

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aziz Moumen	:	
	:	
v.	:	C-2025-3054825
	:	
FirstEnergy Pennsylvania Electric Company	:	

**INITIAL DECISION**

Before  
Chad L. Allensworth  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the Formal Complaint without prejudice for the failure of Complainant to proffer any evidence in support of the complaint.

**HISTORY OF THE PROCEEDING**

On April 23, 2025, Aziz Moumen (“Complainant”) filed a Formal Complaint with the Pennsylvania Public Utility Commission against FirstEnergy Pennsylvania Electric Company.<sup>1</sup> The Complaint alleges that there were incorrect charges on Complainant’s bill and requested a review of Complainant’s account as relief. Complaint ¶¶ 4-5.

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<sup>1</sup> The Complaint is an untimely appeal from the determination of the Commission’s Bureau of Consumer Services (“BCS”), at BCS No. 4035529, which dismissed Complainant’s informal complaint.

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 ¶ 9.

On May 19, 2025, FirstEnergy filed a timely Answer and New Matter in which it denied the material allegations of fact and conclusions of law in the Complaint. Specifically, FirstEnergy denied that there were incorrect charges on Complainant's bill. Answer ¶ 4. FirstEnergy requested that the Complaint be denied. In its New Matter, FirstEnergy asserted that the matter lends itself to resolution through mediation. New Matter ¶ 12.

Complainant did not file a response to the New Matter.

On June 18, 2025, Jason J. Schibinger, Esq., filed a notice of appearance on behalf of Complainant.

On June 26, 2025, an Interim Order setting resolution conference was issued which referred this matter to mediation. The matter did not settle in mediation.

On January 20, 2026, an Initial Telephonic Hearing Notice was served on the parties scheduling an initial telephonic hearing on April 13, 2026 at 10:00 a.m. and the case 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 January 20, 2026, a Prehearing Order was served on the parties which reiterated 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 emailed to Complainant and eServed to Attorney Schibinger in the ordinary course of the Commission’s business. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

On April 13, 2026, I convened the hearing as scheduled. Margaret A. Morris, Esq., appeared on behalf of FirstEnergy along with one witness and was ready to proceed. The court reporter was also present. Jason Joseph Schibinger, Esq., appeared on behalf of Complainant. However, Complainant was not 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. Attorney Schibinger acknowledged that both he and Complainant had notice of the hearing and indicated that he was having difficulty reaching Complainant possibly due to traveling to Morocco. Tr. 5. Attorney

Schibinger further advised that he did not have any available witnesses to sponsor his proposed exhibits or offer any evidence. Tr. 5.

No testimony was taken, and no exhibits were introduced into the record. At the hearing, FirstEnergy moved to dismiss the Complaint with prejudice for Complainant's failure to appear and prosecute his Complaint. Tr. 9. Attorney Schibinger argued that any dismissal of the matter should be without prejudice. Tr. 8. I took FirstEnergy's motion under advisement.

Complainant never contacted the Commission to explain why his failure to appear at the hearing was unavoidable.

The record closed on April 13, 2026.<sup>2</sup> This decision grants FirstEnergy's motion to dismiss the Complaint but does so without prejudice.

#### FINDINGS OF FACT

1. Complainant is Aziz Moumen.
2. Respondent is FirstEnergy Pennsylvania Electric Company.
3. On April 23, 2025, Complainant filed a Formal Complaint against FirstEnergy.

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<sup>2</sup> 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 April 13, 2026. Tr. 9. *See* Pa. 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).

4. On May 19, 2025, Respondent filed an Answer and New Matter to the Complaint.

5. On January 20, 2026, an Initial Telephonic Hearing Notice was served on Complainant scheduling an initial telephonic hearing on April 13, 2026 at 10:00 a.m.

6. On January 20, 2026, a Prehearing Order for Telephone Hearing was served on Complainant providing additional information to the parties regarding the hearing.

7. Both the Hearing Notice and Prehearing Order were served on Complainant by electronic mail to the email address Complainant provided to the Commission.

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

10. Complainant and his attorney received notice of the hearing. Tr. 5.

11. Complainant failed to appear and participate in the scheduled telephonic hearing on April 13, 2026.

12. Complainant's counsel was present at the hearing but was unable to present any evidence and could not explain why Complainant did not appear other than he may be travelling to Morocco. Tr. 5.

13. The court reporter, counsel for FirstEnergy and its witness were present and prepared to proceed at the April 13, 2026 hearing.

14. 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. First, on January 20, 2026, 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 January 20, 2026, 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 claim(s) and issues(s) presented in the dismissed Complaint.

Both the Hearing Notice and Prehearing Order were electronically served to the email address provided by Complainant to the Commission. Neither was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Complainant were 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). Moreover, counsel for Complainant appeared at the hearing and confirmed that both he and Complainant had notice of the hearing date and time.

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. Although Complainant's counsel was present for the hearing, counsel did not have any witnesses to present testimony or evidence. Nor did counsel request a continuation of the hearing on the record.

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. *Brown; Williams*. Accordingly, the merits of the Complaint will not be addressed.

FirstEnergy moved to dismiss the matter with prejudice. Tr. 9. However, Attorney Schibinger, counsel for Complainant, argued that if the matter were to be dismissed it should be dismissed without prejudice. Tr. 8. Attorney Schibinger asserted at the hearing that Complainant never indicated a lack of desire to proceed with the Complaint and that he may have been traveling to Morocco at the time of the hearing. Tr. 4-5.

Because Complainant may have been unable to call in for the hearing due to being out of the county and counsel was able to appear and convey that Complainant

never indicated a desire to abandon his claims, I find that there are sufficient grounds to grant FirstEnergy's motion to dismiss 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 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 FirstEnergy Pennsylvania Electric Company's motion to dismiss the Formal Complaint of Aziz Moumen with prejudice, at Docket No. C-2025-3054825, is granted in part and denied in part.

