

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lacy Jo Nunemaker	:	
	:	
v.	:	C-2024-3052234
	:	
FirstEnergy Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Emily A. Farren
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 November 21, 2024, Lacy Jo Nunemaker (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against FirstEnergy Pennsylvania Electric Company (Respondent or FirstEnergy).¹ The Complaint alleges that there are incorrect charges on her electric bill.

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 4002953, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

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

On December 11, 2024, the 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, or in the alternative, requested the matter be set for mediation. Mediation was unsuccessful.

On July 21, 2025, a Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing on September 11, 2025, at 10:00 a.m. and the case was assigned to me.

On July 21, 2025, a Prehearing Order was served on the parties which reminded the parties of the date and time of the hearing.

On September 9, 2025, I received an email from Ms. Nunemaker, who requested a continuance of the hearing scheduled for September 11, 2025, and noted that she did not receive notice of the hearing until she found the FedEx package with the Company's proposed exhibits. Upon review of the Commission's internal file, I discovered that the Hearing Notice and Prehearing Order were returned to the Commission, marked as undeliverable. On September 10, 2025, I issued an Order Granting Complainant's Motion for Continuance.

On September 11, 2025, the Commission issued a rescheduled Hearing Notice to Ms. Nunemaker via the email address she used to request a continuance, as well as via First-Class Mail to two separate addresses: (1) the service address pertaining to the Complaint, 31 Center Square; and (2) an address the Company used to serve Ms. Nunemaker with the Company's proposed exhibits, 15 Rice Avenue.

On September 11, 2025, a Cancelled/Rescheduled Call-In Telephone Hearing Notice was served on the parties scheduling a telephonic hearing on October 16, 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).

On September 11, 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: (1) electronically served to Complainant in the ordinary course of the Commission’s business to the email address used by Complainant to request a continuance of the September 11, 2025 hearing; and (2) served via First-Class Mail to 15 Rice Avenue. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable, as to both electronic service and First-Class Mail service.

On October 16, 2025, I convened the hearing as scheduled. Mr. Timothy McHugh, Esquire, appeared on behalf of Respondent along with two witnesses 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 the Complaint. Tr. 7. I took this motion under advisement. *Id.*

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

The record closed on October 17, 2025.² This decision grants the Respondent's motion to dismiss the Complaint with prejudice.

FINDINGS OF FACT

1. The Complainant is Lacy Jo Nunemaker.
2. The Respondent is FirstEnergy Pennsylvania Electric Company.
3. On November 20, 2024, Complainant filed a Formal Complaint against Respondent.
4. On December 11, 2024, Respondent filed an answer to the Complaint.

² The record closed at the conclusion of the hearing. 52 Pa. Code § 5.431(a).

5. On September 11, 2025, a Call-In Telephone Hearing Notice was served on Complainant scheduling an initial telephonic hearing on October 16, 2025, at 10:00 a.m.

6. On September 11, 2025, a Prehearing Order for Telephone Hearing was served on Complainant providing additional information to the parties regarding the hearing.

7. Both the Hearing Notice and Prehearing Order were served on Complainant by both electronic mail to the email address Complainant provided to the Commission and First-Class Mail to 15 Rice Avenue .

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

11. The court reporter, Counsel for Respondent and its witness(es) were present and prepared to proceed at the October 16, 2025 hearing.

12. Complainant has not contacted the Commission to explain why Complainant's failure to appear at the October 16, 2025 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 September 11, 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 September 11, 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 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 electronically served to the email address and mailing address provided by Complainant to the Commission. Neither the emails or mailings were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Complainant were received by Complainant. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 2024); *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).

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) (*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).

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 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. Thus, it is appropriate to dismiss the Complaint with prejudice. *Brown; Williams* (citing *Jefferson*). 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 emailed 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. 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).

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. 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).

7. 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).

8. 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).

9. By failing to participate in the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet the Complainant's 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 Lacy Jo Nunemaker v. FirstEnergy Pennsylvania Electric Company with prejudice, at Docket No. C-2024-3052234, is granted.

2. That the Formal Complaint filed by Lacy Jo Nunemaker in Lacy Jo Nunemaker v. FirstEnergy Pennsylvania Electric Company, at Docket No. C-2024-3052234, is hereby dismissed with prejudice.

3. That the Secretary's Bureau shall mark Docket No. C-2024-3052234 as closed.

Date: November 12, 2025

/s/
Emily A. Farren
Administrative Law Judge