondent denied the material allegations of fact and conclusions of law in the Complaint.⁴ The Respondent requested that the Complaint be dismissed with prejudice. In the alternative, FirstEnergy requested that the matter be set for mediation.

On November 12, 2024, Chief Administrative Law Judge Charles E. Rainey, Jr., issued an Interim Order Setting Resolution Conference (Interim Order) referring this matter to mediation. Mediation was not successful.

On February 19, 2025, an Initial Telephonic Hearing Notice (Hearing Notice) was served on the parties scheduling a call-in hearing on Wednesday, April 9, 2025 at 10:00 a.m. and the case was assigned to me. 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:

³ The Commission served the Complaint to FirstEnergy on October 16, 2025 and an answer was due by November 5, 2024. 52 Pa. Code § 5.61(a).

⁴ FirstEnergy denied that it provides service to the Complainant under account numbers ending in 2800 and 5189. Answer ¶ 1. FirstEnergy admitted that it provides service to the Complainant at the Service Address under the account number ending in 2478 (Current Account). *Id.* FirstEnergy averred that the Complainant previously had service in his name under the account number ending in 6902 (Siglerville Account), from December 15, 2004 until June 9, 2024. *Id.*

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).

Hearing Notice at 2.

On March 19, 2025, a Prehearing Order was served on the parties which reminded the parties of the date and time of the hearing. The Prehearing Order also 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.

In the ordinary course of the Commission’s business, the Hearing Notice and Prehearing Order were served via U.S. First-Class Mail to Complainant at the street address provided by him to the Commission. The Commission did not receive any return mail that the Hearing Notice or the Prehearing Order sent to Complainant’s address were undeliverable.

On Sunday, March 30, 2025, the Office of Administrative Law Judge (OALJ) received a voicemail from a person who identified himself as Jason Heckendorn. He provided a callback number that was different than the phone numbers provided on

his Formal Complaint form. The voicemail stated that he had a telephonic hearing coming up on April 9, 2025 and that he “cancelled the hearing by dropping the complaint” and asked for his call to be returned.

On March 31, 2025 and again on April 1, 2025, my legal assistant called the phone number provided in the voicemail and the two phone numbers listed on the Complaint. She received automated responses stating the calls could not be completed.

On Sunday, April 6, 2025, two more messages were left on the OALJ’s voicemail by a person who identified himself as Jason Heckendorn. In each voicemail message, the caller stated that he would not attend the hearing and asked for the calls to be returned. On April 7, 2025, my legal assistant tried to return the calls, but again received automated responses stating the calls could not be completed.

On April 9, 2025, I convened the hearing as scheduled. Timothy K. McHugh, Esquire, appeared on behalf of the 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, I noted that the OALJ received voicemails from a person who identified himself as the Complainant, however, we could not reach him at any of the phone numbers provided. Tr. 5-7. As a result, we could not return the calls as requested. The OALJ did not receive any written request to withdraw the complaints or continue the hearing. *Id.* at 7.

Attorney McHugh also stated that he had not been able to reach the Complainant at the phone numbers listed on the Complaint and received no response to emails that Mr. McHugh sent to the email address provided in the Complaint. Tr. 7-8.

At the close of the hearing, the Respondent moved to dismiss the Complaint for the Complainant's failure to appear and prosecute his complaint. I took this motion under advisement.

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

The record closed on April 18, 2025, when the transcript was filed with the Commission. This decision grants the Respondent's motion to dismiss the Complaint.

FINDINGS OF FACT

1. The Complainant is Jason James Heckendorn.
2. The Respondent is FirstEnergy Pennsylvania Electric Company.
3. On October 2, 2024, the Complainant filed a Formal Complaint against Respondent.
4. On November 5, 2024, the Respondent filed an Answer to the Complaint.
5. On February 19, 2025, a Call-In Telephone Hearing Notice was served on the Complainant scheduling an initial telephonic hearing on April 9, 2025 at 10:00 a.m.

6. On March 19, 2025, a Prehearing Order for Telephone Hearing was served on the Complainant providing additional information to the parties regarding the hearing.

7. Both the Hearing Notice and Prehearing Order were served on the Complainant by U.S. First-Class Mail to the postal address the Complainant provided to the Commission.

8. 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.

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

10. A person who identified themselves as the Complainant left voicemail messages with the Office of Administrative Law Judge on March 30, 2025 and April 6, 2025, respectively, stating that he canceled the April 9, 2025 hearing by dropping the Complaint and would not attend the hearing, and asking for a return call. Tr. 5-6.

11. The OALJ was not able to return the calls because none of the phone numbers provided by the Complainant to the Commission worked to reach the Complainant, either directly or by voicemail. Tr. 5-7.

12. The OALJ and Commission did not receive any written communication from Mr. Heckendorn requesting to withdraw the Complaint or continue the hearing. *Id.* at 7.

13. The Complainant did not appear and participate in the scheduled telephonic hearing on April 9, 2025.

14. The court reporter, counsel for Respondent and Respondent's witness were present and prepared to proceed at the April 9, 2025 hearing.

15. The 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. First, on February 19, 2025, the Commission served the Complainant a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. Second, on March 19, 2025, the Commission served the Complainant a Prehearing Order which reminded the parties of the date and time of the hearing, and 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 the Complainant that failure to appear may result in the dismissal of the Complaint with prejudice, which means that the 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 Order were served by U.S. First-Class Mail to the address provided on the complaint. Neither document was returned as being undeliverable. Accordingly, it must be presumed that this mail was received by Complainant. *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).

The 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 their 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) (*Brown*); *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) (*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).

The 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, the Complainant to support a finding that the Complainant's failure to appear at the hearing was unavoidable.

Consequently, I find that the Complainant waived the opportunity to participate in a hearing on the matters raised in the Complaint, the 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, the 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.

The Respondent's motion to dismiss will be granted. I will not dismiss the Complaint with prejudice, however. While unconfirmed, there was telephone contact about canceling the hearing and dropping Mr. Heckendorn's complaints. Therefore, the case will be dismissed without prejudice.

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 mailed via U.S. First-Class Mail to a party and not returned to the Commission as undeliverable 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).

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. The Complainant's due process rights have been fully protected and the 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, the 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, the Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That FirstEnergy Pennsylvania Electric Company's motion to dismiss the Formal Complaint of Jason James Heckendorn, at Docket Nos. C-2024-3051643, C-2024-3051644, C-2024-3051645 and C-2024-3051646, is granted.

2. That the Formal Complaint filed by Jason James Heckendorn in Jason James Heckendorn v. FirstEnergy Pennsylvania Electric Company, at Docket Nos. C-2024-3051643, C-2024-3051644, C-2024-3051645 and C-2024-3051646, is hereby dismissed.

3. That the Secretary's Bureau shall mark Docket Nos. C-2024-3051643, C-2024-3051644, C-2024-3051645 and C-2024-3051646 as closed.

Date: June 11, 2025

_____/s/
Erin L. Gannon
Administrative Law Judge