

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joanna Hostovich	:	
	:	
v.	:	F-2019-3010932
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

The undersigned dismisses a formal complaint because Complainant failed to appear at a subsequent hearing and pursue her formal complaint against the public utility.

HISTORY OF THE PROCEEDING

On June 13, 2019, Joanna Hostovich (Ms. Hostovich 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 was threatening to shut off her electric service improperly during the pendency of an appeal.

On July 8, 2019, Duquesne Light filed its Answer. Duquesne Light admitted it had sent termination notices to Complainant but denied the notices were improper. Duquesne Light averred it established an account in Complainant's name on September 29, 2004, and on June 28, 2016, Complainant enrolled in CAP. Respondent noted the current balance on the

service account was \$2,945.34, and Complainant had defaulted from CAP due to a failure to recertify on January 12, 2018. Duquesne Light denied providing a termination notice during the pendency of an informal complaint that Ms. Hostovich filed with the Commission's Bureau of Customer Services (BCS) at BCS No. 3641550 on August 10, 2018, in which the informal complaint was dismissed by BCS on May 8, 2019. Respondent contended it did not provide notice of a pending termination to Complainant until June 4, 2019, which date was beyond the 20-day appeal period after the BCS decision. Respondent asked the Commission to dismiss the complaint with prejudice.

On July 11, 2019, the Office of Administrative Law Judge issued a Call-In Telephone Hearing Notice scheduling an Initial Call-In Telephonic Hearing for Wednesday, August 14, 2019, at 10:00 a.m. on the Commission's conference bridge telephone number. On July 23, 2019, the presiding officer issued a Prehearing Order which explained various procedural matters to the parties, including how to connect to the Commission's conference bridge and how to request a continuance.

On August 9, 2019, the presiding officer received a hand-written letter via facsimile from Ms. Hostovich which requested a continuance. Complainant indicated she was waiting on phone records which would confirm her statements submitted to the Commission. Complainant did not provide a copy of the continuance request to Duquesne Light.

On August 9, 2019, the presiding officer sent a copy of Ms. Hostovich's continuance request to counsel for Duquesne Light. Counsel indicated it had been unsuccessful in speaking with Complainant. Duquesne Light objected to the continuance but provided three possible dates if the presiding officer granted the continuance request.

On August 12, 2019, the presiding officer issued the First Interim Order which rescheduled the initial hearing from August 14, 2019 to August 26, 2019.

Thereafter, on August 13, 2019, Respondent filed a Certificate of Satisfaction which averred Complainant and Respondent had reached a settlement and Complainant wished

to withdraw her formal complaint. The Certificate of Satisfaction indicated Complainant had ten days in which to object in writing.

On August 26, 2019, Complainant faxed a hand-written letter to the presiding officer which stated:

I was informed today in a letter from the PUC that has record of incorrect information regarding my case. I do not want to close this case officially until the information is accurately recorded and updated. Therefore, I am asking to keep this case open until the changes have been made.

Accordingly, on September 13, 2019, the Office of Administrative Law Judge issued a Call-In Telephone Hearing Notice scheduling a Call-In Telephonic Hearing for Tuesday, October 15, 2019, at 10:00 a.m. on the Commission's conference bridge telephone number.

On October 15, 2019, the presiding officer attempted to convene the parties for the initial hearing at 10:03 a.m. Duquesne Light was represented by its attorney, Emily M. Farah, Esquire, who appeared with one witness: Roxanne Morris. Complainant failed to appear for the hearing, but Duquesne Light was present and prepared to present its evidence along with the testimony of one witness. Duquesne Light indicated Respondent last had contact with Complainant by a voice message left by Complainant at 9:30 p.m. on Friday, October 11, 2019, in which Complainant indicated she knew there was a hearing scheduled for October 15, 2019.

At 10:06 a.m., the presiding officer called a recess for approximately 10 minutes in order to ascertain from her staff if Ms. Hostovich had called or sent any form of communication explaining the absence and/or requesting a continuance. The presiding officer went back on the record at 10:15 a.m., at which time Ms. Hostovich 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 or filed a request with the Secretary's Bureau to request a continuance or to explain the absence.

Counsel for Respondent made an oral motion to dismiss the formal complaint with prejudice due to Complainant's failure to appear and prosecute the complaint. Counsel averred Complainant's current account balance was \$1,203.31 as of the day of the hearing. Counsel also averred Complainant still received electric service at the service address from Respondent. The presiding officer noted on the record the motion to dismiss would be taken under advisement. The hearing concluded at 10:18 a.m.

Pursuant to 52 Pa.Code § 5.431(a) and (b), the presiding officer closed the hearing record on October 15, 2019, upon the conclusion of the telephonic hearing.

FINDINGS OF FACT

1. Complainant and ratepayer of record is Joanna Hostovich, who resides at 413 East Eleventh Avenue, Homestead, Pennsylvania (service address).
2. Respondent in this proceeding is Duquesne Light Company which provides electric service at the service address.
3. A hearing notice dated September 13, 2019, was sent to the address provided by Complainant in the formal complaint which scheduled a telephonic hearing for October 15, 2019, and the hearing notice was not returned as undeliverable.
4. Complainant was not present and did not participate in the October 15, 2019 hearing.
5. Respondent was ready to proceed with its witness 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, Ms. Hostovich, 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

Ms. Hostovich did not appear at the time scheduled for the October 15, 2019 hearing, and did not participate in the October 15, 2019 hearing. The hearing notice, dated September 13, 2019, listed the date, time and location of the hearing. The Office of Administrative Law Judge mailed the hearing notice to Complainant at the address provided in the formal complaint, where the previous notices were sent. Once notice of a hearing and the opportunity to be heard has been provided, it was the responsibility of Ms. Hostovich to appear and participate in the hearing.⁴ If Complainant cannot appear, for any reason, then it is the responsibility of Ms. Hostovich 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

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).

participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat....

Since Ms. Hostovich 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 with prejudice for failure to prosecute. Respondent's motion was taken under advisement.

The hearing record closed on October 15, 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, Ms. Hostovich did not call into the hearing as specified in the hearing notice. The hearing notice clearly indicated Complainant was to call. These documents provided Complainant with the Commission's toll-free conference bridge number and PIN number. The hearing notice and Prehearing Order also provided an address and telephone number where Ms. Hostovich could reach the presiding officer if a continuance request and/or additional information was needed prior to the hearing. In fact, Ms. Hostovich was aware of how to contact the presiding officer and had previously faxed documents on two occasions to communicate with the presiding officer. Ms. Hostovich did not contact the presiding officer's office to explain the absence from the telephonic hearing or to ask for a continuance.

Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the formal complaint against Respondent by presenting evidence to support the allegations. Ms. Hostovich did not appear at the telephonic hearing scheduled on October 15, 2019. Ms. Hostovich did not request a continuance before or after the hearing on October 15, 2019.

Ms. Hostovich did not communicate with the presiding officer or her staff explaining she would not be available at the hearing on October 15, 2019. As a result, Complainant failed to appear at the scheduled hearing and 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 on October 15, 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).

