

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lynell Tomlin	:	
	:	
v.	:	F-2019-3008844
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

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

On March 23, 2019, Lynell Tomlin (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent or Company).¹ Complainant completed the Commission’s standard Formal Complaint form and alleged in relevant part as follows:

Duquesne Light Co. denied me services, then decided to create a fraudulent account and charge me for an entire year of service without out my knowledge.

. . . .

¹ Complainant seeks timely review of the Commission’s Bureau of Consumer Services’ (BCS) February 1, 2019 decision at BCS No. 3637447, finding that Complainant was responsible for the account balance.

I wasn't billed monthly for these charges, nor was the account established. A request for services was made and denied! Now they are looking for me to pay for their mistake.

....

There were other people in this house, and they picked me to dump a bill on after they realized their mistake.

Complaint pp. 2, 3.

For relief, Complainant requests that the Commission order the Company to remove the fraudulent account and charges from her name.

On April 17, 2019, Respondent filed an Answer denying the material allegations of the Complaint and alleged Complainant was responsible for \$2,309.90 in electric service charges that accrued at the property while she was an adult occupant.

By notice dated April 23, 2019, the Commission scheduled this matter for a call-in telephonic hearing on June 4, 2019, at 10:00 a.m. and assigned the case to me. On the same date a second notice was issued, informing the parties that the telephone hearing was rescheduled as an in-person hearing on June 4, 2019, at 10:00 a.m.² The second notice listed the address where the in-person hearing would take place. I issued a Prehearing Order dated May 2, 2019, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements. The Prehearing Order again listed the time and place for the in-person hearing.

I convened the hearing on June 4, 2019, at 10:09 a.m. Respondent's counsel, Emily M. Farah, Esquire, together with Witness Roxanne Morris, were present in the hearing room when the hearing convened. Complainant was not present. As a result, I recessed the hearing at 10:12 a.m., to afford Complainant additional time to appear. I left the hearing room to determine whether Complainant had contacted the Office of Administrative Law Judge (OALJ) to explain her absence from the hearing.

² The scheduling staff rescheduled the hearing as in-person hearing at Respondent's request.

During the hearing recess, I called into the bridge conference telephone number initially listed on the call-in telephone hearing notice, to determine whether Complainant had called that number to participate in the hearing. However, I received a recording that I was the first person in the conference. No one else was in the conference. Consequently, I directed my administrative staff to telephone Complainant to determine a reason for her non-appearance for the hearing. My staff called Complainant at the telephone number listed in the Complaint; however, the telephone call was not answered.

When I reconvened the hearing at 10:28 a.m., Complainant was not present in the hearing room. Consequently, the hearing proceeded in her absence. No testimony or evidence was offered by Respondent. Counsel for Respondent moved for dismissal of the Complaint for lack of prosecution. I informed counsel that the motion would be taken under advisement, and an initial decision would be issued. The hearing was adjourned at 10:32 a.m.

On July 1, 2019, the hearing transcript was filed with the Commission's Secretary's Bureau, and the record was closed on July 3, 2019. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant in this case is Lynell Tomlin.
2. Respondent in this case is Duquesne Light Company.
3. On March 23, 2019, Complainant filed a Complaint with the Commission against Respondent.
4. By notice dated April 23, 2019, the Commission scheduled this matter for an initial telephonic hearing on June 4, 2019, at 10:00 a.m.

5. By a second notice dated April 23, 2019, the Commission rescheduled this matter for an initial in-person hearing on June 4, 2019, at 10:00 a.m.

6. The Commission sent both the notice of the telephonic hearing and the notice of the in-person hearing to Complainant by regular First-Class Mail to the address stated on the Complaint.

7. Neither the Commission's telephone hearing notice nor the in-person hearing notice was returned to the sender.

8. Complainant did not appear in the hearing room for the hearing scheduled for June 4, 2019.

9. Complainant did not call into the hearing scheduled for June 4, 2019.

10. 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.

The Commission sent notice of a telephonic hearing in this case to Complainant on April 23, 2019, by regular First-Class Mail to the address stated on the Complaint. To my knowledge, this piece of mail was never returned to the sender, the scheduling staff for OALJ in Pittsburgh.

The Commission sent notice of the rescheduling of the telephonic hearing in this case to an in-person hearing on April 23, 2019, by regular First-Class Mail to the address stated on the Complaint. To my knowledge, this piece of mail was never returned to the sender, the scheduling staff for OALJ in Pittsburgh.

In addition, I issued a Prehearing Order dated May 2, 2019, which, *inter alia*, provided the date, time and address for the parties to participate in the in-person hearing. The Prehearing Order informed the parties that they must be available in the hearing room and prepared to go forward when the case is called. The Prehearing Order, which was mailed to Complainant at the address shown on the Complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by Complainant. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa.Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 449 A.2d 658 (Pa.Super. 1982).

Complainant did not appear in person nor call in for the hearing scheduled and convened on June 4, 2019, which was the date shown on the April 23, 2019 hearing notices and the May 2, 2019 Prehearing Order. Under these circumstances, Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of Complainant have been fully protected. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this Complaint, Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. By failing to appear and proffer any evidence to support her Complaint, Complainant has failed to meet this burden. Under these circumstances, the Complaint may be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. West Penn*

Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of 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 her burden of proving that she is entitled to the relief that she 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 at Docket No. F-2019-3008844 for lack of prosecution is granted.

2. That the Complaint of Lynell Tomlin against Duquesne Light Company at Docket No. F-2019-3008844 is dismissed for failure of Complainant to appear for the hearing and prosecute the Complaint.

