

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tracy Lyn Scopel	:	
	:	
v.	:	C-2019-3015037
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Kailey B. Maguire
Special Agent

INTRODUCTION

This decision grants a motion to dismiss for failure to prosecute the complaint of an electric service customer for failure of the Complainant to appear at the scheduled hearing at the designated date and time despite being given notice of the hearing. This decision also denies as moot Respondent’s motion for judgment on the pleadings.

HISTORY OF THE PROCEEDING

On December 14, 2019, Tracy Scopel (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne Light or Respondent). In her complaint, Ms. Scopel averred Duquesne Light was threatening to shut off her service or had already shut off her service. As relief, Complainant requested a Commission-issued payment arrangement.

On January 7, 2020, Duquesne Light filed its answer and new matter, properly endorsed with a notice to plead. In the answer Respondent admitted Complainant had been sent

termination notices, however, denied doing so was improper and denied all other material allegations in the complaint. In the new matter, Respondent averred Complainant should not be afforded a payment arrangement as she had not made a good-faith effort to pay for her electric service bills; therefore, the complaint should be dismissed. No responsive pleading was filed to Respondent's new matter

On February 4, 2020, the Commission issued a Call-In Telephonic Hearing Notice to the parties, establishing an initial telephonic hearing for Wednesday, March 11, 2020, at 10:00 a.m. and assigning the undersigned as Presiding Officer.¹ Of note, the Hearing Notice advised the parties: “*Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in the original).

Also on February 4, 2020, a Prehearing Order was issued reminding the parties of the date and time of the hearing and addressed, *inter alia*, the procedures applicable to the hearing including the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them. Further, the Prehearing Order advised the parties:

If you fail to participate in the hearing on the scheduled day and time, the hearing will proceed in your absence. You will be deemed to have waived the opportunity to participate in the hearing. **The case may be dismissed ‘with prejudice,’ whereby, you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.**

(emphasis in the original).

Both the Hearing Notice and Prehearing Order were sent to Ms. Scopel at the address provided in her complaint via regular, first-class mail. Neither document was returned by the postal authorities as undeliverable.

¹ 52 Pa. Code § 56.174 provides for review by a special agent of any case in which the issue is solely the ability to pay.

On February 12, 2020, Duquesne Light filed a motion for judgment on the pleadings, properly endorsed with a notice to plead, pursuant to 52 Pa.Code § 5.102. In its motion, Duquesne Light averred: (1) that Complainant, by failing to respond, has admitted to the allegations contained within its answer and new matter; (2) that Complainant is not entitled to the remedy sought, a Commission-issued payment arrangement, as she has not made a good faith effort to pay for her electric service; (3) that Complainant has defaulted on seven previously established payment arrangements, one being a Commission-issued payment arrangement; and (4) that the motion was made within a time that the hearing will not be delayed as required by 52 Pa. Code § 5.102(a). Respondent requested the Commission dismiss the formal complaint with prejudice.

On March 10, 2020, Complainant faxed a letter to the undersigned requesting a continuance due to not being able to “make the 10 am time on Wednesday.” Following receiving Ms. Scopel’s continuance request, I emailed a copy of the letter to Emily M. Farah, counsel for Respondent, to inform her of Ms. Scopel’s request as Ms. Scopel’s letter indicated Respondent was not aware of her continuance request. Respondent, through Attorney Farah, objected to the continuance due to the last-minute nature of the request. Complainant’s request for a continuance was denied and the parties were advised that the March 11, 2020 hearing would proceed as scheduled.

The hearing convened on March 11, 2020, at 10:00 a.m., as scheduled. Attorney Farah appeared on behalf of Respondent and was ready to proceed with one proposed witness. Complainant did not appear. After waiting approximately fifteen minutes for Complainant to appear and participate, the hearing proceeded in Complainant’s absence. Counsel for Respondent noted Duquesne Light had made multiple efforts to contact Complainant in an attempt to settle this matter, without success. At the conclusion of the hearing, Respondent moved to dismiss the complaint with prejudice for failure of Complainant to appear and prosecute her complaint; additionally, Respondent renewed its motion for judgment on the pleadings. The undersigned informed counsel the motions would be taken under advisement and a ruling would be issued in an initial decision.

The record closed on March 11, 2020, following the conclusion of the telephonic hearing.² As of the date of this decision, no communication has been made to the Office of Administrative Law Judge (OALJ) by Ms. Scopel or on her behalf explaining the March 11, 2020 absence. For the reasons discussed below, this decision grants Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. Complainant is Tracy Scopel.
2. Respondent is Duquesne Light Company.
3. The service address is 115 North South Drive.
4. On January 7, 2020, Duquesne Light filed its answer and new matter, properly endorsed with a notice to plead.
5. On February 4, 2020, a Call-In Telephone Hearing Notice was issued, scheduling this matter for a telephonic hearing to be held on March 11, 2020, at 10:00 a.m.
6. The Hearing Notice stated the following: *Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.*" (emphasis in the original).
7. By Prehearing Order issued on February 4, 2020, the parties were informed of the date and time of the call-in telephonic hearing and were provided with various procedures applicable to the hearing, notably, the method by which a party could request a continuance of the hearing date, if needed.

² Pursuant to 52 Pa. Code § 56.174(3), the hearing was digitally recorded. No court reporter was present.

8. The Prehearing Order advised the parties: “If you fail to participate in the hearing on the scheduled day and time, the hearing will proceed in your absence. You will be deemed to have waived the opportunity to participate in the hearing. **The case may be dismissed ‘with prejudice,’ whereby, you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.**” (emphasis in the original).

9. Both the Hearing Notice and Prehearing Order provided the parties with the toll-free bridge telephone number and PIN number to participate in the hearing.

10. The Hearing Notice and the Prehearing Order were sent to the address provided in the complaint via regular, first-class mail.

11. Neither the Hearing Notice nor the Prehearing Order served upon Ms. Scopel was returned to the Commission as undeliverable by the postal authorities.

12. On February 12, 2020, Duquesne Light filed a motion for judgment on the pleadings, properly endorsed with a notice to plead; Respondent requested the Commission dismiss the formal complaint.

13. No responsive pleading was filed to Respondent’s motion for judgment on the pleadings.³

14. On March 10, 2020, Complainant requested a continuance,

15. The Respondent objected to Complainant’s March 10, 2020 continuance request.

³ A responsive pleading was due by March 11, 2020, the day of the scheduled hearing.

16. On March 10, 2020, an interim order was entered denying Complainant's continuance request and directing the parties that the March 11, 2020 hearing will proceed as scheduled.

17. Complainant did not appear by phone to participate in the March 11, 2020 telephonic hearing.

18. As of the date of this decision, no communication has been made to the Office of Administrative Law Judge by Ms. Scopel or on her behalf explaining the March 11, 2020 absence.

DISCUSSION

Due Process

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pa. v. Pa. Pub. Util. Comm'n*, 421 A.2d 481, 484 (Pa. Cmwlt. 1980).

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. 66 Pa. C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *See Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974) (*Mayflower*); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944, 946 (Pa. Cmwlt. 1994), *appeal denied*, 653 A.2d 1234 (Pa. 1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Order entered September 16, 2010) (*Geary*).

Once notice of a hearing and the opportunity to be heard have been provided to the parties, 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); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Order entered October 25, 1993) (*Sentner*).

In the instant matter, the record shows Complainant was provided both notice and the opportunity to appear and be heard. The February 4, 2020 Hearing Notice and Prehearing Order informed the parties of the date and time of the hearing and addressed, *inter alia*, how to request a continuance prior to the hearing, and that failure to appear for the hearing and present evidence on the issues raised in the complaint could result in dismissal of the complaint. Both documents were served separately, by regular first-class mail to the address provided by Ms. Scopel in the complaint. Neither document was returned to the Commission as undeliverable by the postal authorities. Accordingly, it must be presumed these documents, which were sent to the Complainant in the ordinary course of business, were received by Ms. Scopel. *Mayflower*.

Under these circumstances, the Complainant had ample notice and opportunity to appear and be heard in this proceeding, however, chose not to do so. Therefore, the due process rights of Complainant have been fully protected. *Sentner*.

Failure to Appear

Both the Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a)-(b). However, these provisions do not apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting the reopening or further examination, 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a)-(b), or if the

presiding officer determines that the complainant demonstrated a good faith attempt to attend the hearing. *See, e.g., Then v. Philadelphia Gas Works*, Docket No. F-2012-2318264 (Order entered June 13, 2013); *see also, Wiggins v. PECO Energy Company*, Docket No. C-2010-2190335 (Order entered October 27, 2011).

The public interest is prejudiced by the wasteful use of the Commission's and the respondent's time and resources in addressing a complaint. *See Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995) (*Jefferson*); *see also, e.g., Nichols v. Bell-Atlantic-Pennsylvania*, Docket No. C-00956667 (Order entered August 4, 1995). Out of concern for the waste of the Commission's (and Respondent's) time and resources, the Commission has dismissed *pro se* complaints with prejudice for failure of Complainant to appear at a hearing. *See e.g., Smith v. PECO Energy Company*, Docket No. F-2014-2446204 (Order entered September 3, 2015); *Day v. PECO Energy Company*, Docket No. C-2010-2181515 (Order entered June 10, 2011); and *Geary*.

In the instant matter, Complainant failed to appear for the hearing despite being given two written notices. Further, once the hearing began, the undersigned waited an additional fifteen minutes to allow Complainant time to appear. To date, no communication has been received by the OALJ, by or on behalf of Complainant, regarding whether Complainant's absence was unavoidable or that Ms. Scopel made a good faith attempt to attend the hearing. Consequently, Complainant has waived the opportunity to participate in a hearing on the issues raised in the complaint.

Burden of Proof

The proponent of any request for relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, a complainant, as the proponent of the request for relief, must show the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the

smallest amount, than presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

As the proponent of the request for relief from the Commission, Complainant bears the burden of proof. By failing to participate in the March 11, 2020 hearing and proffer any evidence to support the complaint, Complainant has failed to satisfy her burden. Accordingly, the merits of the complaint will not be addressed herein, and the complaint will be dismissed in its entirety. *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered March 14, 2019), citing, *inter alia*, *Jefferson*.

Respondent's alternative motion for judgment on the pleadings is denied as moot due to the disposition herein granting Respondent's motion to dismiss the complaint for lack of prosecution.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. The Commission is required to provide due process to the parties appearing before it. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

3. 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 Pennsylvania*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

4. After being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing, shall not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a).

5. If the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination, the presiding officer may find that a party did not waive the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a).

6. Complainant's due process rights have been fully protected and Complainant's failure to appear was not unavoidable. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. As the proponent of the request for relief, Complainant bears the burden of proof by a preponderance of the evidence standard. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

8. By failing to appear and participate in the hearing and proffer any evidence in support of the complaint, Complainant has failed to satisfy her burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Duquesne Light Company to dismiss the formal complaint of Tracy Scopel at Docket No. C-2019-3015037 is granted.
2. That the complaint of Tracy Scopel against Duquesne Light Company at Docket No. C-2019-3015037 is hereby dismissed.
3. That the motion of Duquesne Light Company for judgment on the pleadings is denied as moot.
4. That the Secretary's Bureau mark Docket No. C-2019-3015037 as closed.

Date: June 9, 2020

_____/s/
Kailey B. Maguire
Special Agent