

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Chauncey Gainey

v.

Duquesne Light Company

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F-2018-3005851

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 October 29, 2018, Chauncey Gainey (Mr. Gainey 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 too high, and the payment plan is too high. Complainant also denied switching his supplier from Duquesne Light and requested Duquesne Light be his supplier. Complainant requested the Commission order Duquesne Light to give him an affordable payment plan and review his charges to ensure he has not been overcharged.

On November 27, 2018, Duquesne Light filed its Answer. Respondent generally denied Complainant's allegations. Duquesne Light denied Complainant was entitled to a more

favorable payment arrangement than the one he received from the Bureau of Consumer Services (BCS) at BCS Case No. 3633244. Accordingly, Respondent asked the Commission to dismiss the complaint and deny the relief sought by Complainant.

By Call-In Telephone Hearing Notice dated December 7, 2018, the Office of Administrative Law Judge notified the parties an initial telephonic hearing in this case was scheduled for Wednesday, January 23, 2019, at 10:00 a.m. On December 11, 2018, the presiding officer issued a Prehearing Order which, *inter alia*, advised the parties continuances would only be granted if requested and only in rare situations where sufficient cause was shown to exist.

The time and date of the January 23, 2019 hearing was included in the December 7, 2018 hearing notice and in the December 11, 2018 Prehearing Order. The hearing notice and the Prehearing Order specified how to call into the hearing on the scheduled day and at the scheduled time. The hearing notice and the Prehearing Order stated in bold, underlined print that the case would be dismissed if Complainant failed to call into the hearing.

The presiding officer attempted to convene the telephonic hearing as scheduled on January 23, 2019, at 10:04 a.m. After informing the presiding officer as to the names of Duquesne Light's two witnesses, counsel for Duquesne Light averred it attempted to contact Complainant on the day before the initial hearing but was unsuccessful. However, counsel advised a long conversation took place between Complainant, Complainant's wife and counsel for Duquesne Light approximately one week prior to the scheduled telephonic hearing. Complainant failed to appear for the hearing, but Duquesne Light was present and prepared to present its evidence along with the testimony of two witnesses.

The presiding officer called a recess for 15 minutes in order to ascertain from her staff if Mr. Gainey had called or sent any form of communication explaining his absence and/or requesting a continuance. The presiding officer went back on the record at 10:20 a.m., at which time Mr. Gainey continued to be absent from the initial hearing. The presiding officer advised Respondent's counsel that Complainant had not contacted the presiding officer's office to request a continuance or explain his absence.

Counsel for Respondent made an oral motion to dismiss due to Complainant's failure to appear and prosecute the complaint. Counsel averred Complainant's current account balance was \$7,612.47 as of the day of the hearing. Counsel also averred Complainant still received electric service at the service address. The presiding officer noted on the record the motion to dismiss would be taken under advisement. The hearing concluded at 10:22 a.m. The hearing record closed on January 23, 2019, upon the conclusion of the telephonic hearing.

FINDINGS OF FACT

1. Complainant and ratepayer of record is Chauncey Gainey, who resides at 4110 Clendenning Road, Gibsonia, 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 December 7, 2018, and the Prehearing Order dated December 11, 2018, were sent to the address provided by Complainant in the formal complaint and were not returned as undeliverable.

4. Complainant was not present and did not participate in the January 23, 2019 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, Mr. Gainey, as the 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

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

Mr. Gainey did not appear at the time scheduled for the January 23, 2019 hearing, and did not participate in the January 23, 2019 hearing. The date and time of the hearing were listed in the hearing notice, dated December 7, 2018, and in the Prehearing Order, dated December 11, 2018.

The Office of Administrative Law Judge mailed both the hearing notice and the Prehearing Order 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 Mr. Gainey to appear and participate in the hearing.⁴ If Complainant was unable to appear, for any reason, then it was the responsibility of Mr. Gainey to have notified 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....

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).

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

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

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

Since Mr. Gainey did not appear or participate in the hearing, despite receiving two notices 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 January 23, 2019, 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, Mr. Gainey did not call into the hearing as specified in the hearing notice and Prehearing Order. The hearing notice and Prehearing Order clearly indicated Complainant was to call. These documents provided the Commission's toll-free conference bridge number and PIN number. The hearing notice and Prehearing Order clearly provided an address and telephone number where Mr. Gainey could reach the presiding officer if a continuance request and/or additional information was needed prior to the hearing. Mr. Gainey also did not contact the presiding officer's office to explain his absence or ask for a continuance. 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.

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 January 23, 2019. 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).
6. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993).
7. Complainant failed to sustain the burden of proof. 66 Pa.C.S.A. § 332(a).

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).

