

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mario J. Sebastianelli, MD	:	
	:	
v.	:	C-2023-3042065
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
Chad L. Allensworth
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint without prejudice for failure of Complainant to appear for the hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

On August 4, 2023, Dr. Mario Sebastianelli (“Complainant”) filed a Formal Complaint (“complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against Pennsylvania-American Water Company (“Respondent” or “PAWC”). The complaint avers that Complainant is having a reliability, safety or quality problem with Respondent’s wastewater/sewer service due to a leak in the sewer line that caused damage to Complainant’s property. Complaint ¶¶ 4-6.

In his complaint, Complainant selected the option to receive all communications from the Commission via email at the email address provided by Complainant on the complaint. Complaint ¶ 2. The complaint listed “John Clarey, Esq.” as counsel for Complainant, but the complaint failed to provide any contact information for Attorney Clarey. Complaint ¶ 9.¹

On August 28, 2023, Respondent filed an answer in which it denied the material allegations of fact and conclusions of law in the complaint. Specifically, Respondent denied that any damage to Complainant’s property was the result of a sewer leak. Answer ¶¶ 5-6. Respondent requested that the matter be referred to mediation.

On August 31, 2023, Chief Administrative Law Judge Charles E. Rainey, Jr., issued an Interim Order Setting Resolution Conference (“Interim Order”) referring this matter to mediation. The Interim Order was served to Complainant electronically. Mediation was not successful.

On March 4, 2025, an Initial Telephonic Hearing Notice was served on the parties scheduling an initial telephonic hearing on April 23, 2025 at 10:00 a.m. and the case was assigned to me. Also, on March 4, 2025, a Prehearing Order was served on the parties which reiterated the date and time of the hearing.

On April 16, 2025, counsel for Respondent sent an email to counsel for Complainant and me requesting to continue the April 23, 2025 hearing. That same day, counsel for Complainant concurred in continuing the scheduled hearing.

¹ Because no contact information was submitted for Attorney John Clarey on the complaint and he never filed an entry of appearance, all filings in this matter were served on Complainant.

On April 17, 2025, I advised the parties that the April 23, 2025 hearing was continued and directed the parties to provide a status report by May 26, 2025.

Also, on April 17, 2025, a Cancellation Notice was served on the parties cancelling the April 23, 2025 hearing.

On May 23, 2025, counsel for Respondent provided a status report, via email sent to counsel for Complainant and me, requesting additional time to discuss the matter. That same day, I responded to the parties by email, advising them to provide an additional status report by June 27, 2025.

On June 30, 2025, I emailed the parties requesting a status update.

On July 1, 2025, counsel for Respondent provided a status report, via email sent to counsel for Complainant and me, requesting additional time to discuss the matter. That same day, I responded to the parties by email, advising them to provide an additional status report by August 1, 2025.

On August 4, 2025, I emailed the parties requesting a status update. That same day, counsel for Respondent responded by email sent to counsel for Complainant and me, requesting additional time to resolve the matter. I replied to the parties, via email sent on August 4, 2025, advising that I would contact the parties again in two weeks.

On August 21, 2025, I emailed the parties requesting a status update.

On August 22, 2025, counsel for Respondent provided a status report, via email sent to counsel for Complainant and me, advising that they were waiting for settlement papers to be returned.

On September 24, 2025, I emailed the parties requesting a status update by October 1, 2025.

On September 30, 2025, counsel for Respondent sent an email to counsel for Complainant and me advising that he was unable to contact counsel for Complainant and requesting that the hearing be scheduled.

On October 2, 2025, a Rescheduled Initial Telephonic Hearing Notice was served on the parties rescheduling the hearing for December 10, 2025 at 10:00 a.m.

On December 9, 2025, I emailed the parties directing them to exchange any proposed exhibits for the hearing scheduled for the December 10, 2025 hearing by 5:00 p.m.

On December 9, 2025, the parties submitted a joint request to continue the December 10, 2025 hearing, via email, and to postpone the hearing for at least 60 days.

On December 9, 2025, a Rescheduled Initial Telephonic Hearing Notice was served on the parties cancelling the December 10, 2025 hearing and rescheduling the hearing for February 18, 2026 at 10:00 a.m. The Rescheduled Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the telephonic hearing. The Rescheduled 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).

The Rescheduled Hearing Notice was eServed to Complainant in the ordinary course of the Commission’s business to the email address he provided to the Commission. The Hearing Notice was not returned to the Commission as undeliverable.

On February 18, 2026, I convened the hearing as scheduled. Michael A. Gruin, Esq., appeared on behalf of Respondent along with one witness and was ready to proceed. The court reporter was also present. Neither Complainant nor anybody on behalf of Complainant was present at the scheduled start time for the hearing. After a brief delay 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 without prejudice for Complainant’s failure to appear and prosecute his complaint. (Tr. 8). I took this motion under advisement.

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

The record closed on February 18, 2026.² This decision grants Respondent's motion to dismiss the complaint without prejudice.

² I stated at the hearing that I would hold the record open to allow time for Complainant to contact the Office of Administrative Law Judge to explain his absence, and the record would close at close of business on February 18, 2026. Tr. 8. *See Pa.*

FINDINGS OF FACT

1. Complainant is Dr. Mario Sebastinelli.
2. Respondent is Pennsylvania-American Water Company.
3. On August 4, 2023, Complainant filed a Formal Complaint against Respondent regarding its wastewater/sewer service.
4. On August 28, 2023, Respondent filed an answer to the complaint.
5. The parties agreed to continue hearings that were scheduled for April 23, 2025 and December 10, 2025.
6. On December 9, 2025, a Rescheduled Initial Telephonic Hearing Notice was served on the parties rescheduling the hearing for February 18, 2026 at 10:00 a.m.
7. The Rescheduled Hearing Notice was served on Complainant by eService to the email address Complainant provided to and registered with the Commission.
8. The Rescheduled Hearing Notice 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.

Code § 5.431(a) (providing that the record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission).

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

10. Complainant failed to appear and participate in the scheduled telephonic hearing on February 18, 2026.

11. The court reporter, counsel for Respondent and its witness were present and prepared to proceed at the February 18, 2026 hearing.

12. Complainant did not contact the Commission to explain why his 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 December 9, 2025, the Commission served Complainant a Rescheduled Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. The notice advised the parties, *inter alia*, how to request a continuance prior to the hearing if needed. The document also 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 Rescheduled Hearing Notice was eServed to the Complainant at the email address [he/she] registered with the Commission. Neither was 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).

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 ("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 with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022) (“*Brown*”); *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) (“*Williams*”); *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 without 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. *Brown; Williams*. Accordingly, the merits of the complaint will not be addressed.

Respondent's motion to dismiss the complaint without 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 electronically 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 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 Complaint of Dr. Mario Sebastianelli without prejudice, at Docket Number C-2023-3042065, is granted.

2. That the Formal Complaint filed by Dr. Mario Sebastianelli in Dr. Mario Sebastianelli v. Pennsylvania-American Water Company at Docket Number C-2023-3042065 is hereby dismissed without prejudice.

3. That the Secretary's Bureau shall mark Docket No. C-2023-3042065 as closed.

Date: March 23, 2026

/s/
Chad L. Allensworth
Administrative Law Judge