

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lirieth Herrera Clark West A/K/A	:	
Lirieth West	:	
	:	C-2024-3045957
v.	:	
	:	
FirstEnergy Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Charece Z. Collins
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 January 23, 2024, Lirieth West (Ms. West or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against FirstEnergy Pennsylvania Electric Company (FirstEnergy or Respondent) seeking a payment arrangement.

In her Complaint, Complainant selected the option to receive all communications from the Commission via U.S. First-Class Mail at the address provided by Complainant on the Complaint. Complaint ¶ 9. However, Complainant also registered an eFiling account when she eFiled her Complaint, thereby electing eService.¹

On February 1, 2024, Respondent was served a copy of the Complaint via eService through an eFiling account registered with the Commission. Respondent filed an answer to the Complaint on February 21, 2024.²

¹ When Complainant registered for 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 May 14, 2024).

² This case was previously assigned to Former Administrative Law Judge Arlene Ashton under the same docket number. The first hearing notice and prehearing order in this case were sent on behalf of Judge Ashton in June 2024. The Complainant failed to appear at a hearing scheduled by Judge Ashton in September 2024. A second hearing notice was issued on behalf of Judge Ashton in January 2025. The case was reassigned to me in February 2025. The Complainant failed to appear at a hearing scheduled by Judge Ashton on February 25, 2025. However, this Judge noted that a prehearing order was not sent in advance of that hearing, and a third hearing was therefore scheduled for April 15, 2025. This Decision addresses the April 2025 hearing at which Complainant did not appear.

On February 27, 2025, an Initial Telephonic Hearing Notice was served on the parties scheduling a further telephonic hearing on April 15, 2025, at 10:00 a.m., and the matter was assigned to me.

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).

Also on February 27, 2025, a Prehearing Order was served on the parties reminding 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.

The Hearing Notice and Prehearing Order were sent to Complainant via U.S. First-Class Mail, and eServed to the Complainant in the ordinary course of the Commission’s business to the address and email address (respectively) that was provided to the Commission by Complainant. The Hearing Notice and the Prehearing Order sent

by U.S. First-Class Mail were returned to the Commission as undeliverable³. The Hearing Notice and Prehearing Order were delivered successfully via the Commission's eService.

On April 15, 2025, I convened the hearing as scheduled. Timothy K. McHugh, Esquire, appeared on behalf of FirstEnergy. Complainant did not appear and participate. After a 20-minute recess to allow time for Complainant to appear, the hearing was reconvened and the Company moved to dismiss the Complaint with prejudice. Tr. 4/15/2025, at 10. I took the motion under advisement. *Id.* at 11. The record closed on May 1, 2025, following my receipt of the hearing transcript.

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

FINDINGS OF FACT

1. Complainant is Lirieth West.
2. Respondent is FirstEnergy Pennsylvania Electric Company.
3. On January 23, 2024, Complainant filed a Formal Complaint against Respondent.
4. Respondent filed a timely answer to the Complaint.

³ The Complainant did not provide an alternate address to which documents can be mailed.

5. On February 27, 2025, an Initial Telephonic Hearing Notice was served on the parties scheduling an initial telephonic hearing on April 15, 2025, at 10:00 a.m.

6. Also on February 27, 2025, a Prehearing Order for Telephonic Hearing was served on Complainant providing additional information regarding the hearing.

7. On April 15, 2025, the hearing convened as scheduled.

8. Both the Hearing Notice and Prehearing Order were served on Complainant by U.S. First-Class Mail to the address and eServed to the email address Complainant provided to the Commission.

9. Both the Hearing Notice and Prehearing Order provided the Complainant with the Toll-Free Bridge 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.

10. The Hearing Notice and the Prehearing Order sent by U.S. Mail were returned to the Commission as undeliverable.

11. The Hearing Notice and Prehearing Order were eServed successfully to Complainant.

12. Complainant failed to appear and participate in the scheduled telephonic hearing on April 15, 2025.

13. 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. First, on February 27, 2025, the Commission served Complainant a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. Second, on February 27, 2025, the Commission served 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 claims and issues presented in the dismissed Complaint.

Both the Hearing Notice and Prehearing Order were eServed to the Complainant at the email address she registered with the Commission. Neither eServed document was returned as being 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).

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. Ms. West's absence was not unavoidable, and the Complaint 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, 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. *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.

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 it; 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. 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 burden of proof. 66 Pa.C.S. § 332(a).

