

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Richard A. Happ	:	
	:	
v.	:	F-2016-2581153
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

This decision dismisses a complaint for failure to appear and prosecute. On December 20, 2016, Richard A. Happ (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent). The complaint alleged incorrect charges on Complainant's bill and requested a refund of overcharges and no further billing for overcharges for the period including October 2015 - February 2016.

Respondent filed an answer on January 12, 2017. The answer denied the material allegations contained in the complaint and requested that the complaint be dismissed with prejudice.

By notice dated March 13, 2017, the Commission scheduled this matter for an initial telephonic hearing on Wednesday, April 12, 2017, at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated March 20, 2017, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic initial hearing on April 12, 2017 as scheduled. Complainant failed to appear for that hearing. I called Complainant at the home telephone number listed in his complaint at 10:00 a.m., and a recorded message advised me that the voice mailbox for this number has not been set up yet. I called the home telephone number a second time, and Complainant did not answer. The same automated message about the voice mailbox answered the call. I attempted to reach complaint at the mobile telephone number listed on the complaint. When I called, a woman by the name of Michelle Trice answered the telephone and advised me that I had called a medical office and that Dr. Happ was not available because of an emergency, but she did not provide any additional information regarding the emergency or a telephone number where I could reach Complainant. At 10:06 a.m., the hearing proceeded in Complainant's absence.

Upon commencement of the hearing, Lauren N. Rulli, Esquire, counsel for Respondent, moved to dismiss the complaint for failure to appear and prosecute. Tr. 5. Counsel indicated that Respondent's exhibits were delivered to Complainant and that she had made several attempts to contact Complainant prior to the hearing at the two telephone numbers listed on his formal complaint but she was unable to reach him. I advised Respondent's counsel that I would take her motion under advisement. Tr. 5.

The record closed on May 5, 2017, the date the transcript was received by me. This decision grants Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. Complainant in this case is Richard A. Happ.

2. Respondent in this case is Duquesne Light Company.
3. On December 20, 2016, Complainant filed a complaint with the Commission against Respondent.
4. Respondent filed an answer on January 12, 2017.
5. By notice dated March 13, 2017, the Commission scheduled this matter for an initial telephonic hearing on Wednesday, April 12, 2017, at 10:00 a.m.
6. The Commission sent notice of the telephonic hearing in this case to 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 as undeliverable.
8. A Prehearing Order was mailed to Complainant by regular first class mail to the address stated on the complaint on March 20, 2017.
9. The Prehearing Order was never returned to the sender as undeliverable.
10. Complainant failed to appear at the April 12, 2017 telephonic hearing.
11. 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.

Notice of the scheduled initial telephonic hearing in this case was sent to Complainant on March 13, 2017, by regular first-class mail to the address stated in the complaint. This piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge in Harrisburg. In addition, I issued a Prehearing Order on March 20, 2017, that advised the parties, *inter alia*, that “[y]ou may lose this case, if you do not take part in this hearing and present evidence on the issues raised.” Prehearing Order, p. 3. This Order, which was also mailed to Complainant at the address stated on the complaint, was never returned. Accordingly, one must presume this mail, which was sent in the ordinary course of business, was received by the addressee. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); and Judge v. Celina Mutual Insurance Co., 303 Pa.Super. 221, 444 A.2d 658 (1982).

Neither Complainant nor a representative appeared for the scheduled initial telephonic hearing on April 12, 2017. Complainant’s absence is unexplained. Complainant did not request a continuance of the hearing. Neither a petition to withdraw the complaint¹ nor a certificate of satisfaction² was filed with the Commission. Under these circumstances, it appears Complainant had ample opportunity to appear and be heard in this proceeding, but failed to appear for the scheduled hearing. Therefore, the due process rights of Complainant have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); and 52 Pa.Code § 5.245(a).

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a). By failing to appear and proffer any evidence to support his complaint, Complainant has failed to meet this burden. Complainant’s failure to appear is unexcused. Complainant has waived the opportunity to participate in the hearing and

¹ 52 Pa.Code § 5.94.

² 52 Pa.Code § 5.24.

this case may be dismissed with prejudice. 52 Pa.Code § 5.245(a); Jefferson v. UGI Utilities, Inc., (Opinion and Order entered December 26, 1995 at Docket No. Z-00269892); El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

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 Complainant have 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, Complainant has failed to meet his burden of proving that he is entitled to the relief that he 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 Richard A. Happ at Docket No. F-2016-2581153 is granted.

2. That the complaint of Richard A. Happ against Duquesne Light Company at Docket No. F-2016-2581153 is dismissed with prejudice for failure of Complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. F-2016-2581153 is marked closed.

Date: July 11, 2017

_____/s/_____
Mark A. Hoyer
Deputy Chief Administrative Law Judge