

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robin Callahan

v.

Aqua Pennsylvania, Inc.

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C-2025-3053546

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Decision dismisses the Formal Complaint with prejudice for the failure of Complainant to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On February 24, 2025, Robin Callahan (Complainant or Ms. Callahan) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Aqua Pennsylvania, Inc. (Respondent or Aqua). The Complaint alleges that the utility is threatening to shut off service or has already shut off service.

In her Complaint, Complainant selected the option to receive all communications from the Commission via eService through an eFiling account she registered with the Commission at the email address provided by Complainant on the Complaint. Complaint ¶ 9.

On March 17, 2025, Respondent filed an Answer in which it denied the material allegations of fact and conclusions of law in the Complaint. Respondent requested that the Complaint be dismissed.

On March 26, 2025, a Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing on May 21, 2025, at 10:00 a.m., and the matter was assigned to me.

On March 27, 2025, a Prehearing Order was served on the parties reminding them 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.

On May 21, 2025, I convened the hearing as scheduled. Margaret Morris, Esquire, appeared on behalf of Respondent along with one witness. At the outset of the hearing, Attorney Morris requested a continuance pursuant to a conversation with Complainant wherein Complainant informed Attorney Morris that her husband was experiencing a medical emergency. I granted the Motion for Continuance on the record.

On May 22, 2025, a Further Telephonic Hearing Notice was served on the parties scheduling a further telephonic hearing on July 21, 2025, at 10:00 a.m.

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.

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).

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 21, 2025, I convened the further hearing as scheduled. Margaret Morris, Esquire, appeared on behalf of 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, Respondent moved to dismiss the Complaint with prejudice for Complainant’s failure to appear and prosecute her Complaint. Tr. 11. I took this Motion under advisement.

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

The record closed on July 30, 2025, upon the filing of the transcript with the Commission. This Decision grants Respondent's Motion to Dismiss the Complaint with prejudice.

FINDINGS OF FACT

1. Complainant is Robin Callahan.
2. Respondent is Aqua Pennsylvania, Inc.
3. On February 24, 2025, Complainant filed a Formal Complaint against Respondent.
4. On March 17, 2025, Respondent filed an answer to the Complaint.
5. On March 26, 2025, a Call-In Telephone Hearing Notice was served on Complainant scheduling an initial telephonic hearing on May 21, 2025, at 10:00 a.m.
6. On March 27, 2025, a Prehearing Order for Telephone Hearing was served on Complainant providing additional information to the parties regarding the hearing.
7. On May 21, 2025, the hearing convened as scheduled.

8. At the outset of the hearing, Counsel for Respondent made an oral Motion for Continuance because Complainant's husband was experiencing a medical emergency. Tr. 4-5.

9. I granted Respondent's Motion for Continuance on the record. Tr. 5.

10. On May 22, 2025, a Further Telephonic Hearing Notice was served on the parties scheduling a further telephonic hearing on July 21, 2025, at 10:00 a.m.

11. Both the Further Hearing Notice and Prehearing Order were served on Complainant by eService to the email address Complainant provided to and registered with the Commission.

12. Both the Further 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.

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

14. Complainant failed to appear and participate in the scheduled telephonic hearing on July 21, 2025. Tr. 10.

15. The court reporter, Counsel for Respondent and its witness were present and prepared to proceed at the July 21, 2025, hearing. Tr. 10-11.

16. Complainant has not contacted the Commission to explain why her 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 March 26, 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 March 27, 2025, the Commission served Complainant a Prehearing Order which reminded the parties of the date and time of the hearing, and how to participate. Third, on May 22, 2025, the Commission served Complainant a Further Hearing Notice which advised the parties of the date and time of the further hearing, and how to participate. Further, all three documents advised the parties, *inter alia*, how to request a continuance prior to the hearing if needed. Finally, all three 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 claims and issues presented in the dismissed Complaint.

Both Hearing Notices and the Prehearing Order were eServed to the Complainant at the email address she 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).

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. *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 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, 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. Thus, it is appropriate to dismiss the Complaint with prejudice. *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)). Accordingly, the merits of the Complaint will not be addressed.

Respondent's Motion to Dismiss with prejudice 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).

