

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas and Sherri Golding	:	
	:	
v.	:	C-2024-3050550
	:	
FirstEnergy Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On August 2, 2024, Thomas and Sherri Golding (Complainants or the Goldings) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against FirstEnergy Pennsylvania Electric Company (FE PA, Company, or Respondent), alleging that the Company was threatening to shut off service or had already shut off service and there were incorrect charges on their bill. Complaint ¶ 4. Complainants also requested a payment arrangement (PAR). *Id.* Further, they wrote in the “other” section that the bill had “high charges” during a period of time when they were not home and alleged that the electricity was “going to other places.” *Id.* As relief,

Complainants requested that the Company conduct an investigation to see “where all the power is going.” Complaint ¶ 5.

Regarding service by the Commission, the Goldings elected to be served by First-Class Mail. Complaint ¶ 9. Complainants subsequently registered an eService account with the Commission.¹

On August 26, 2024, Respondent filed an Answer to the Complaint, denying the material averments of the Complaint. It averred, *inter alia*, it issued Complainants a termination notice for an outstanding balance of \$781.41, but did so consistent with Commission regulations. Answer ¶ 4. It further denied that Complainants were eligible for a PAR because they are currently enrolled in the Company’s Customer Assistance Program (CAP), and maintained that the bills issued to Complainants were based on actual meter readings and were correct as rendered. *Id.*

On August 30, 2024, Chief Administrative Law Judge Charles E. Rainey, Jr. issued an Interim Order Setting Resolution Conference. The matter did not settle.

¹ When Complainants registered for an eFiling account they 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 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).

On July 23, 2025, a Call-In Telephone Hearing Notice was served on the parties rescheduling the initial telephonic hearing for September 23, 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 July 23, 2025, 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).

On July 23, 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 July 23, 2025 Hearing Notice and Prehearing Order were served on Complainants by eService and First-Class Mail at P.O. Box 183, 819 Main Street, Coalport, PA.

The Prehearing Order was subsequently returned as undeliverable. Tr. 6.

On August 12, 2025, the Commission re-served the Prehearing Order.

On September 3, 2025, my Legal Assistant called Complainants at the phone number listed on the Complaint and left a voicemail requesting a return call. Tr. 7.

On September 10, 2025, my Legal Assistant called Complainants a second time, leaving another voicemail, and sent Complainants an email at the email address listed on their Complaint, requesting they contact the office to ensure we had their correct mailing address. Tr. 7.

Complainants did not contact the Office of Administrative Law Judge (OALJ) in response to my Legal Assistant's calls and email. Tr. 7.

The July 23, 2025, the Hearing Notice was not returned as undeliverable, nor was the copy of the Prehearing Order re-served on August 12, 2025.

On September 23, 2025, I convened the hearing as scheduled. Ms. Angelina Umstead, Esquire, was present on behalf of Respondent along with one witness and was ready to proceed. The court reporter was also present. Complainants were not present at the start of the hearing, and the hearing proceeded in Complainants' absence. No testimony was taken, and no exhibits were introduced into the record. At the hearing, Respondent moved to dismiss the Complaint with prejudice due to Complainants' failure to appear and prosecute their Complaint. Tr. 7-8. I took this motion under advisement.

Complainants have not contacted the Commission to explain why their failure to appear at the hearing was unavoidable.

The record closed on September 23, 2025, at the conclusion of the hearing.
52 Pa. Code § 5.431(a).

The Transcript (Tr.) was filed on October 3, 2025, and is nine pages in length.

This decision grants the Respondent's motion to dismiss the Complaint but without prejudice.

FINDINGS OF FACT

1. Complainants are Thomas and Sherri Golding.
2. Respondent is FirstEnergy Pennsylvania Electric Company.
3. On August 2, 2024, Complainant filed a Formal Complaint against Respondent.
4. On August 26, 2024, Respondent filed an Answer to the Complaint.
5. On July 23, 2025, a Call-In Telephone Hearing Notice was served on Complainant scheduling an initial telephonic hearing on September 23, 2025, at 10:00 a.m.
6. On July 23, 2025, a Prehearing Order for Telephone Hearing was served on Complainant providing additional information to the parties regarding the hearing.

7. Both the July 23, 2025, Hearing Notice and July 23, 2025, Prehearing Order were served on Complainants by First-Class Mail and by eService.

8. The July 23, 2025, Prehearing Order was returned as undeliverable.
Tr. 6.

9. On August 12, 2025, the July 23, 2025, Prehearing Order was re-served on Complainants by First-Class Mail.

10. On September 3, 2025, an OALJ Legal Assistant called Complainants at the phone number listed on the Complaint and left a voicemail requesting a return call. Tr. 7.

11. On September 10, 2025, an OALJ Legal Assistant called Complainants a second time, leaving another voicemail, and sent Complainants an email at the email address listed on their Complaint, requesting they contact the OALJ office to confirm their mailing address. Tr. 7.

12. The July 23, 2025, Hearing Notice was not returned as undeliverable, nor was the copy of the Prehearing Order re-served on August 12, 2025.

13. Complainants did not respond to the Legal Assistant's calls or email.
Tr. 7.

14. The September 23, 2025, hearing convened as scheduled.

15. Complainants failed to appear and participate in the scheduled telephonic hearing on September 23, 2025.

16. The court reporter, counsel for Respondent, and its witness were present and prepared to proceed at the September 23, 2025, hearing.

17. Complainants have not contacted the Commission to explain why their 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 Complainants were provided notice and the opportunity to be heard. On July 23, 2025, the Commission issued a Notice and Prehearing Order and served Complainants by both eService and First-Class Mail. Although the copy of the Prehearing Order served by First-Class Mail was returned, the Commission promptly re-served it and contacted Complainants by both telephone and email, requesting Complainants contact the Commission to confirm their mailing address. The July 23, 2025, Notice and the Prehearing Order re-served on August 12, 2025, were not returned as undeliverable. Additionally, the copies of the July 23, 2025, Notice and Prehearing Order eServed on Complainants were not returned as undeliverable.

The Hearing Notice served on July 23, 2025, advised the parties of the date and time of the hearing, and how to participate. The Prehearing Order 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 Complainants that failure to appear may result in the dismissal of the Complaint with prejudice, which means that Complainants would be barred from filing another complaint raising the same claim(s) and issues(s) presented in the dismissed complaint.

The Notice served by eService and First-Class Mail on July 23, 2025, was not returned as undeliverable; the Prehearing Order eServed on July 23, 2025, and re-served by First-Class Mail on August 12, 2025, were not returned as undeliverable. Accordingly, it must be presumed that these documents were received by Complainants. *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); *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).

Complainants had notice of the hearing and an opportunity to be heard in this proceeding. Therefore, Complainants' 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).

Complainants failed to appear for the September 23, 2025, 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, Complainants explaining why Complainants' failure to appear at the hearing was unavoidable.

Consequently, I find that Complainants waived the opportunity to participate in a hearing on the matters raised in the Complaint, Complainants' 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, Complainants bear the burden of proof. By failing to participate and proffer any evidence to support the Complaint, Complainants have failed to meet this burden. Complainants have failed to participate in this proceeding in any way since filing their Complaint and have not responded to the Legal Assistant's calls or email. Thus, it is appropriate to dismiss the Complaint. Accordingly, the merits of the Complaint will not be addressed.

Respondent's motion to dismiss with prejudice will be granted in part such that the Complaint is dismissed, but 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. 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).

5. 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).

6. 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).

7. 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).

8. 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 FirstEnergy Pennsylvania Electric Company's motion to dismiss the Formal Complaint with prejudice of Thomas and Sherri Golding, at Docket Number C-2024-3050550, is granted in part such that the Complaint is dismissed and denied in part such that it is dismissed without prejudice.

2. That the Formal Complaint filed by Thomas and Sherri Golding in *Thomas and Sherri Golding v. FirstEnergy Pennsylvania Electric Company*, Docket Number C-2024-3050550, is hereby dismissed without prejudice.

