

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Salvatore A. Cosentino	:	
	:	
v.	:	F-2025-3056381
	:	
FirstEnergy Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On July 14, 2025, Salvatore A. Cosentino (Complainant or Mr. Cosentino) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against FirstEnergy Pennsylvania Electric Company (FE PA, Company, or Respondent) regarding his service at 1512 Ridge Avenue, Apt. 2A, Latrobe, PA (service location).¹ Mr. Cosentino checked the “other” box and alleged, *inter alia*, there may be a shared metering situation in his apartment complex and there may be incorrect bills on his account. Complaint ¶ 4. Mr. Cosentino further avers “electricity theft” has occurred

¹ Complainant’s Complaint is a timely appeal of the Bureau of Consumer Services’ (BCS) decision on Complainant’s informal complaint at BCS No. 4055821.

and Respondent has incorrectly assigned costs to him. Complaint ¶ 5. Regarding service by the Commission, Mr. Cosentino elected to be served by First-Class Mail, checking and initialing next to this option. Complaint ¶ 9.

On August 11, 2025, Respondent filed an Answer to the Complaint. In its Answer, FE PA denies that Complainant's bills are incorrect and denies that a shared metering situation exists at Complainant's apartment building. Answer ¶ 4.

On August 19, 2025, a Call-In Telephone Hearing Notice (Notice) was served on the parties scheduling an initial telephonic hearing on October 7, 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 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 August 21, 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 Notice and Prehearing Order were served by First-Class Mail to Complainant at the address listed on his Complaint. Neither the Notice nor the Prehearing Order were returned to the Commission as undeliverable.

On September 23, 2025, I received correspondence from Mr. Cosentino. Notably, the correspondence included a copy of the August 19, 2025, Notice, as well as several handwritten pages. There was no certificate of service attached to the correspondence evidencing Mr. Cosentino had served a copy on the Company's counsel. In his correspondence, Mr. Cosentino writes, *inter alia*,

Another face I would gladly confront in a courtroom is that of First Energy's attorney, Timothy K. McHugh Esquire. His mailing of August 11, 2025, refutes facts I know to be true. I would welcome to see him in 'in person' and provide him an opportunity to get his law school tuition receipts for possible remuneration... Afterall, he is their legal face and should have to appear in a courtroom in Westmoreland County.... If I could question the two W.P.P. reps who came here, along with Jack Bangor, in an actual courtroom, perhaps a different story would emerge.... With all due respect, Your Honor, expecting you to rule in First Energy's favor, and a process denying 'face to face' adjudication, I won't be calling.

I interpreted Mr. Cosentino's correspondence to potentially be a request for an in-person hearing. I instructed my legal assistant to call Complainant to clarify whether he was requesting an in-person hearing. She called the number on the Complaint, but the number simply rang with no option to leave a voicemail message. Mr. Cosentino did not list an email address on his Complaint.

Therefore, on September 23, 2025, I issued an Interim Order attaching the correspondence to the record, curing the *ex parte* nature of the communication, and

directing Mr. Cosentino to file, by October 1, 2025, a clear and unambiguous request with the Commission's Secretary's Bureau if he wanted to have his telephonic hearing converted to an in-person one. I explained, however, that if the hearing were to be held in-person, it would be held at the Office of Administrative Law Judge (OALJ) office in downtown Pittsburgh, not some location in Westmoreland County. September 23, 2025, Interim Order, pp. 1-2. I further ordered that if Mr. Cosentino did not make a filing by October 1, 2025, the hearing would convene as a telephonic hearing as scheduled on October 7, 2025, and if Mr. Cosentino failed to appear, the Complaint may be dismissed. *Id.* at 2.

The September 23, 2025, Interim Order was served on Mr. Cosentino by First-Class Mail, consistent with his selection on the Complaint.

Mr. Cosentino made no filing in response to the September 23, 2025, Interim Order.

The hearing convened as scheduled on October 7, 2025. Mr. Timothy McHugh, Esquire, was present on behalf of the Company. Complainant was not present. Mr. McHugh explained he had communication with Mr. Cosentino the day before the hearing. Tr. 5. Mr. McHugh indicated Complainant texted Mr. McHugh saying he had sent additional correspondence to OALJ, would not be participating in the hearing, and did not want to pursue the Complaint. Tr. 5-6. Out of an abundance of caution, I took a brief recess so my legal assistant could call Mr. Cosentino to encourage him to call in to the hearing and make his request to withdraw the Complaint on the record, if that was what he wanted to do. Tr. 6-8. My legal assistant called Mr. Cosentino at the number listed on his Complaint, but there was no answer and no option to leave a message. Tr. 8.

Mr. McHugh made a motion to dismiss the Complaint with prejudice due to Complainant's failure to appear (Motion). Tr. 8-9. I took the Motion under advisement. Tr. 9.

On October 21, 2025, I received correspondence from Mr. Cosentino. It was a copy of the September 23, 2025 Interim Order with a handwritten notation at the top, which reads, "I consider this matter closed! I told the truth! I didn't read this! Please cease correspondence!" (emphasis in original). There was no indication that Mr. Cosentino provided a copy of the October 21, 2025, correspondence to the Company.

I asked the Secretary's Bureau to add this correspondence to the docket, and I emailed a copy to Mr. McHugh to cure the *ex parte* nature of the communication.

Complainant has not contacted the Commission to explain why his failure to appear at the hearing was unavoidable, nor has he filed correspondence clearly and unambiguously indicating an intent to withdraw the Complaint.

The Transcript (Tr.) was filed on October 23, 2025.

On October 28, 2025, I issued an Interim Order closing the record.

This decision grants the Respondent's motion to dismiss the Complaint with prejudice.

FINDINGS OF FACT

1. Complainant is Salvatore A. Cosentino.
2. Respondent is FirstEnergy Pennsylvania Electric Company.

3. On July 14, 2025, Complainant filed a Formal Complaint against Respondent.

4. On August 11, 2025, Respondent filed an Answer to the Complaint denying the material averments of the Complaint.

5. On August 19, 2025, a Call-In Telephone Hearing Notice was served on Complainant scheduling an initial telephonic hearing on October 7, 2025, at 10:00 a.m.

6. On August 21, 2025, a Prehearing Order for Telephone Hearing was served on Complainant providing additional information to the parties regarding the hearing.

7. Both the August 19, 2025, Notice and August 21, 2025, Prehearing Order were served on Complainant by First-Class Mail at the address listed on the Complaint.

8. Both the August 19, 2025, Notice and August 23, 2025, Prehearing Order provided 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 August 19, 2025, Notice nor the August 23, 2025, Prehearing Order were returned to the Commission as undeliverable.

10. On September 23, 2025, Mr. Cosentino submitted correspondence to the Commission which contained a copy of the August 19, 2025, Notice and several handwritten pages.

11. On September 23, 2025, I issued an Interim Order directing, *inter alia*, Mr. Cosentino to file correspondence with the Commission by October 1, 2025, if he wanted to convene the hearing in-person.

12. The September 23, Interim Order advised Mr. Cosentino that if he did not file correspondence by the deadline, the hearing would be held by telephone as scheduled, and that the Complaint may be dismissed if he failed to appear at the hearing.

13. The September 23, 2025, Interim Order was served on Complainant by First-Class Mail.

14. Mr. Cosentino made no filing in response to the September 23, 2025, Interim Order.

15. The October 7, 2025, hearing convened as scheduled.

16. Complainant failed to appear and participate in the scheduled telephonic hearing on October 7, 2025.

17. The court reporter, counsel for Respondent, and its witness were present and prepared to proceed at the October 7, 2025, hearing.

18. On October 21, 2025, I received correspondence from Mr. Cosentino, which contained a copy of the September 23, 2025 Interim Order with a handwritten notation at the top.

19. The handwritten notation reads, “I consider this matter closed! I told the truth! I didn’t read this! Please cease correspondence!” (emphasis in original).

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

21. Complainant has not filed a clear, unambiguous statement that he wants to withdraw the Complaint.

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. The Commission served Complainant with a Notice on August 19, 2025, which advised the parties of the date and time of the hearing, and how to participate. On August 21, 2025, the Commission served Complainant with 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.

Further, the September 23, 2025, Interim Order emphasized the importance of appearing at the hearing.

The August 19, 2025, Notice, August 21, 2025, Prehearing Order, and September 23, 2025, Interim Order were served by U.S. First-Class Mail to the address provided on the Complaint as Mr. Cosentino's mailing address. None of the documents were returned as being undeliverable. Importantly, Mr. Cosentino's correspondence received on September 23, 2025, included a copy of the August 19, 2025, Notice, evidencing the fact he actually received a copy of the Notice. Further, Mr. Cosentino's correspondence received on October 21, 2025, was a copy of the September 23, Interim Order with a handwritten notation at the top, evidencing the fact he actually received a copy of the September 23, 2025, Interim Order.

Complainant had actual 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 October 7, 2025, hearing despite receiving actual 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.

Further, his correspondence received October 21, 2025, read, “I consider this matter closed! I told the truth! I didn’t read this! Please cease correspondence!” (emphasis in original). Arguably, this could be interpreted as a request to withdraw the Complaint, but to me, there is a distinct difference between “considering a matter closed” and “wanting to withdraw it.” One could consider a matter closed based on some misunderstanding of fact or law or misinterpretation of some correspondence received from the Commission or the Company. Therefore, I am not considering this

correspondence as a request for leave to withdraw the Complaint pursuant to 52 Pa Code § 5.94 and will consider it as a situation in which Complainant failed to appear.

Consequently, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the Complaint, his absence was not unavoidable, and Complainant did not withdraw the Complaint. I find the Complaint should be dismissed with prejudice.

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. Complainant had *actual notice* of the hearing, as evidenced by the facts that: (1) his September 23, 2025, correspondence included a copy of the August 19, 2025 Notice, and (2) his October 21, 2025 correspondence included a copy of the September 23, 2025 Interim Order (which, based on his handwritten notation he chose not to read). If Complainant will not read Interim Orders sent to him by the Commission and does not want the Commission to contact him

further about his Complaint, there is no possible way this matter can move forward. Thus, it is appropriate to dismiss the Complaint with prejudice. 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. 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).

4. 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).

5. 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).

