

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                        |   |                |
|------------------------|---|----------------|
| Alisa Stroud           | : |                |
|                        | : |                |
| v.                     | : | C-2019-3012685 |
|                        | : |                |
| 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 with prejudice because Complainant failed to appear at the initial hearing and prosecute the case.

**HISTORY OF THE PROCEEDING**

On September 3, 2019, Alisa Stroud (Complainant or Ms. Stroud) filed a Formal Complaint against Duquesne Light Company (Respondent or Duquesne Light) with the Public Utility Commission (Commission) alleging Respondent threatened to shut off electric service, there were incorrect charges on the billing statements and Complainant wanted a payment arrangement. Ms. Stroud asked the Commission to verify the arrears allegedly owed on the \$3,805.71 total balance and order Respondent to provide her with a new payment arrangement.

Respondent filed an Answer on September 24, 2019. Respondent denied all material allegations and averred the total account balance was \$4,135.06 including \$2,240.82 consisting of Customer Assistance Program (CAP) arrears. Respondent alleged Complainant

defaulted from CAP on June 19, 2018 due to her failure to update her income and household size and the last payment received from Complainant was on August 17, 2018. Duquesne Light averred the charges on Complainant's billing statements are correct and the Formal Complaint should be dismissed with prejudice.

On September 25, 2019, the Commission's Office of Administrative Law Judge scheduled this matter for an Initial Call-In Telephonic Hearing on Tuesday, November 12, 2019 and sent the Notice to Complainant and Respondent. On September 30, 2019, the Presiding Officer issued a Prehearing Order, which was mailed to both Parties and which specified how and when the Parties could request a continuance in writing.

On October 29, 2019, Complainant submitted a written request to the Presiding Officer via facsimile and requested a continuance. Complainant averred she started a new job and during the initial 90-day probationary period Complainant was not permitted to take time off from work. Ms. Stroud requested the Commission reschedule the hearing in late December or early January 2020. After Respondent indicated it had no objection to the request, the Presiding Officer issued the First Interim Order, which granted Complainant's request for a continuance on October 31, 2019.

By Call-In Telephone Hearing Notice dated November 4, 2019, the Office of Administrative Law Judge notified the Parties an initial telephonic hearing was rescheduled for Monday, January 21, 2020, at 10:00 a.m.

The time and date of the hearing on January 21, 2020, was included in the hearing notice, dated November 4, 2019. The hearing notice 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 21, 2020, at 10:03 a.m. 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: Roxanne Morris. Duquesne Light averred its last attempt to speak with Complainant prior to the hearing was on January 14, 2020 at which time Duquesne Light left a message on Complainant's voicemail with a reminder of the hearing on January 21, 2020.

At 10:05 a.m., the Presiding Officer called a recess until 10:15 a.m. in order to ascertain if Ms. Stroud had called or sent any form of communication explaining her absence and/or requesting a continuance. The Presiding Officer went back on the record at 10:15 a.m., at which time Ms. Stroud continued to be absent. The Presiding Officer advised Respondent's counsel that Complainant 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 with prejudice due to Complainant's failure to appear. Counsel averred Complainant's current account balance was \$4,552.06 and the Customer Assistance Program (CAP) arrears totaled \$2,232.82. Counsel also averred Complainant still receives 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 10:18 a.m. The hearing record closed on January 21, 2020, upon the conclusion of the telephonic hearing.

#### FINDINGS OF FACT

1. Complainant, Alisa Stroud, resides at 112 Palace Court, Pittsburgh, Pennsylvania 15227 (service address).
2. Respondent, Duquesne Light Company, is an electric distribution company which provides electric service at the service address.

3. The hearing notices dated September 25, 2019 and November 4, 2019, and the Prehearing Order dated September 30, 2019, were sent to the address provided by Alisa Stroud in the Formal Complaint and were not returned as undeliverable.

4. Alisa Stroud was not present and did not participate in the hearing.

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

6. Complainant did not contact the Presiding Officer or the Commission to request a continuance.

#### 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. Stroud, as the complainant, is the proponent of a rule or order. Therefore, Alisa Stroud 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.<sup>1</sup> Ms. Stroud must show the utility is responsible or accountable for the problem described in the Complaint.<sup>2</sup> 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 notice and the opportunity to appear and be heard.<sup>3</sup>

Ms. Stroud did not appear at the time scheduled for the hearing, and she did not participate in the hearing. The date, time and location of the hearing was listed in the hearing notice, dated November 4, 2019.

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

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

<sup>3</sup> *Schneider v. Pa. Pub. Util. Comm 'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

The Office of Administrative Law Judge mailed both hearing notices and the Prehearing Order to Complainant at the address Ms. Stroud provided in the Formal Complaint. Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of Ms. Stroud to appear and participate in the hearing.<sup>4</sup> If Ms. Stroud could not appear, for any reason, then it was the responsibility of Ms. Stroud to notify the Presiding Officer immediately about the impediment or dilemma.

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...

Since Ms. Stroud 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 appear. Respondent's motion was taken under advisement.

The hearing record closed on January 21, 2020, 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.

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<sup>4</sup> *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002).

In this proceeding, Ms. Stroud 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 Complainant with the Commission's toll-free conference bridge number and PIN number. The hearing notice and Prehearing Order also provided an address where Ms. Stroud could reach the Presiding Officer if a continuance request and/or additional information was needed prior to the hearing. The hearing notice provided a telephone number and a facsimile number for the office of the Presiding Officer if Complainant needed to request a continuance.

Ms. Stroud did not contact the Presiding Officer or the Office of Administrative Law Judge to explain her 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 Respondent 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 will be dismissed in the Ordering Paragraphs below.<sup>5</sup>

#### 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 21, 2020. 52 Pa.Code § 5.431(a).

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<sup>5</sup> *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).

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).

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of Duquesne Light Company, to dismiss the Formal Complaint filed by Alisa Stroud against Duquesne Light Company, at Docket No. C-2019-3012685 is granted.

2. That the Formal Complaint filed by Alisa Stroud against Duquesne Light Company, at Docket No. C-2019-3012685 is dismissed.

