

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Jessica Waugaman

v.

Duquesne Light Company

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C-2016-2552875

**INITIAL DECISION**

Before  
Tiffany L. Tran  
Special Agent

**INTRODUCTION**

This decision dismisses the Complaint filed in this matter for failure of the Complainant to appear for the hearing and prosecute the Complaint.

**HISTORY OF THE PROCEEDING**

On June 24, 2016, Jessica Waugaman (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent). The Complaint alleged the Respondent is threatening to terminate her service or has already done so. The Complainant requested that the Commission grant her an affordable payment arrangement. This is an untimely appeal of a BCS decision at Case No. 3432326.

The Respondent filed an Answer on July 14, 2016. The answer denied all material allegations in the Complaint. The Respondent denied that the Complainant is entitled to a payment arrangement in an amount or duration different than the one she received from BCS at

Case No. 3432326. The Respondent also alleged that the Complainant has defaulted on a prior Company-issued payment arrangement. The Answer requested that the Commission deny the Complaint.

By notice dated August 8, 2016, the Commission scheduled this matter for an initial telephonic hearing on September 12, 2016, at 10:00 a.m. and assigned the case to me, pursuant to 52 Pa. Code § 56.174. I issued a prehearing order dated August 9, 2016, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements, and cautioning the Complainant that she might lose her case if she failed to appear.

I attempted to contact the Complainant using the telephone number provided on the formal complaint form on September 12, 2016, at 10:00 a.m. There was no response and I left a voice message identifying myself and the reason for the call, indicated that I would attempt to call again in ten minutes, and cautioned that the hearing would proceed in the Complainant's absence and that she might lose her case if she did not attend the hearing.

I then verified with the support staff for the Office of Administrative Law Judge (OALJ) in Harrisburg that the Complainant had not contacted the office to indicate that the Complainant would be unable to participate in the telephonic hearing. My voice mail and email had no messages from the Complainant stating that she would be unable to participate in the hearing.

After verifying that the Complainant had not contacted the OALJ in Harrisburg, I made a second attempt to contact her using the telephone number provided on the formal complaint form at 10:10 a.m. This time, my call went directly to voice mail. I left another message, again identified myself and the reason for the call, and stated that the hearing would proceed in the Complainant's absence.

Upon commencement of the hearing at approximately 10:12 a.m., Lauren N. Rulli, Esquire, counsel for the Respondent, moved to dismiss the Complaint for failure to appear and prosecute.<sup>1</sup> I advised the Respondent that I would take its motion under advisement.

The record closed on September 12, 2016, at the conclusion of the hearing. No witnesses were presented and no exhibits were introduced into the record. This decision grants the Respondent's motion to dismiss the Complaint.

### FINDINGS OF FACT

1. The Complainant in this case is Jessica Waugaman.
2. The Respondent in this case is Duquesne Light Company.
3. On June 24, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on July 14, 2016.
5. By notice dated August 8, 2016, the Commission scheduled this matter for an initial telephonic hearing on September 12, 2016 at 10:00 a.m.
6. The Commission sent notice of the telephonic hearing in this case to the Complainant by regular first-class mail to the address stated on the Complaint.
7. The Commission's hearing notice was never returned to the sender.
8. The Complainant failed to appear at the September 12, 2016 telephonic hearing.

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<sup>1</sup> A tape recording was made, no court reporter being present.

9. The Complainant did not settle, withdraw or request a continuance of the matter.

### DISCUSSION

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, however, when the administrative agency provides the parties notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to the Complainant on August 8, 2016, by regular first-class mail to the address stated on the Complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for OALJ in Harrisburg.

In addition, I issued a prehearing order dated August 9, 2016, which, inter alia, directed the parties to notify me if the telephone numbers where they could be reached at the time of the hearing changed. The prehearing order, which was mailed to the Complainant at the address shown on the Complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); Judge v. Celina Mutual Insurance Co., 444 A.2d 658 (Pa.Super. 1982).

The Complainant did not appear for the scheduled hearing despite two attempts to contact her using the telephone number provided in the Complaint. Under these circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Telephone Co. of Pa. Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this complaint, the Complainant bears the burden of proving by a preponderance of the evidence that they are entitled to relief. By failing to appear and proffer any evidence to support her complaint, the Complainant has failed to meet this burden. Under these circumstances, the complaint should be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

### 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 due process rights of the Complainant has been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear for the hearing and proffer any evidence to support the complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Duquesne Light Company to dismiss the Complaint filed by Jessica Waugaman at Docket No. C-2016-2552875 is granted.

2. That the Complaint of Jessica Waugaman against Duquesne Light Company at Docket No. C-2016-2552875 is dismissed with prejudice for failure of the Complainant to appear for the hearing and prosecute the Complaint.

3. That the docket at Docket No. C-2016-2552875 is marked closed.

Date: September 13, 2016

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Tiffany L. Tran  
Special Agent