

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ann Kelly	:	
	:	
v.	:	C-2025-3057259
	:	
Columbia Gas of Pennsylvania, Inc.	:	

**INITIAL DECISION**

Before  
Emily I. DeVoe  
Administrative Law Judge

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On September 5, 2025, Anne Kelly (Complainant or Ms. Kelly) filed a Formal Complaint (Complaint) with the Pennsylvania Columbia Gas of Pennsylvania, Inc. (Columbia, Company, or Respondent). She checked the “other” box” on the Formal Complaint form, alleging that the Company’s weather normalization adjustments (WNAs) caused her gas bill to rise despite her replacing her roof, windows, and boiler. Complaint ¶ 4. As relief, she requested the Commission direct Columbia to end its WNA program and reimburse her for the money she paid for WNAs, which she claims she

would not have had to pay but for “warming temperatures caused by fossil fuel companies.” Complaint ¶ 4.

Regarding service by the Commission, Ms. Kelly elected to be served by eService.<sup>1</sup> Complaint ¶ 9.

On September 24, 2025, Respondent filed an Answer to the Complaint, averring the WNA has been correctly charged to Complainant’s account consistent with its Commission-approved tariff. Answer ¶¶ 4, 5.

On October 1, 2025, an Initial Telephonic Hearing Notice (Hearing Notice) was served on the parties scheduling the initial telephonic hearing for November 10, 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:

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<sup>1</sup> When Complainant registered for an eFiling account she agreed to the following terms and conditions:

I agree that I will accept electronic service in the Commission proceeding in which I am a party of record. By creating this account, notification of filings via electronic mail shall constitute valid service of Commission documents. I understand that such electronic service of any and all documents will be substituted for service by mail. I agree to be served via email with all subsequent filings. I agree that email notices will be sent on the same day the document is posted.

By clicking on the ‘Create Account’ button below, [I am] agreeing to all the Terms and Agreements listed above.

eFiling Registration Page, <https://efiling.puc.pa.gov/Accounts/Create?accountType=I> (last visited Jan. 2, 2025).

**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 October 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.

The October 1, 2025, Hearing Notice and October 2, 2025, Prehearing Order were served on Complainant by eService consistent with her election on the Complaint. *See* Complaint ¶ 9.

Neither the October 1, 2025, Hearing Notice nor the October 2, 2025, Prehearing Order were returned as undeliverable.

On November 10, 2025, I convened the hearing as scheduled. Mr. Larry Crayne, Esquire, was present 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, and 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 due to Complainant's failure to appear and prosecute his Complaint. Tr. 7. I took this motion under advisement. *Id.*

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

The record closed on November 10, 2025, at the conclusion of the hearing. 52 Pa. Code § 5.431(a).

The Transcript (Tr.) was filed on November 24, 2025, and is eight pages in length.

This decision grants the Respondent's motion to dismiss the Complaint but without prejudice.

#### FINDINGS OF FACT

1. Complainant is Anne Kelly.
2. Respondent is Columbia Gas of Pennsylvania, Inc.
3. On September 5, 2025, Complainant filed a Formal Complaint against Respondent.
4. On September 24, 2025, Respondent filed an Answer to the Complaint.

5. On October 1, 2025, an Initial Telephonic Hearing Notice was served on Complainant scheduling an initial telephonic hearing on November 10, 2025, at 10:00 a.m.

6. On October 2, 2025, a Prehearing Order was served on Complainant providing additional information to the parties regarding the hearing.

7. Both the October 1, 2025, Hearing Notice and October 2, 2025, Prehearing Order were eServed on Complainant.

8. Neither the October 1, 2025, Hearing Notice nor the October 2, 2025, Prehearing Order were returned as undeliverable.

9. The November 10, 2025, hearing convened as scheduled.

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

11. The court reporter, counsel for Respondent, and its witness were present and prepared to proceed at the November 10, 2025, hearing.

12. Complainant has not contacted the Commission to explain why her 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. On October 1, 2025, the Commission eServed a Notice on Complainant, and on October 2, 2025, the Commission eServed a Prehearing Order on Complainant.

The Hearing Notice served on October 1, 2025, advised the parties of the date and time of the hearing, and how to participate. The October 2, 2025, Prehearing Order 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.

The October 1, 2025, Notice and October 2, 2025, Prehearing Order were served on Complainant by eService and were not returned as undeliverable. Accordingly, it must be presumed that these documents were received by Complainant. *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. *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 November 10, 2025, hearing despite receiving 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 her 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 and Complainant's absence was not unavoidable.

### **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. Accordingly, the merits of the Complaint will not be addressed.

Respondent's motion to dismiss the Complaint with prejudice will be granted in part such that the Complaint is dismissed, but without prejudice.

### 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. 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).

6. 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).

7. By failing to participate in the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That Columbia Gas of Pennsylvania, Inc.'s motion to dismiss with prejudice the Formal Complaint of Anne Kelly, at Docket Number C-2025-3057259, is granted in part such that the Complaint is dismissed and denied in part such that it is dismissed without prejudice.

2. That the Formal Complaint filed by Anne Kelly in *Anne Kelly v. Columbia Gas of Pennsylvania, Inc.*, Docket Number C-2025-3057259, is hereby dismissed without prejudice.

