

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tammy’s West Side Deli	:	
	:	
v.	:	C-2025-3053323
	:	
FirstEnergy Pennsylvania Electric Company	:	

**INITIAL DECISION**

Before  
Emily I. DeVoe  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses without prejudice the Formal Complaint of a non-residential customer seeking a payment arrangement due to the customer failing to appear and prosecute the Complaint.

**HISTORY OF THE PROCEEDING**

On February 10, 2025, Tammy’s West Side Deli (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against FirstEnergy Pennsylvania Electric Company (FE PA, Company, or Respondent), requesting a payment arrangement (PAR). Complainant checked the “other” box, writing,

Nov 1<sup>st</sup> I talked to Daniel Garcia which was very nice to talk with. We came to an agreement but he said that if we needed anything in the future [sic] to get ahold of him. We have been trying the past 3 weeks to contact him at 724-838-6416, but have not heard back from him. We are waiting on a settlement to come [sic] thru[sic] and when that does we can get the back bill taken care of. Until then we would like to pay the current bill plus [sic] \$1000.00 a month.

Complaint ¶ 4.

Regarding service by the Commission, Complainant selected the option to receive all communications from the Commission via eService through an eFiling account registered with the Commission. Complaint ¶ 9. The Complaint was signed by Tammy Brest (Ms. Brest), who identified herself as the “owner.” Complaint ¶ 11.

On March 3, 2025, Respondent filed an Answer to the Complaint. FE PA admits it provides non-residential service to Complainant at 48 West Main Street, Greenville, PA 16125 (service location). It denied Complainant is eligible for a PAR and denied the material allegations of fact in the Complaint and denied that Complainant was entitled to the relief requested. Respondent requested that the Complaint be dismissed.

Finally, FE PA noted Complainant must be represented by counsel in these proceedings. It maintained that Complainant is a limited liability company (LLC) and the Complaint was signed by Complainant’s owner, Tammy Brest, who may not represent Complainant since she is not an attorney.

On March 6, 2025, Chief Administrative Law Judge Charles E. Rainey, Jr. issued an Interim Order Setting Resolution Conference.

The matter did not settle, so on June 30, 2025, the Commission issued a Call-In Telephone Hearing Notice which was served on the parties scheduling an initial telephonic hearing on August 14, 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:

**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. If you are unable to attend the hearing for any reason, you must request a continuance using the procedure described below.

**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 continuation, 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).

On June 30, 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.

The Hearing Notice and Prehearing Order were eServed to Complainant in the ordinary course of the Commission’s business to the email address that was registered

with the Commission by Complainant. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

On July 2, 2025, I issued an Interim Order directing Complainant to, by August 6, 2025, either cause counsel to enter an appearance or show cause why it is not required to be represented by counsel in these proceedings.

Complainant did not cause counsel to enter an appearance nor did it show cause as to why it is not required by the Commission's rules to be represented by an attorney in this proceeding.

The hearing convened on August 14, 2025, as scheduled. The Company was represented by Timothy McHugh, Esquire, who appeared along with one witness and was ready to proceed. The court reporter was also present. Complainant was not present, and the hearing proceeded in Complainant's absence. Mr. McHugh and I discussed email correspondence between himself, Ms. Brest, and myself occurring on August 13, 2025, regarding Ms. Brest's desire to have the Complaint withdrawn. Mr. McHugh had no objection to the admission of these emails, and I admitted them into the record. No testimony was taken, and no exhibits were introduced into the record. At the hearing, Respondent moved to dismiss the Complaint with prejudice for Complainant's failure to appear and prosecute the Complaint. Tr. 8. I took this motion under advisement. *Id.* at 9.

On August 19, 2025, I issued an Interim Order marking the emails as ALJ Exhibit 1 and attaching the emails to the record. The August 19, 2025 Interim Order also closed the record in this matter.

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

This decision grants Respondent's motion and dismisses the Complaint but without prejudice.

#### FINDINGS OF FACT

1. The Complainant is Tammy's West Side Deli.
2. The Respondent is FirstEnergy Pennsylvania Electric Company.
3. On February 10, 2025, Tammy Brest, on behalf of Complainant, filed a Formal Complaint against Respondent.
4. Tammy Brest signed the Complaint as Complainant's "owner."
5. On March 3, 2025, Respondent filed an Answer to the Complaint.
6. On June 30, 2025, a Call-In Telephone Hearing Notice was served on Complainant scheduling an initial telephonic hearing on August 14, 2025, at 10:00 a.m.
7. On June 30, 2025, a Prehearing Order for Telephone Hearing was served on Complainant providing additional information to the parties regarding the hearing.
8. Both the Hearing Notice and Prehearing Order were served on Complainant by eService to the email address Complainant provided to and registered with the Commission.

9. 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.

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

11. On July 2, 2025, I issued an Interim Order directing Complainant to, by August 6, 2025, either cause counsel to enter an appearance or show cause why it is not required to be represented by counsel in these proceedings.

12. Complainant did not cause counsel to enter an appearance nor did it show cause as to why it is not required by the Commission's rules to be represented by an attorney in this proceeding.

13. On August 13, 2025, at 10:37 a.m., Ms. Brest emailed Mr. McHugh writing, "We are asking for this case 2 be dismissed. Because we no longer own the business and sold that location." ALJ Ex. 1.

14. On August 13, 2025, at 11:50 a.m., Mr. McHugh forwarded Ms. Brest's email to me, copying Ms. Brest, writing, "I received the email below from the Complainant. I requested that she contact you about this, but I still wanted to share it with you." ALJ Ex. 1.

15. On August 13, 2025, at 11:55 a.m., I emailed Mr. McHugh and Ms. Brest, writing, "Ms. Brest, if you want to withdraw the Complaint you filed with the Commission at Docket No. C-2025-3053323, you may respond to this email simply stating you wish to withdraw it. Alternatively, you may call in to the hearing tomorrow

morning and make your request to withdraw on the record or you may give the Company permission to file a certificate of satisfaction with the Commission.” ALJ Ex. 1.

16. Complainant did not respond to my email.

17. Complainant failed to appear and participate in the scheduled telephonic hearing on August 14, 2025.

18. The court reporter, counsel for Respondent and its witness were present and prepared to proceed at the August 14, 2025 hearing.

19. Complainant has not contacted the Commission to explain why its 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 June 30, 2025, the Commission served Complainant a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. Second, on June 30, 2025, the Commission served 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 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 Order were eServed to the Complainant at the email address registered with the Commission. Neither 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).

Further, Ms. Brest's email to Mr. McHugh the day before the hearing suggests she was aware of the hearing. Additionally, in my email response to Ms. Brest, I advised her that she could "call in to the hearing tomorrow morning." ALJ Ex. 1.

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 with prejudice. *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. 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.

While Ms. Brest indicated in her email to Mr. McHugh that she wanted to “dismiss” the case, I am hesitant to consider this a petition for leave to withdraw the Complaint because the request was not made directly to me or another representative of the Office of Administrative Law Judge. This is why I encouraged Ms. Brest to email me directly a request to withdraw the Complaint, copying Mr. McHugh, or call in to the hearing and make her request on the record. Ms. Brest did neither, so I am dismissing this Complaint due to Complainant’s failure to appear. Out of an abundance of caution and to protect Complainant’s due process rights, I do not believe it is appropriate to accept representations made by an opposing party or messages passed through an opposing party regarding a complainant’s intent to proceed with a complaint.

Commission precedent would support my dismissing the Complaint with prejudice. *See 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)). In this case, however, I am exercising my discretion to dismiss without prejudice.

Accordingly, the Complaint is dismissed without prejudice, and 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 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. 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 with prejudice. *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).

