

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Fred and Reva Levy	:	
	:	
v.	:	C-2025-3053847
	:	C-2025-3053848
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Decision dismisses the Formal Complaints of Fred and Reva Levy against Pennsylvania-American Water Company for the failure of Complainants to appear for the hearing and prosecute the Formal Complaints.

HISTORY OF THE PROCEEDING

On February 26, 2025, Fred and Reva Levy (Complainants or the Levys) filed two Formal Complaints (Complaints) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania-American Water Company (Respondent or PAWC). There was one Complaint related to wastewater (Docket No. C-2025-3053847) and one related to water (Docket No. C-2025-3053848). Both of the Complaints alleged that there were incorrect charges on their bills and that they were being charged above the recognized legal limit.

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

On March 31, 2025¹, Respondent filed an Answer in which it denied the material allegations of fact and conclusions of law in the Complaints. Respondent requested that the Complaints be dismissed.

On April 3, 2025, a Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing on May 28, 2025, at 10:00 a.m. and the cases were assigned to me.

On April 4, 2025, a Prehearing Order was served on the parties which reminded 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 19, 2025, PAWC filed a Motion to Continue the hearing scheduled for May 28, 2025, due to a scheduling conflict. The Complainants did not object to the Motion. I granted the request, and the parties were notified via telephone and again by electronic mail on May 27, 2025.

On May 28, 2025, a Cancelled/Rescheduled Initial Telephonic Hearing Notice was served on the parties which rescheduled the initial telephonic hearing to July 22, 2025, at 10:00 a.m. The Hearing Notice provided the parties with the Toll-Free

¹ The Formal Complaints were served on the Respondent by the Commission's Secretary's Bureau on March 11, 2025.

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).

In the ordinary course of the Commission’s business, the Hearing Notices and Prehearing Order were served via U.S. First-Class Mail to Complainants at the street address provided by them to the Commission. The Commission did not receive any return mail that the Hearing Notice or the Prehearing Order sent to Complainants’ address were undeliverable.

On July 22, 2025, I convened the hearing as scheduled. Nicholas Stobbe, Esquire, appeared 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. After a short recess to allow time for Complainants to appear, 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 Complaints for Complainants’ failure to appear and prosecute their Complaints with prejudice. Tr. 6. I took this Motion under advisement.

On July 25, 2025, my office received written correspondence from the Complainants indicating that they were requesting a new hearing date. The correspondence did not provide a reason as to why the Complainants failed to appear for the hearing on July 22, 2025. My office contacted the Complainants to request that they provide a reason for their request.

On August 8, 2025, PAWC filed a letter objecting to the Complainants' request for a new hearing date.

On August 13, 2025, my office received a follow-up correspondence from the Complainants indicating that they were requesting a new hearing date because July 22, 2025, was one of their birthdays and that they did not "do hearings via Zoom on that date."

On August 15, 2025, the Complainants filed a response to PAWC's objections to their request for a new hearing date.²

The record closed on August 20, 2025, when the hearing transcript was received. This Decision grants Respondent's Motion to Dismiss the Complaint with prejudice.

FINDINGS OF FACT

1. Complainants are Fred and Reva Levy.

² In their response to PAWC's objections, the Complainants indicated that they objected to a telephonic hearing and stated that they had requested an in-person hearing in Harrisburg. However, my office had not received any prior request for the Complainants for an in-person hearing, nor is there any indication that they filed a request with the Secretary's Bureau.

2. Respondent is Pennsylvania-American Water Company.
3. On February 26, 2025, Complainants filed two Formal Complaints against Respondent; one for wastewater and one for water.
4. On March 31, 2025, Respondent filed Answers to the Formal Complaints.
5. On April 3, 2025, the matters were consolidated and a Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing in both Formal Complaints on May 28, 2025, at 10:00 a.m.
6. On April 4, 2025, a Prehearing Order was served on the parties.
7. On May 1, 2025, PAWC filed a Motion to Continue the Hearing on May 28, 2025.
8. PAWC's continuance request was granted, and a Cancelled/Rescheduled Telephonic Hearing Notice was served on May 28, 2025, to the parties which scheduled a new initial telephonic hearing for July 22, 2025, at 10:00 a.m.
9. Both the Hearing Notices and Prehearing Order were served on Complainants via U.S. First-Class Mail to the postal address Complainants provided to the Commission.
10. Both the Hearing Notices and 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.

11. Neither the Hearing Notices nor the Prehearing Order were returned to the Commission as undeliverable.

12. Complainants failed to appear and participate in the scheduled telephonic hearing on July 22, 2025.

13. The court reporter, Counsel for Respondent and its witness were present and prepared to proceed at the July 22, 2025, hearing.

14. On July 25, 2025, my office received written correspondence from the Complainants indicating that they were requesting a new hearing date.

15. The correspondence did not provide a reason as to why the Complainants failed to appear for the hearing on July 22, 2025.

16. The legal assistant for the presiding officer called the Complainants to request that they provide a reason for their request.

17. On August 8, 2025, PAWC filed a letter objecting to the Complainants request for a new hearing date.

18. On August 13, 2025, my office received follow-up correspondence from the Complainants indicating that they were requesting a new hearing date because July 22, 2025, was one of their birthdays and that they did not “do hearings via Zoom on that date.”

19. On August 15, 2025, the Complainants filed a response to PAWC’s objections to their request for a new hearing date.

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. Cmwlt. 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. First, on April 3, 2025, the Commission served Complainants a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. Second, on April 4, 2025, the Commission served Complainants a Prehearing Order which reminded the parties of the date and time of the hearing, and how to participate. Finally, the Commission served Complainants with the Cancelled/Rescheduled Telephonic Hearing Notice on May 28, 2025. Further, these documents advised the parties, *inter alia*, how to request a continuance prior to the hearing if needed. Finally, these documents advised Complainants that failure to appear may result in the dismissal of the Complaints with prejudice, which means that Complainants would be barred from filing another complaint, raising the same claims and issues presented in the dismissed Complaints.

The Hearing Notice, Prehearing Order, and Cancelled/Rescheduled Telephonic Hearing Notice were served by U.S. First-Class Mail to the address provided on the Complaints. None of the documents were returned as being undeliverable. Accordingly, it must be presumed that this mail was received by the Complainants. *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).

The 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 their 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).

The Complainants failed to appear for the hearing despite receiving notice and despite the undersigned allowing additional time for the Complainants to appear. On July 25, 2025, my office received written correspondence from the Complainants indicating that they were requesting a new hearing date. The correspondence did not provide a reason as to why the Complainants had failed to appear for the hearing on July 22, 2025. My legal assistant called the Complainants to request that they provide a reason for their request. On August 8, 2025, PAWC filed a letter objecting to the Complainants request for a new hearing date. On August 13, 2025, my office received follow-up correspondence from the Complainants indicating that they were requesting a new hearing date because July 22, 2025, was one of their birthdays and that they did not “do hearings via Zoom on that date.” On August 15, 2025, the Complainants filed a response to PAWC’s objections to their request for a new hearing date.

Based on the information presented by the parties, I do not find that the Complainants failure to appear for the hearing on July 22, 2025, was unavoidable. Consequently, I find that Complainants waived the opportunity to participate in a hearing on the matters raised in the Complaints, Complainants’ absence was not unavoidable, and the Complaints 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 Complaints, Complainants have failed to meet this burden. Thus, it is appropriate to dismiss the Complaints. *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 Complaints 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 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. 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. 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 Complaints, Complainants have failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Pennsylvania-American Water Company's Motion to Dismiss the Formal Complaints with prejudice of Fred and Reva Levy, at Docket Numbers C-2025-3053847 and C-2025-3053848, is granted.

2. That the Formal Complaints filed by Fred and Reva Levy, in Fred and Reva Levy vs. Pennsylvania-American Water Company, Docket Numbers C-2025-3053847 and C-2025-3053848, are hereby dismissed with prejudice.

3. That the Secretary's Bureau shall mark Docket Nos. C-2025-3053847 and C-2025-3053848 as closed.

Date: November 18, 2025

_____/s/
Marta Guhl
Administrative Law Judge