

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Teresa Pizzonia	:	
	:	
v.	:	C-2018-3003607
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

The undersigned grants Respondent’s oral motion to dismiss a formal complaint because Complainant failed to appear at the initial hearing and prosecute the case.

HISTORY OF THE PROCEEDING

On July 18, 2018, Teresa Pizzonia (Ms. Pizzonia or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne Light or Respondent). Complainant alleged Duquesne Light’s charges are incorrect and the payment plan is too high. Complainant requested the Commission order Duquesne Light to give her an affordable payment plan and review her charges to ensure she has not been overcharged.

On August 14, 2018, Duquesne Light filed its Answer and New Matter. Respondent generally denied Complainant’s allegations and contended the ratepayer of record is Door to Door Dry Cleaning, which is a registered business entity. Duquesne Light averred

Complainant must be represented by an attorney pursuant to 52 Pa.Code §§ 1.21 and 1.22. Accordingly, Respondent asked the Commission to dismiss the complaint, or at least require Complainant to obtain the services of an attorney by a date certain prior to the hearing.

On September 20, 2018, the Office of Administrative Law Judge issued a Call-In Telephone Hearing Notice scheduling an Initial Call-In Telephonic Hearing for Thursday, November 1, 2018, at 10:00 a.m. on the Commission's conference bridge telephone number, and the presiding officer issued a Prehearing Order on October 15, 2018 which explained various procedural matters to the parties, including how to request a continuance.

On September 24, 2018, Duquesne Light filed a Motion for Judgment on the Pleadings, with a Notice to Plead, pursuant to 52 Pa.Code § 5.102. Duquesne Light contended Complainant is a business that is not represented by an attorney. Respondent also indicated Complainant never filed a response to the New Matter and, pursuant to 52 Pa.Code § 5.63(b), Complainant's failure to file a timely reply to the New Matter permits the Commission to deem the allegations in the New Matter as admitted. Duquesne Light asked that the pleadings be closed in the case and that the Motion for Judgment on the Pleadings be granted by dismissing the formal complaint with prejudice, or if not granted, that Ms. Pizzonia be required to hire an attorney by a specific date.

On October 17, 2018, the presiding officer issued an Interim Order which addressed the Motion for Judgment on the Pleadings. The Interim Order did not dismiss the formal complaint but also did not deny the basis for the Motion for Judgment on the Pleadings: Complainant's need to retain an attorney. The presiding officer gave Ms. Pizzonia until Friday, October 26, 2018, to hire an attorney because the ratepayer of record appears to be a partnership, limited liability company, or corporation.

On Monday, October 29, 2018, the presiding officer received a one-page letter from Complainant, dated October 25, 2018, which stated, in full: "I am requesting a postponement due to the fact that I had to go out of the country on a family emergency. If this

could be granted that would be greatly appreciated.” The letter was not copied to Duquesne Light or Duquesne Light’s attorney. The presiding officer’s office provided a copy of the correspondence to Duquesne Light and Duquesne Light indicated it had no objection to postponing the hearing but noted Complainant had failed to obtain an attorney, as required by the Interim Order dated October 17, 2018.

On October 30, 2018, the presiding officer issued the Second Interim Order which granted the continuance request. The Second Interim Order ordered Complainant to obtain an attorney who must file a Notice of Appearance on or before November 30, 2018. The fourth Ordering Paragraph advised Complainant that if she “does not hire an attorney on or before Friday, November 30, 2018, then the formal complaint will be dismissed.”

By Hearing Cancellation/Reschedule Notice dated October 30, 2018, the Office of Administrative Law Judge notified the parties the initial telephonic hearing was rescheduled for Tuesday, December 18, 2018, at 10:00 a.m.

The time and date of the December 18, 2018 hearing was included in the October 30, 2018 hearing notice. The hearing notice specified how to call into the hearing on the scheduled day and at the scheduled time. The hearing notice stated in bold, underlined print that the case would be dismissed if Complainant failed to call into the hearing.

On December 4, 2018, Duquesne Light filed a Motion to Dismiss with a Notice to Plead. Duquesne Light averred the formal complaint should be dismissed with prejudice because Complainant had failed to obtain an attorney and had violated two Interim Orders issued by the presiding officer which specifically ordered Complainant to hire an attorney by dates certain. Duquesne Light averred that because Complainant was a corporate entity which must be represented by an attorney and because Complainant had failed to comply with two orders, the formal complaint should be dismissed with prejudice. The presiding officer did not rule on the Motion to Dismiss for failure to hire an attorney, filed on December 4, 2018, and this earlier Motion to Dismiss has been rendered moot by the subsequent oral Motion to Dismiss for failure to appear stated on the hearing record.

On December 10, 2018, Complainant sent a response to Duquesne Light and to the presiding officer. She reiterated she wanted a payment agreement, had been overcharged on two months when her bill was close to \$900 and wanted the matter resolved without a hearing. Complainant repeated she was out of the country on a matter of “personal family urgency” and she assumed her lawyer and business partner would handle the matter for her. She did not identify the lawyer and business partner.

The presiding officer attempted to convene the telephonic hearing as scheduled on December 18, 2018, at 10:04 a.m. After informing the presiding officer as to the names of Duquesne Light’s four witnesses, Respondent averred it last heard from Complainant on December 10, 2018, via electronic mail. Respondent also averred it received a telephone call from an attorney on December 13, 2018, who inquired about the case but stated clearly he had not agreed to represent Complainant.

Complainant failed to appear for the hearing. Duquesne Light was present and prepared to present its evidence along with the testimony of four witnesses. The presiding officer read into the hearing record the last correspondence received from Complainant via electronic mail.

The presiding officer called a recess at 10:18 a.m. in order to ascertain from her staff if Ms. Pizzonia or anyone on her behalf had called or sent any form of communication explaining her absence and/or requesting a continuance. In addition, the presiding officer verified no electronic mail was received from Complainant.

The presiding officer went back on the record at 10:27 a.m., at which time Complainant or any representative continued to be absent from the initial hearing. The presiding officer advised Respondent’s counsel that Complainant or her representative had not contacted the presiding officer’s office to request a continuance or explain her absence.

Counsel for Respondent made an oral motion to dismiss due to Complainant’s failure to appear and prosecute the complaint. The presiding officer noted on the record the

motion to dismiss would be taken under advisement. The hearing concluded at 10:29 a.m. The hearing record closed on December 18, 2018, upon the conclusion of the telephonic hearing.

FINDINGS OF FACT

1. Complainant is Teresa Pizzonia and the ratepayer of record is a dry cleaning business located at 2511 Main Street, Pittsburgh, Pennsylvania (service address).

2. Respondent in this proceeding is Duquesne Light Company which provides electric service at the service address.

3. The hearing notice dated October 30, 2018, was sent to the address provided by Complainant in the formal complaint and was not returned as undeliverable.

4. Complainant was not present and did not participate in the December 18, 2018 hearing.

5. Respondent was ready to proceed with its witnesses at the date and time scheduled for the hearing.

DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S.A. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the proponent of a rule or order. Therefore, Complainant bears the burden of proving by a preponderance of the evidence that Respondent violated the Public Utility Code or a regulation or order of the Commission.¹ Complainant must show the utility is responsible or accountable for the problem described in the complaint.²

¹ *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

² *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are provided with a notice and the opportunity to appear and be heard.³

Neither Ms. Pizzonia nor anyone representing Ms. Pizzonia appeared at the time scheduled for the December 18, 2018 hearing. Neither Ms. Pizzonia nor anyone representing Ms. Pizzonia participated in the December 18, 2018 hearing. The date and time of the hearing were listed in the hearing notice, dated October 30, 2018.

The Office of Administrative Law Judge mailed the hearing notice to Complainant at the address provided in the formal complaint. Once notice of a hearing and the opportunity to be heard has been provided, it was the responsibility of Ms. Pizzonia, or someone on her behalf, to appear and participate in the hearing.⁴ If Complainant cannot appear, for any reason, then it is the responsibility of Ms. Pizzonia to notify the presiding officer immediately of the impediment.

Section 332(f) of the Public Utility Code, 66 Pa.C.S.A. § 332(f), provides in pertinent part:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat....

Once notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered

³ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

⁴ *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993).

January 24, 2002) (*Mumma*); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993) (*Sentner*).

Since Ms. Pizzonia did not appear or participate in the hearing, despite receiving notice of the date and time of the hearing, the hearing was held in accordance with 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245. Respondent's attorney moved to dismiss the complaint for failure to prosecute. Respondent's motion was taken under advisement.

The hearing record closed on December 18, 2018, pursuant to 52 Pa.Code § 5.431(a) and (b) which provides:

(a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.

(b) After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.

In this proceeding, Ms. Pizzonia did not call into the hearing as specified in the hearing notice. The hearing notice clearly indicated Complainant was to call. This document provided the Commission's toll-free conference bridge number and PIN number. The hearing notice clearly provided an address and telephone number where Ms. Pizzonia or someone representing Complainant could reach the presiding officer if a continuance request and/or additional information was needed prior to the hearing. Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the formal complaint against Duquesne Light by presenting evidence to support the allegations. As a result, Complainant failed to sustain the burden of proof.

It should also be noted Complainant was advised three times in writing by the presiding officer that Complainant must hire an attorney to represent Complainant at the hearing: in the initial Prehearing Order; in the Interim Order and in the Second Interim Order. In the Second Interim Order, Complainant was advised in clear language that the formal complaint would be

dismissed if Complainant did not hire an attorney to represent her at the hearing. Complainant failed to hire an attorney to appear on behalf of Complainant and no attorney appeared to represent Complainant.

Accordingly, Respondent's oral motion to dismiss the formal complaint will be granted, and the formal complaint in this matter will be dismissed in the Ordering Paragraphs below.⁵

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S.A. § 701.
2. Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).
3. The hearing record closed at the conclusion of the hearing on December 18, 2018. 52 Pa.Code § 5.431(a).
4. Complainant, by failing to appear at the scheduled hearing, waived the opportunity to participate in the hearing. 66 Pa.C.S.A. § 332(f).
5. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

⁵ *Volgstadt v. UGI Penn Natural Gas*, Docket No. F-02266429 (Order entered September 12, 2008) and *Martin Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

