

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dawn Binder	:	
	:	
v.	:	F-2025-3056688
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Alphonso Arnold III
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 July 31, 2025, Dawn Binder (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent), complaining of PECO's billing practices.

In her 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 ¶ 9.

On August 5, 2025, the Complaint was served on PECO.

On August 25, 2025, 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 September 2, 2025, an Initial Telephonic Hearing Notice was served on the parties scheduling an initial telephonic hearing on November 13, 2025, at 10:00 a.m. and the case was assigned to me.

On September 4, 2025, a Prehearing Order was served on the parties which reminded the parties of the date and time of the hearing.

On October 26, 2025, via email, Complainant asked for a continuance of the November 13, 2025 evidentiary hearing. Respondent did not object to Complainant's continuance request, therefore by email I granted the request and informed the parties that the evidentiary hearing would be rescheduled to another date.

On October 27, 2025, a Rescheduled Initial Telephonic Hearing Notice was served on the parties rescheduling the November 13, 2025 evidentiary hearing to January 7, 2026, at 10:00 a.m.

On November 5, 2025, a Prehearing Order was served on the parties which reminded the parties of the date and time of the January 7, 2026 evidentiary hearing.

On January 5, 2026, via email, Complainant asked for a continuance of the January 7, 2026 evidentiary hearing. Respondent did not object to Complainant's continuance request, therefore by email I granted the request and informed the parties that the evidentiary hearing would be rescheduled to another date.

On January 6, 2026, a Hearing Cancellation Notice was issued cancelling the January 7, 2026 evidentiary hearing.

On January 9, 2026, a Rescheduled Initial Telephonic Hearing Notice was served on the parties rescheduling the January 7, 2026 evidentiary hearing to March 25, 2026, 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:

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 January 9, 2026 Hearing Notice was electronically served to Complainant in the ordinary course of the Commission’s business to the email address she provided to the Commission. The Hearing Notice was not returned to the Commission as undeliverable.

On March 25, 2026, the hearing was convened as scheduled. Attorney Margaret A. Morris appeared on behalf of Respondent along with a witness and was ready to proceed. The court reporter was also present. Complainant was not present to start 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 her Complaint. Tr. 6-7. I took this Motion under advisement.

The record closed on March 30, 2026, the date that I received the electronic transcript of the hearing. This Decision grants Respondent's Motion to Dismiss the Complaint with prejudice.

FINDINGS OF FACT

1. Complainant is Dawn Binder.
2. Respondent is PECO Energy Company.
3. On July 31, 2025, Complainant filed a Formal Complaint against Respondent.
4. On August 25, 2025, Respondent filed an Answer to the Complaint.
5. On September 2, 2025, an Initial Telephonic Hearing Notice was served on the parties scheduling an initial telephonic hearing on November 13, 2025, at 10:00 a.m.
6. On September 4, 2025, a Prehearing Order was served on the parties which reminded the parties of the date and time of the November 13, 2025 hearing.

7. On October 27, 2025, a Rescheduled Initial Telephonic Hearing Notice was served on the parties rescheduling the November 13, 2025 evidentiary hearing to January 7, 2026, at 10:00 a.m.

8. On November 5, 2025, a Prehearing Order was served on the parties which reminded the parties of the date and time of the January 7, 2026 evidentiary hearing.

9. On January 6, 2026, a Hearing Cancellation Notice was issued cancelling the January 7, 2026 evidentiary hearing.

10. On January 9, 2026, a Rescheduled Initial Telephonic Hearing Notice was served on the parties rescheduling the January 7, 2026 evidentiary hearing to March 25, 2026, at 10:00 a.m.

11. The January 9, 2026 Rescheduled Initial Telephonic Hearing Notice was served on Complainant by electronic mail to the email address Complainant provided to the Commission.

12. The January 9, 2026 Rescheduled Initial Telephonic 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.

13. The January 9, 2026 Rescheduled Initial Telephonic Hearing Notice was not returned to the Commission as undeliverable.

14. Complainant failed to appear and participate in the scheduled telephonic hearing on March 25, 2026.

15. The court reporter, Counsel for Respondent and its witness were present and prepared to proceed at the March 25, 2026 hearing.

16. 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 January 9, 2026, Complainant was served a Hearing Notice which advised the parties of the date and time of the March 25, 2026 evidentiary hearing and how to participate. The document 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 dismissal 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 Hearing Notice was electronically served to the email address provided by Complainant to the Commission and was not returned to the Commission as undeliverable. Accordingly, it must be presumed that this document sent to Complainant was received by Complainant. *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).

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 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. *Binder 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, the complainant must show that the respondent's 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. *Binder 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 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. *Binder 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).

