

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Benjamin Kroop	:	
	:	
v.	:	F-2021-3027160
	:	
Duquesne Light Company	:	

**INITIAL DECISION**

Before  
Jeffrey A. Watson  
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**

Benjamin Kroop (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) dated May 28, 2021, averring there were incorrect charges on his electric bill. In his request for relief, Mr. Kroop stated “I submitted a change of provider request and it was denied by Duquesne Light. I was overcharged for electricity for months. I would like a refund for the difference in cost, plus compensation for my time dealing with this issue.”

On July 29, 2021, Duquesne Light Company (Duquesne Light or Respondent) timely filed an Answer and New Matter averring that Complainant’s supplier change request was properly rejected. Respondent also filed Preliminary Objections, seeking a dismissal of the

portions of the Complaint requesting financial compensation, averring the Commission lacks jurisdiction to grant Complainant relief in the form of money damages.

Duquesne Light also filed a Motion to Join AEP Energy as an Indispensable Party (Motion to Join AEP).

On August 18, 2021, AEP filed an Answer of AEP Energy, Inc., to Duquesne Light Company's Motion to Join AEP Energy as an Indispensable Party.

On September 16, 2021, a Judge Change Notice was issued assigning the case to the undersigned. The notice scheduled a Call-in Telephonic Hearing for Thursday, October 14, 2021, at 10:00 a.m.

On September 16, 2021, counsel for Duquesne Light Company provided the undersigned presiding officer with an email requesting a continuance of the hearing and advising that counsel contacted counsel for all parties, and all parties were agreeable to rescheduling the hearing. An interim order was entered granting the continuance request and cancelling the telephone hearing scheduled for October 14, 2021.

On November 22, 2021, an interim order was entered joining AEP Energy, Inc., as a party to this proceeding.

On December 14, 2021, AEP Energy, Inc., filed an Answer and New Matter and also filed Preliminary Objections. In its Preliminary Objections, AEP Energy Inc., sought dismissal of the portions of the Complaint requesting an award of damages to Complainant, averring the Commission lacks jurisdiction to grant Complainant relief in the form of money damages.

On March 23, 2022, a Hearing Notice was served upon the parties scheduling this matter for a telephonic hearing on April 20, 2022, at 10:00 a.m. I issued a prehearing order on March 23, 2022, which was also served upon the parties and 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 April 12, 2022, an interim order was entered granting the preliminary objections filed by AEP Energy, Inc., regarding Complainant's request for money damages for time spent to address the Complaint as set forth in the formal complaint filed by Complainant.

On April 12, 2022, an interim order was entered granting the preliminary objections filed by Duquesne Light Company, regarding Complainant's request for money damages for time spent to address the Complaint as set forth in the formal complaint filed by Complainant.

The hearing convened as scheduled. Complainant did not appear. Attorney Emily Farah appeared along with her witnesses on behalf of Duquesne Light Company. Attorney Todd Stewart appeared with his witnesses on behalf of AEP Energy. Counsel for Duquesne Light Company and for AEP Energy made motions to dismiss for failure of Complainant to appear. The record closed by Interim Order entered on April 21, 2022.

#### FINDINGS OF FACT

1. Complainant in this case is Benjamin Kroop.
2. Respondent in this case is Duquesne Light Company, a jurisdictional public utility.
3. AEP Energy Inc., was joined as an indispensable party in this proceeding.
4. Complainant did not call the conference number at 10:00 a.m. on April 20, 2022, to participate in the scheduled hearing.

5. Complainant did not contact the Commission to explain his failure to appear for the hearing.

### 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 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 March 23, 2022, the Commission scheduled this matter for a hearing to be held on April 20, 2022, at 10:00 a.m. A prehearing order also issued on March 23, 2022, and reminded the Parties of the date and time of the hearing.

The prehearing order also 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>3</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>4</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>1</sup> *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

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

<sup>3</sup> *See also*, 52 Pa. Code § 5.245.

<sup>4</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. Under the circumstances, the Complaint is dismissed with 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 motion of Duquesne Light Company and AEP Energy Inc., to dismiss the Complaint of Benjamin Kroop, filed at Docket No. F-2021-3027160 for failure to prosecute is granted.

2. That the Complaint of Benjamin Kroop against Duquesne Light Company, and AEP Energy Inc. at Docket No. F-2021-3027160, is dismissed with prejudice.

3. That the Secretary's Bureau shall mark Docket No. F-2021-3027160 as closed.

Date: June 15, 2022

\_\_\_\_\_/s/  
Jeffrey A. Watson  
Administrative Law Judge