

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Fred DeIuliis	:	
	:	
v.	:	C-2021-3026386
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This decision dismisses with prejudice the formal Complaint filed by Fred DeIuliis (Complainant) against Duquesne Light Company (DLC or Respondent), a dispute with respect to establishing electric service. The Complaint is dismissed because Complainant twice failed to appear at hearing despite Notice, and so failed to prosecute his Complaint.

PROCEDURAL HISTORY

On April 29, 2021, Complainant filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) alleging failure on the part of DLC to provide adequate service and billing issues. The Complaint pertains to electric service provided to two separate addresses. A portion of the Complaint relates to the service address where meter number F74478404 (Meter F74478404) is located, specifically, 14 Cable Pl., Apt. 3, Pittsburgh, PA 15213. The remaining portion of the Complaint is associated with the billing associated with 3440 Dawson St., Pittsburgh, PA 15213. Specifically, Complainant disagrees with the requirement to obtain a wiring approval after a service address has not had active electric service for an extended period of

time, namely, 12 or more months, and dissatisfaction with the Customer Charge on his bills. The latter issue was stricken from the Complaint as will be explained, below.

On June 29, 2021, DLC timely filed an Answer to the Complaint denying any violation of the Public Utility Code (Code) or of the regulations of the Commission.

Also on June 29, 2021, DLC filed Preliminary Objections to the Complaint seeking to dismiss the portion of the Complaint disputing the Company's Customer Charge because the Customer Charge is permitted by the Company's tariff, and does not constitute a violation of the Code, regulations or orders of the Commission. DLC also contended that the Complaint is legally insufficient *in toto* and should be dismissed. Preliminary Objections at Paragraphs 14-15.

The Preliminary Objections were duly served on Complainant, and properly endorsed with a Notice to Plead. Complainant did not file an Answer or any other responsive pleading to the Preliminary Objections.

On August 20, 2021, I issued an Order sustaining the Preliminary Objections in part and denying them in part finding that the portion of the Complaint alleging the unlawfulness of a Customer Charge was legally insufficient and striking that allegation from the Complaint but setting the remaining issues in the case for hearing.

On August 30, 2021, a hearing Notice was issued and served on the parties setting October 19, 2021, as the date for a telephonic evidentiary hearing in this case which included, along with other information, the dial-in telephone number for the hearing. Neither the hearing Notice to Complainant nor to DLC was returned as undeliverable.

On October 19, 2021, the hearing convened as scheduled. Emily M. Farah, Esquire, appeared on behalf of DLC, but Complainant did not appear. Although the hearing Notice had been served upon Complainant and had not been returned, due to an oversight, a Prehearing Order had not been issued. Consequently, a Prehearing Order was issued on January 6, 2022, and on January 21, 2022, a hearing Notice was issued setting March 8, 2022, as the date for a further

hearing in this matter. Neither the Prehearing Order nor the hearing Notice served to Complainant and to DLC was returned as undeliverable.

On March 8, 2022, a telephonic evidentiary hearing reconvened. Attorney Farah was again present on behalf of DLC with two witnesses. Complainant did not appear. Counsel for DLC made a Motion for the Dismissal of the Complaint, with prejudice on the basis of non-prosecution by Complainant. I provisionally granted the Motion, and the hearing adjourned. There has been no subsequent contact with the Complainant.

On March 17, 2022, the court reporter filed the transcript of the hearing of March 8, 2022. The record in this case closed on that day.

The record in this case is comprised of the hearing transcript of October 19, 2021, pages 1-6, and the hearing transcript of March 8, 2022, pages 7-15.

This matter is ready for disposition.

For the reasons stated herein, the Complaint of Fred DeIuliis filed at Docket No. C-2021-3026386, is dismissed with prejudice for failure to prosecute his Complaint.

FINDINGS OF FACT

1. The Complainant in this case is Fred DeIuliis.
2. The Respondent in this case is Duquesne Light Company, a Commission-jurisdictional electric distribution company.
3. Complainant failed to appear and to prosecute his Complaint at the hearings scheduled for October 19, 2021, and again on March 8, 2022.

4. Complainant received notice of the hearings scheduled for October 19, 2021, and for March 8, 2022, both of which documents notified him that failure to appear could result in the dismissal of his Complaint.

5. Complainant received a Prehearing Order issued on January 6, 2022, notifying him that failure to call into the hearing, then scheduled for March 8, 2022, could result in a dismissal of his case for failure to appear.

6. The Hearing Notices and Prehearing Order were served to the address Complainant provided.

7. Neither the Hearing Notices nor the Prehearing Order were returned to the Commission as undeliverable.

8. Complainant was also reminded of the call-in hearings by Respondent's counsel before the hearing on March 8, 2022. Tr. at 12.

9. Complainant failed to appear at two successive evidentiary hearings and provided no reason for his non-appearance.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). In this proceeding, Mr. DeIuliis filed a Complaint against DLC alleging both a quality of service and a billing dispute. Mr. DeIuliis, therefore, has the burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. *Id.*

No one appeared on behalf of Complainant at the date and time set for the hearings on October 19, 2021, or on March 8, 2022, despite notice of the hearings. Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

- (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
- (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a).

The hearing Notices and Prehearing Order were served upon Complainant and were not returned to the Commission as being undeliverable. Accordingly, it must be presumed that the hearing Notices sent to Complainant in the ordinary course of business were received by him. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 449 A.2d 658 (Pa. Super. 1982).

A telephonic evidentiary hearing was scheduled in this case for October 19, 2021, at 10:00 a.m. and again on March 8, 2022, at 10:00 a.m. Both hearings convened as scheduled, but Complainant did not appear, so after a wait of approximately 10-15 minutes on both occasions, the

matter was adjourned after a Motion to Dismiss was made by Counsel. Complainant has not contacted me or the Office of Administrative Law Judge with respect to his absence from these hearings.

Complainant has twice been afforded notice and an opportunity to be heard in this matter. No one appeared on behalf of Complainant at the time of either hearing. As such, Mr. DeIuliis had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Complainant's due process rights have been fully protected. *Sentner v. Bell Tele. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

At the March 8, 2022, hearing, Counsel for DLC moved to have the Complaint dismissed for lack of prosecution, with prejudice. By failing to appear and present any evidence in support of his Complaint, Mr. DeIuliis failed to carry his burden of proof. Thus, it is appropriate to dismiss the Complaint. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995). *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

Based on the foregoing analysis, the Complaint filed by Fred DeIuliis at Docket No. C-2021-3026386 is dismissed, with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. *Id.*

5. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

6. Ms. DeLuliis' due process rights have been fully protected. *Sentner v. Bell Tele. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

7. Mr. DeLuliis failed to carry his burden of proof in this proceeding because he failed to appear and prosecute his Complaint at either hearing. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Duquesne Light Company to dismiss with prejudice the formal Complaint of Fred DeLuliis at Docket No. C-2021-3026386 for failure to prosecute is granted.

