

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Messinger	:	
	:	
v.	:	F-2025-3055633
	:	
PPL Electric Utilities Corporation	:	

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 May 29, 2025, Michael Messinger (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent or PPL).¹ The Complaint alleges that there are incorrect charges on Complainant's bill. Complaint ¶ 4.

¹ The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 4025805, which dismissed Complainant's informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a). The Commission served the Complaint on Respondent on June 9, 2025.

In the Complaint, Complainant selected the option to receive all communications from the Commission via eService through an e-Filing account Complainant registered with the Commission. Complaint ¶ 9.

On June 30, 2025, 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.

On July 2, 2025, a Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing on September 25, 2025 at 10:00 a.m. and the case was assigned to me.

On July 2, 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.

On September 25, 2025, the hearing convened as scheduled. Tr. 3. Complainant was present, along with counsel and a witness for Respondent. *Id.* The parties indicated they believed more time for settlement discussions may allow for parties to reach a settlement. Tr. 4. The parties agreed to continue the hearing for 4-6 weeks from September 25, 2025. Tr. 5.

On September 25, 2025, the Commission issued an additional hearing notice, informing the parties the hearing would reconvene on Friday, November 14, 2025, at 10:00 a.m.

The additional 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).

The additional hearing notice was e-Served to the Complainant in the ordinary course of the Commission’s business to the email address that was registered with the Commission by Complainant. The additional hearing notice was not returned to the Commission as undeliverable.

On November 14, 2025, I reconvened the hearing as scheduled. Hayley Wilburn, Esquire, appeared on behalf of Respondent along with one witness 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. 11. I took this motion under advisement. Tr. 12.

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

The record closed on November 14, 2025.² This decision grants the Respondent's motion to dismiss the Complaint with prejudice.

FINDINGS OF FACT

1. The Complainant is Michael Messinger.
2. The Respondent is PPL Electric Utilities Corporation.
3. On May 29, 2025, Complainant filed a Formal Complaint against Respondent.
4. On June 30, 2025, Respondent filed an Answer to the Complaint.
5. On September 25, 2025, a Hearing Notice was served on Complainant scheduling an additional telephonic hearing on November 14, 2025, at 10:00 a.m.
6. On July 2, 2025, a Prehearing Order for Telephone Hearing was served on Complainant providing additional information to the parties regarding the hearing.

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

7. Both Hearing Notices and the Prehearing Order were served on Complainant by eService to the email address Complainant provided to and registered with the Commission.

8. Both Hearing Notices and the 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 Hearing Notices nor the Prehearing Order were returned to the Commission as undeliverable.

10. Complainant failed to appear and participate in the scheduled telephonic hearing on November 14, 2025.

11. The court reporter, Counsel for Respondent and its witness(es) were present and prepared to proceed at the November 14, 2025 hearing.

12. Complainant has not contacted the Commission to explain why Complainant's 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 Complainant was provided notice and the opportunity to be heard. First, on September 25, 2025, the Commission served the Complainant an additional hearing notice which advised the parties of the date and time of the hearing, and how to participate. Second, on July 2, 2025, the Commission served the Complainant a Prehearing Order. Further, both documents advised the parties, *inter alia*, how to request a continuance prior to the hearing if needed. Finally, all 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 Hearing Notices and Prehearing Order were e-Served to the Complainant at the email address Complainant registered with the Commission. None were returned to the Commission as undeliverable. Notice e-Served 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).

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); *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 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 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 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 e-Served to a party with no notification that service failed is presumed received. *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).

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. 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).

7. 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).

8. 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 PPL Electric Utilities Corporation's motion to dismiss the Formal Complaint of Michael Messinger with prejudice, at Docket No. F-2025-3055633, is granted.

2. That the Formal Complaint filed by Michael Messinger in *Michael Messinger v. PPL Electric Utilities Corporation*, Docket No. F-2025-3055633, is hereby dismissed with prejudice.

