

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lee Miller	:	
	:	
v.	:	C-2025-3057042
	:	
FirstEnergy Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Erin L. Gannon
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On August 25, 2025, Lee Miller (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against FirstEnergy Pennsylvania Electric Company (FirstEnergy, Respondent or Company). Mr. Miller is served by the Respondent’s Penelec Rate District. The Complainant alleged FirstEnergy was threatening to shut off his electric service or has already shut off his service. He stated that he “tried to make a payment agreement they would not accept it.” Complaint ¶ 4. For relief, the Complainant asked the Commission to prevent Penelec from shutting off service.

In his Complaint, Mr. Miller selected the option to receive all communications from the Commission via eService through an eFiling account he registered with the Commission. Complaint ¶ 9.

On September 15, 2025, FirstEnergy timely filed an answer, in which it generally admitted the Complainant's allegations. FirstEnergy admitted that it issued a termination notice on August 7, 2025 but averred that service had not been terminated since the notice was sent. Answer ¶ 4(a). The Company also admitted that it advised Mr. Miller that he is not entitled to a Commission payment arrangement due to having customer assistance program arrears in his account balance. *Id.* ¶ 4(b). FirstEnergy asserts that the majority of the past due balance consists of monies which were subject to a customer assistance program. *Id.* Further, the Company avers that the Commission should decline a payment arrangement for the arrears not subject to a customer assistance program based on the Complainant's poor payment history. As of September 9, 2025, FirstEnergy stated that the Complainant's account balance was \$4,360.69. *Id.* The Respondent asked the Commission to dismiss the Complaint in its entirety and with prejudice.

On September 23, 2025, 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 Mr. Miller by eService. Mediation was not successful.

On January 20, 2026, the Office of Administrative Law Judge issued a Call-In Telephonic Hearing Notice (Hearing Notice) scheduling an Initial Telephonic Hearing for Thursday, February 26, 2026 at 10:00 a.m., and assigning me as the presiding officer. 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. If you are unable to attend the hearing for any reason, you must request a continuance using the procedure described below.

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 for Telephone Hearing (Prehearing Order) was served on the parties which reminded the parties of the date and time of the hearing. Like the Hearing Notice, the Prehearing Order 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 eServed to the Complainant in the ordinary course of the Commission’s business to the email address that was registered with the Commission by Mr. Miller. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

On February 26, 2026, I convened the hearing as scheduled. Angelina Umstead, Esquire, appeared on behalf of FirstEnergy along with one witness and was ready to proceed. The court reporter was also present. The Complainant was not present at the start of the hearing. After a 15-minute recess to allow time for Mr. Miller to appear, the hearing proceeded in the Complainant's absence. No testimony was taken, and no exhibits were introduced into the record. At the hearing, the Respondent moved to dismiss the Complaint for the Complainant's failure to appear and prosecute his Complaint. Tr. 6. I took this motion under advisement. *Id.*

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

The record closed on March 13, 2026, which was the date the transcript was received by the Commission. Tr. 7.

This decision grants the Respondent's motion to dismiss the Complaint for the failure of the Complainant to appear for the hearing and prosecute the Complaint.

FINDINGS OF FACT

1. The Complainant is Lee Miller.
2. The Respondent is FirstEnergy Pennsylvania Electric Company.
3. On August 25, 2025, the Complainant filed a Formal Complaint against Respondent.
4. On September 15, 2025, the Respondent filed an answer to the Complaint.

5. On January 20, 2026, a Telephonic Evidentiary Hearing Notice was served on the Complainant scheduling a further telephonic hearing on February 26, 2026 at 10:00 a.m.

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

7. Both the Telephonic Evidentiary Hearing Notice and Prehearing Order were served on the Complainant by eService to the email address the Complainant provided to and registered with the Commission.

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

10. The Complainant failed to appear and participate in the scheduled telephonic hearing on February 26, 2026.

11. The court reporter, Counsel for Respondent and its witness were present and prepared to proceed at the February 26, 2026 hearing.

12. The Complainant has not contacted 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 the Complainant was provided notice and the opportunity to be heard. First, on January 20, 2026, the Commission served the Complainant a Telephonic Evidentiary 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 the 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 the Complainant that failure to appear may result in the dismissal of the Complaint with prejudice, which means that the Complainant would be barred from filing another complaint raising the same claims and issues presented in the dismissed complaint.

Both the Telephonic Evidentiary Hearing Notice and Prehearing Order were eServed to the Complainant at the email address he 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).

Mr. Miller 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 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. *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) (*Jefferson*); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

Mr. Miller failed to appear for the hearing despite receiving notice and despite the undersigned allowing additional time for the Complainant to appear. To date, there has been no communication to the Office of Administrative Law Judge or me by, or on behalf of, the Complainant explaining why the Complainant's failure to appear at the hearing was unavoidable.

Consequently, I find that the Complainant waived the opportunity to participate in a hearing on the matters raised in the Complaint, the Complainant'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, the Complainant bears the burden of proof. By failing to participate and proffer any evidence to support the complaint, Mr. Miller has failed to meet this burden. Thus, it is appropriate to dismiss

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

The Respondent's motion to dismiss 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 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. The 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, the 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, the 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 Lee Miller, at Docket No. C-2025-3057042, is granted.

2. That the Formal Complaint filed by Lee Miller in Lee Miller v. FirstEnergy Pennsylvania Electric Company, Docket No. C-2025-3057042, is hereby dismissed.

3. That the Secretary's Bureau shall mark Docket No. C-2025-3057042 as closed.

Date: May 26, 2026

_____/s/
Erin L. Gannon
Administrative Law Judge