

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Maloney	:	
	:	
	:	C-2020-3021171
	:	
Duquesne Light Company	:	

**INITIAL DECISION**

Before  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This decision dismisses the Complaint filed in this matter due to Complainant's failure to appear for the hearing and prosecute the Complaint.

**HISTORY OF THE PROCEEDING**

On August 5, 2020, James Maloney (Complainant) filed a Formal Complaint against Duquesne Light Company (Duquesne Light or Respondent) with the Pennsylvania Public Utility Commission (Commission), at Docket Number C-2020-3021171. Mr. Maloney alleges Duquesne Light destroyed a wall in front of his home and needlessly hacked apart a mature dogwood tree in his front yard on April 10, 2020, while restoring electric service to his home. Mr. Maloney sought \$5,500 for wall repairs; \$1,200 for tree replacement; all expenses moving forward related to pursuing this claim; and to be made whole in every way.

On August 20, 2020, Duquesne Light filed an Answer to the Complaint. Duquesne Light denied any wrongdoing associated with the actions taken to repair a downed

wire at Complainant's residence on April 10, 2020. Duquesne Light denied that this Complaint was not an appeal from a decision on Mr. Maloney's informal complaint dismissing the informal complaint at BCS Case Number 3764004. Duquesne Light requested that Complainant's request for relief be denied and the Complaint dismissed.

On August 20, 2020, Duquesne Light also filed a preliminary objection requesting dismissal of the Complaint. Duquesne Light asserted that Mr. Maloney's sole request for relief was monetary damages and, therefore, the Complaint should be dismissed because the Commission lacks jurisdiction to award monetary damages or litigate a private action for damages on behalf of a complainant.

On August 31, 2020, Mr. Maloney filed an Answer to the preliminary objection.

On September 21, 2020, a Motion Judge Assignment was sent to the parties and this matter was assigned to me.

On October 13, 2020, the undersigned issued a First Interim Order Granting Preliminary Objection, In Part, Striking Claim for Monetary Damages and Referring Matter to Mediation.

On October 15, 2020, an Interim Order Setting Resolution Conference was issued.

On December 14, 2020, an Initial Telephonic Hearing Notice was issued scheduling a hearing for January 12, 2021. The undersigned issued a Prehearing Order for Telephonic Hearing on December 16, 2020, which also provided the date and time of the hearing as well as other procedural requirements related to hearings, including instructions for requesting a continuance if the hearing date and time were not convenient.

On January 4, 2021, a Telephonic Hearing Cancellation/Reschedule Notice was issued rescheduling the hearing for Tuesday, February 16, 2021 at 10:00 a.m.

The Telephonic Hearing Cancellation/Reschedule Notice, noting the date and time of the hearing, and the Prehearing Order for Telephonic Hearing, were e-served on the parties.

The hearing convened as scheduled. Complainant did not appear. Emily M. Farah, Esquire, appeared on behalf of Respondent. Three potential witnesses for Respondent called into the hearing. Counsel for Respondent moved that the Complaint be dismissed for failure to meet the burden of proof. The record closed by Interim Order entered March 1, 2021.

### FINDINGS OF FACT

1. Complainant in this case is James Maloney.
2. Respondent in this case is Duquesne Light Company.
3. Complainant did not call the conference number at 10:00 a.m. on February 16, 2021 to participate in the rescheduled hearing.
4. Complainant did not contact the Commission to explain his failure to appear for the hearing.
5. The Telephonic Hearing Cancellation/Reschedule Notice, noting the date and time of the rescheduled telephone hearing, and the Prehearing Order were e-served on Complainant.

### DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.<sup>1</sup> However, this due process requirement is satisfied

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

when the parties are provided notice and the opportunity to appear and be heard.<sup>2</sup> 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 the Complaint.

By hearing notice dated January 4, 2021, the Commission scheduled this matter for a hearing to be held on February 16, 2021, at 10:00 a.m.

The Commission e-served the Telephonic Hearing Cancellation/Reschedule Notice and Prehearing Order on the Complainant. The Commission did not receive any indication that the Notice or Order failed to be delivered to the Complainant. Therefore, the Complainant is deemed to have had sufficient notice of the day, date and time of the scheduled hearing and for whatever reason chose not to appear at the hearing to prosecute his Complaint.<sup>3</sup>

Paragraph 10 of the Prehearing Order informed Complainant that if he failed to participate in the hearing and present evidence in support of his Complaint, the Complaint may be dismissed.<sup>4</sup> The prehearing order also provided instructions for contacting the Commission to request a change of the scheduled hearing date.

Section 332(a) of the Public Utility Code<sup>5</sup> places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, 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, Complainant failed to meet this burden of proof. Consequently, the Complaint must be dismissed.

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<sup>2</sup> *Id.*

<sup>3</sup> *Morella v. PECO Energy Company*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

<sup>4</sup> *See also*, 52 Pa.Code § 5.245.

<sup>5</sup> 66 Pa.C.S. § 332(a).

In conclusion, Complainant was notified of the scheduled hearing call-in procedure, date and time, as well as how to contact the Office of Administrative Law Judge, but he failed to appear without explanation. Under these circumstances, Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. The due process rights of the Complainant have been fully protected. However, due to the unusual circumstances caused by the Covid-19 state of emergency, the Complaint is dismissed without prejudice.

#### 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. 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 his burden of proving he is eligible to the relief he seeks from the Commission. 66 Pa.C.S. § 332(a); 52 Pa.Code § 5.245(a).

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of James Maloney against Duquesne Light Company at Docket No. C-2020-3021171, is dismissed without prejudice.

