

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rickey Davis	:	
	:	
v.	:	F-2018-3006074
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

A formal complaint filed by a customer of an electric distribution company is dismissed because the complainant failed to appear for the hearing without good cause.

HISTORY OF PROCEEDINGS

On November 13, 2018, Rickey Davis (Complainant) filed a formal complaint against Duquesne Light Company (DLC or Company). Using the Commission’s formal complaint form, he checked boxes noting that the company was threatening to terminate his service; he wanted a payment arrangement; there are incorrect charges on his bill; and “other.” In the “other” section of the complaint, he explained “they won’t provide a remedy required by lawful payment tendered by me instructing them to set off and discharge according to Federal Emergency Relief Act March 9, 1933 H.J.R. 192.” As relief he stated that he wanted DLC to “cease and desist 10 day shut off notices accept my payment methods based on my position I’m making lawful payments.”

DLC filed an answer on December 10, 2018. In DLC’s answer it denies the material allegations of the complaint and alleges that the Complainant is responsible for the

outstanding balance on his account “payable in legal tender only.” DLC further averred that the Complainant has attempted to avoid termination for his unpaid balance by presenting a “Government Obligation Remittance Coupon” as payment. In DLC’s view, a “Government Obligation Remittance Coupon” is not legal tender and is not accepted as payment for utility service.

DLC also filed preliminary objections on December 10, 2018, which sought dismissal of the complaint in its entirety. The bases for the preliminary objections were lack of Commission jurisdiction to enforce federal law and legal insufficiency because DLC is not required to accept the Complainant’s instructions to “set off and discharge” as a matter of law. The Complainant did not file a response to the preliminary objections.

By notice dated January 3, 2019, the preliminary objections were assigned to me for disposition. By interim order dated January 4, 2019, DLC’s preliminary objections were sustained with respect to any claim relating to federal statutes, but DLC’s request for dismissal of the complaint with prejudice was denied with respect to Complainant’s allegations concerning incorrect charges and Complainant’s request for a payment arrangement.

A hearing was scheduled to take place on February 12, 2019 through a Hearing Notice issued January 8, 2019. I issued my customary prehearing order on January 4, 2019, which set forth the place and time of the hearing, instructions for requesting a continuance, and warned the Complainant that the case could be dismissed if he failed to appear.

None of the notices or orders described above were returned by the U.S. Postal Service as undeliverable.

The hearing convened as scheduled. Emily M. Farah, Esquire, appeared on behalf of the Company along with two witnesses, Roxanne Morris and Erin Ditomasso. The Complainant did not call the conference call number. After a brief recess to provide the Complainant additional time to call, the hearing proceeded in his absence. The Company made a

motion to dismiss, which was taken under advisement. The record closed upon receipt of the transcript, by order dated February 25, 2019.

FINDINGS OF FACT

1. The Complainant is Rickey Davis.
2. The Respondent is Duquesne Light Company, a jurisdictional public utility.
3. The Complainant did not call the conference number at 10:00 a.m. on Tuesday, February 12, 2019.
4. The Complainant did not contact the Commission to explain his failure to appear.
5. The notices or orders were sent to the Complainant's address on the formal complaint form and were not returned by the U.S. Postal Service as undeliverable.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.¹ However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.² The Complainant had adequate notice of the time and date of the hearing, yet he failed to appear or explain why he could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss his complaint.

¹ *Schneider v. Pa. Pub. Util. Comm 'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

² *Id.*

A hearing notice and prehearing order were sent to the Complainant. The prehearing order informed the Complainant that if he failed to appear for the hearing, he could lose his case. The prehearing order also provided instructions for contacting the Commission to request a change of the scheduled hearing date. The notices and orders were mailed to the address on the formal complaint and were not returned as undeliverable by the U.S. Postal Service. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received.³ Therefore, the Complainant is deemed to have received these documents and had sufficient notice of the Commission's procedures and notice of the date and time of the scheduled hearing.

Section 332(a) of the Public Utility Code⁴ places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the Complainant has the burden of demonstrating that the facts alleged in his complaint are true and that he is entitled to the relief that he requested. By not appearing for the scheduled hearing to present evidence, the Complainant failed to meet his burden of proof. Consequently, the complaint must be dismissed.

The Complainant was notified of the scheduled hearing date and time, as well as how to contact the Office of Administrative Law Judge, but failed to appear without explanation. Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so.⁵ The due process rights of the Complainant have been fully protected. The motion to dismiss of the Company is granted, and the complaint is dismissed.

³ *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Dev. Auth. v. Allegheny County Bd. of Property Assessment Appeals and Rev.*, 645 A.2d 944 (Pa.Cmwlth. 1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered September 16, 2010).

⁴ 66 Pa.C.S. § 332(a).

⁵ 66 Pa.C.S. § 332(f).

CONCLUSIONS OF LAW

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

2. 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).

3. By failing to appear at his scheduled hearing, the Complainant has waived his claims and has failed to sustain his burden of proof. 66 Pa.C.S. § 332.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion to dismiss the complaint of Rickey Davis at Docket No. F-2018-3006074, is granted.

2. That the complaint of Rickey Davis at Docket No. F-2018-3006074, is dismissed.

3. That this docket be marked closed and discontinued.

Date: February 27, 2019

/s/
Mary D. Long
Administrative Law Judge