

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Maureen Stopperich	:	
	:	
v.	:	C-2022-3034514
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint filed in this matter for Complainant’s failure to appear for the hearing to prosecute the Complaint.

HISTORY OF THE PROCEEDING

Maureen Stopperich (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) on August 17, 2022, averring there were incorrect charges on her electric utility bill and requesting that her bill be corrected.

On September 7, 2022, Duquesne Light Company (Duquesne Light, Company, or Respondent) timely filed an Answer and New Matter denying the material averments set forth in the Complaint.

On October 21, 2022, a Call-in Telephonic Hearing Notice (Hearing Notice) was issued scheduling the evidentiary hearing for December 8, 2022, at 10:00 a.m. The

Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing to participate in the telephonic hearing. The Hearing Notice further stated as follows:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. All continuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

(Emphasis in original).

On October 24, 2022, a prehearing order was entered, which also provided the date and time of the hearing as well as other procedural requirements related to the hearing, including instructions for requesting a continuance if the hearing date and time were not convenient. The prehearing order also reminded the parties to call-in, on the date and at the time of the hearing, the Toll-Free Bridge Number and to enter the PIN to participate in the telephonic hearing. The Prehearing Order again stated the **FAILURE TO APPEAR** warning. Additionally, the Prehearing Order informed the Parties about the applicable procedural rules, and again included the procedure to follow for hearing **CONTINUANCES**.

The Hearing Notice and Prehearing Order informing the parties of the manner, date and time of the hearing, were electronically served upon the parties in the ordinary course of the Commission’s business to the email addresses provided by them to the Commission. The Commission did not receive a return electronic message that delivery of the Hearing Notice or the Prehearing Order to Complainant’s email address had failed.

The hearing convened as scheduled. Complainant did not appear. Attorney David Beane appeared along with his witness on behalf of Respondent and made a motion to dismiss for failure of Complainant to appear and prosecute the Complaint. No request for a continuance was made by any party and no explanation was provided by Complainant regarding her failure to attend the hearing. Under the circumstances, it is appropriate to close the record at this time.

An Interim Order was entered on December 23, 2022, closing the hearing record in this proceeding.

FINDINGS OF FACT

1. Complainant in this proceeding is Maureen Stopperich.
2. Respondent Duquesne Light Company is a jurisdictional public utility providing electric service to Pennsylvania customers.
3. On August 17, 2022, Ms. Stopperich filed a Complaint against Respondent with the Commission.
4. On September 7, 2022, Duquesne Light Company filed an Answer and New Matter to the Complaint.
5. By Call-In Telephone Hearing Notice dated October 21, 2022, the Parties were informed that a call-in telephonic hearing in this proceeding would convene on December 8, 2022, at 10:00 a.m.
6. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing to participate in the telephonic hearing.

7. The Hearing Notice informed the Parties that failure to participate in the hearing may result in dismissal of their case.

8. The Hearing Notice was electronically served upon Ms. Stopperich at the email address provided by her to the Commission.

9. There is no indication in the record that there was a failure in the delivery of the Hearing Notice to Ms. Stopperich.

10. Respondent's counsel and witnesses were present on December 8, 2022, when the telephonic hearing convened at 10:01 a.m.

11. By approximately 10:20 a.m. on December 8, 2022, Ms. Stopperich had not appeared for the telephonic hearing.

12. There is nothing in the record to indicate that Ms. Stopperich's failure to appear for the telephonic hearing was unavoidable.

13. When Ms. Stopperich did not appear for the telephonic hearing, Respondent's counsel moved for dismissal of the Complaint with prejudice for lack of prosecution.

DISCUSSION

Due Process

The Commission satisfies the requirement of affording a complainant with administrative due process, by providing timely notice of the hearing on the complaint and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

On October 21, 2022, the Call-In Telephone Hearing Notice was electronically served upon Complainant at the email address she provided to the Commission. The Commission did not receive a return message that delivery of the Hearing Notice to Ms. Stopperich's email address had failed. Accordingly, there is a presumption that Ms. Stopperich received electronic notice of the hearing and elected not to participate in the hearing. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016). Therefore, Complainant's due process rights have been fully protected.

Burden of Proof

Pursuant to Section 332(a) of the Code, 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the proponent of a rule or order. Therefore, Ms. Stopperich had the burden of proving she was entitled to the relief requested in her Complaint. Duquesne Light was present for the hearing through its attorney and witnesses. However, Ms. Stopperich was not present for the hearing.

Section 332(f) of the Code 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[.]

66 Pa.C.S. § 332(f).

Since Ms. Stopperich failed to appear and participate in the scheduled hearing by telephone, her Complaint may be dismissed with prejudice. *See Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26,

1995); 52 Pa. Code § 5.245. There is nothing in the record to indicate that Ms. Stopperich's failure to appear for the telephonic hearing was unavoidable. Accordingly, in the ordering paragraphs below the Complaint will be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022).

CONCLUSIONS OF LAW

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

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

3. Notice electronically served to a party with no notification that service failed is presumed received. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

4. When a complainant fails to appear for a scheduled conference or hearing and there is no indication in the record to indicate that complainant's failure to appear for the hearing was unavoidable, the complaint shall be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered April 22, 2022); 52 Pa. Code § 5.245.

5. Complainant as the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).

6. By failing to participate in the hearing and proffer any evidence to support the complaint, the Complainant has failed to meet the 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 Complaint of Maureen Stopperich for failure to prosecute her Complaint is granted consistent with this decision.

2. That the Formal Complaint in Maureen Stopperich v. Duquesne Light Company, at Docket No. C-2022-3034514 is dismissed with prejudice.

3. That the Secretary's Bureau shall mark Docket No. C-2022-3034514 closed.

Date: February 2, 2022

/s/
Jeffrey A. Watson
Administrative Law Judge