

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Micheál McHugh

v.

Duquesne Light Company

:
:
:
:
:

C-2018-3000302

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

A formal complaint is dismissed without prejudice. The complainant was directed to file a more specific complaint which provided the utility with adequate notice regarding the nature of his dispute, but he failed to do so.

HISTORY OF THE PROCEEDINGS

On March 5, 2018, Micheál McHugh (Complainant) filed a formal complaint against Duquesne Light Company (Duquesne Light or Company). In Section 4 of the formal complaint form provided by the Commission, the Complainant checked all of the boxes:

The utility is threatening to shut off my service or has already shut off my service;

I would like a payment arrangement;

Incorrect charges are on my bill;

I am having a reliability, safety or quality problem with my utility service;

Other.

Handwritten under the first box regarding the termination of service, is “2017.” In the sections relating to incorrect charges on the bill, reliability problems and other, the words “On file” are handwritten. Section 5, which invites the Complainant to explain what he wants the Commission to do, are the handwritten words “On file.”

In lieu of an answer, Duquesne Light filed preliminary objections on March 28, 2018, which included a notice to plead instructing the Complainant to file a response to the preliminary objections within ten days. Duquesne Light states that the complaint is so vague that Duquesne Light cannot properly prepare a meaningful response to it. The Complainant did not file a response to Duquesne Light’s preliminary objections.

By notice dated May 1, 2018, this matter was assigned to me for disposition as a motion judge. By interim order dated May 3, 2018, the preliminary objections were granted. The Complainant was directed to file a more specific complaint within 30 days of that order.

On May 14, 2018, the May 3, 2018 Interim Order was returned by the U.S. Postal Service. Handwritten on the envelope were the words “Return Unknown.” Also, on the envelope was the postal service tag noting that delivery was attempted, but the postal service was unable to forward. The Commission attempted to contact the Complainant by telephone at the telephone number listed on the complaint. On July 9, 2018, the Complainant returned the telephone message. His address was verified. The Complainant informed the legal assistant for the Office of Administrative Law Judge that if the accent marks or apostrophes in his first name are not in the proper placements, the mail will be returned. Accordingly, a second interim order was served on July 10, 2018 (July 10 Interim Order), which again granted Duquesne Light’s preliminary objections and directed that the Complainant file a more specific complaint within 20 days.

The time for responding to the July 10 Interim Order has expired. To date the Complainant has not filed a response. The complaint will be dismissed due to the Complainant's failure to comply with the July 10 Interim Order.

FINDINGS OF FACT

1. The Complainant is Mícheál McHugh.
2. The Respondent is Duquesne Light Company, a jurisdictional public utility.
3. The Commission mailed an interim order which granted preliminary objections and directed the filing of a more specific complaint on July 10, 2018.
4. The July 10, 2018 interim order was not returned as undeliverable by the U.S. Postal Service.
5. The Complainant did not file an amended formal complaint or otherwise respond to the July 10, 2018 interim order.

DISCUSSION

Commission regulations provide a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer.¹ Section 5.22 of the Commission's regulations requires that a formal complaint set forth a clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation, as well as a clear and concise statement of the relief sought.² The Commission's formal complaint form is designed to aid self-represented individuals in

¹ 52 Pa.Code § 5.21(a).

² 52 Pa.Code § 5.22(a)(5) and (6).

meeting this and other requirements for the filing of formal complaints.³ The form includes a series of boxes which can be checked to help frame the basis of a complainant's dispute with a public utility. The form also includes an instruction to include "relevant details including dates, times and places and any other information that may be important." When alleging incorrect charges, the form directs a complainant to provide "dates that are important and an explanation about any amounts or charges that you believe are not correct." Similarly, a reliability or safety allegation should "[e]xplain the problem, including dates, times or places and any other relevant details that may be important."

In reviewing the formal complaint form filed by the Complainant, the complaint failed to conform to the Commission's requirements. The Complainant was directed to file a more specific complaint to include sufficient information to ensure that Duquesne Light's right and ability to answer and defend the complaint will not be unduly impaired by a vague pleading when stating the grounds of the complaint. The order directing the Complainant to file a further explanation regarding the nature of his complaint also warned him that if he failed to file a response, his complaint would be dismissed. The Complainant failed to file anything in response to this order.

As held in the July 10 Interim Order directing a more specific pleading, more information is needed in order for Duquesne Light to form a meaningful response to the complaint. Although the service termination section refers to "2017," Duquesne Light can only speculate as to what the Complainant is referring to and whether the following allegations also relate to 2017. While the Complainant makes a reference to "on file" it is unclear whether he is referring to Duquesne Light's files, the Commission's files or his own files. Litigation expenses are generally recovered by utilities in base rate filings. It does not serve Duquesne Light's other ratepayers to require the company to go to the expense of attempting to prepare for a hearing without a more specific explanation of the nature of the Complainant's dispute.

³ See *Richmond v. PECO Energy Company*, Docket No. F-2010-2187305 (Opinion and Order entered December 7, 2011).

The Commission has previously dismissed complaints because the complainant failed to file an amended complaint when directed to do so. In *Zaslav v. Philadelphia Gas Works*⁴ the complainant checked only the “other” box on the complaint form and wrote the word “appeal.” The presiding administrative law judge directed the complainant to file a more specific complaint. The complainant failed to do so. Accordingly, the complaint was dismissed.

In the consolidated decision of *Belmonte-Gates v. PECO Energy Company*, and *Belmonte-Gates v. Pennsylvania-American Water Company*, the Commission characterized the complaint as incomprehensible and held that the complainant’s failure to set forth a clear and concise statement of the facts alleged, and relief being sought would deprive the respondents of the opportunity to prepare adequate defenses.⁵ The complainant was directed to file a more concise complaint. The complainant failed to comply with the order of the presiding administrative law judge. Those complaints were dismissed as well, in part because the complainant’s failure to set forth a clear statement of the facts being alleged deprived the utility of the opportunity to prepare a defense.

Failure to comply with the order of an Administrative Law Judge is grounds for dismissal of the case.⁶ Further, the Commission has held on numerous occasions that such lack of compliance presents a sufficient basis to dismiss a complaint without a hearing.⁷ The July 10 Interim Order warned the Complainant that failing to respond to the order would result in the dismissal of his complaint. The Complainant did not file any response to either Duquesne Light’s preliminary objections or the July 10 Interim Order, as directed.

⁴ Docket No. F-2016-2549869 (Final Order entered December 20, 2016).

⁵ Docket No. F-2012-2332583 and Docket No. F-2012-2332589 (Opinion and Order entered August 15, 2013).

⁶ *Snyderville Community Development Corporation v. Verizon Pennsylvania, Inc.*, Docket No. C-20055032, (Opinion and Order entered July 31, 2006).

⁷ *Jackson v. Duquesne Light Company*, Docket No. C-2018-2644080 (Order entered July 12, 2018); *Zaslav; Randall v. Metropolitan Edison Co.*, Docket No. C-2013-2367046 (Final Order entered October 7, 2013); *Snyderville*.

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.⁸ However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.⁹ The Complainant had an 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.¹⁰ His complaint will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 66 Pa.C.S. § 701.

2. Failure to comply with the order of an Administrative Law Judge is grounds for dismissal of the case. *Snyderville Community Development Corporation v. Verizon Pennsylvania, Inc.*, Docket No. C-20055032, (Opinion and Order entered July 31, 2006).

3. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

⁸ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

⁹ *Id.*

¹⁰ *Cf. Olmstead v. Equitable Gas Company, LLC*, Docket No. C-2009-2125349 (Order entered March 3, 2010); *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

