

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James and Tracy Smyth	:	
	:	
v.	:	C-2025-3055568
	:	
Community Utilities of Pennsylvania Inc.	:	

**INITIAL DECISION**

Before  
Barbara Shadie Nause  
Administrative Law Judge

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On June 2, 2025, James and Tracy Smyth (Complainants) filed a Formal Complaint (Complaint) against Community Utilities of Pennsylvania (Respondent) with the Pennsylvania Public Utility Commission (Commission). Complainants challenged Respondents' rate increase and alleged the information surrounding the rate increase was misleading. In their Complaint, Complainants selected the option to receive all communications from the Commission via eService through an eFiling account they registered with the Commission. Complaint ¶ 9.

Respondent filed an Answer and New Matter on June 24, 2025, alleging that the Complaint should be dismissed for legal insufficiency, and that Respondent has not violated a Commission order, regulations or the Public Utility Code.

On September 4, 2025, an Initial Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing on October 8, 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 Passcode 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. If you are unable to attend the hearing for any reason, you must request a continuance using the procedure described below.

**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 was eServed to Complainants in the ordinary course of the Commission’s business to the email address that was registered with the Commission by Complainants. The Hearing Notice was not returned to the Commission as undeliverable.

A Prehearing Order was not eServed in this matter.

On October 8, 2025, the hearing convened as scheduled. Whitney Snyder, 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 Complaint, with prejudice, for Complainants' failure to appear and prosecute their Complaint. Tr. 4. 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 October 28, 2025, following the Commission's receipt of the transcript. This Decision grants Respondent's Motion to Dismiss the Complaint, with prejudice.

#### FINDINGS OF FACT

1. Complainants are James and Tracy Smyth.
2. The Respondent is Community Utilities of Pennsylvania, Inc.
3. On June 2, 2025, Complainants filed a Formal Complaint against Respondent.
4. On June 24, 2025, Respondent filed an Answer and New Matter to the Complaint.

5. On September 4, 2025, a Call-In Telephone Hearing Notice was served on Complainants scheduling an initial telephonic hearing on October 8, 2025, at 10:00 a.m.

6. The Hearing Notice was served on Complainants by eService to the email address Complainants provided to and registered with the Commission.

7. The Hearing Notice provided Complainants 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.

8. The Hearing Notice was not returned to the Commission as undeliverable.

9. Complainants failed to appear and participate in the scheduled telephonic hearing on October 8, 2025.

10. The court reporter, Counsel for Respondent and its witness were present and prepared to proceed at the October 8, 2025, hearing.

11. 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 September 4, 2025, the Commission served Complainants a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. Specifically, the Hearing Notice advised the parties, *inter alia*, how to request a continuance prior to the hearing if needed. Finally, the Hearing Notice 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.<sup>1</sup>

The Hearing Notice was eServed to Complainants at the email address they registered with the Commission. The Hearing Notice was not 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).

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<sup>1</sup> Although a Prehearing Order was not eServed, Complainants had notice of the hearing and an opportunity to be heard. Further, they were specifically advised in the Hearing Notice of the consequences of the failure to appear.

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).

Complainants failed to appear for the hearing despite receiving notice and despite the undersigned allowing additional time for Complainants to appear. 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 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, 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. Thus, it is appropriate to dismiss the complaint. *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 the Complaint 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. *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 Complaint, Complainants have failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Community Utilities of Pennsylvania, Inc.'s Motion to Dismiss the Formal Complaint, with prejudice, of James and Tracy Smyth, at Docket No. C-2025-3055568, is granted.
2. That the Formal Complaint filed by James and Tracy Smyth in James and Tracy Smyth v. Community Utilities of Pennsylvania, Inc., Docket No. C-2025-3055568, is hereby dismissed with prejudice.
3. That the Secretary's Bureau shall mark Docket No. C-2025-3055568 as closed.

Date: December 2, 2025

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/s/  
Barbara Shadie Nause  
Administrative Law Judge