

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Indian Head Development LLC	:	
c/o Daniel Lloyd	:	
	:	
v.	:	C-2022-3034290
	:	
Duquesne Light Company	:	

Indian Head Development LLC	:	
c/o Daniel Lloyd	:	
	:	
v.	:	C-2022-3034309
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants Duquesne Light Company’s motion to dismiss the Formal Complaints because Indian Head Development LLC, a corporation, was unrepresented by legal counsel at the hearing and failed to appear and prosecute the Formal Complaints.

HISTORY OF THE PROCEEDING

On August 1, 2022, Indian Head Development LLC (Complainant) filed a Formal Complaint (First Complaint) with the Public Utility Commission (Commission) against Duquesne

Light Company (Duquesne Light or Respondent) alleging Duquesne Light failed to send bills to the correct mailing address for service provided to 612 ½ Monongahela Avenue, Glassport, Pennsylvania 15045 (Property 1). As relief, Complainant requested that the Commission appoint a competent third-party administrative services company to handle billing administration since Duquesne Light promised to correct this issue and failed to do so. This Formal Complaint was docketed at C-2022-3034290.

Indian Head Development LLC filed a second Formal Complaint (Second Complaint) on August 1, 2022, against Duquesne Light. Complainant alleged Duquesne Light failed to send bills to the correct mailing address for service provided to 1048 East 8th Avenue, Munhall, Pennsylvania 15120 (Property 2). As relief, Complainant requested that the Commission appoint a competent third-party administrative services company to handle billing administration since Duquesne Light promised to correct this issue and failed to do so. This Formal Complaint was docketed at C-2022-3034309.

On August 25, 2022, Duquesne Light filed an answer and new matter in response to the First Complaint. Duquesne Light admitted that an alternate address was provided to a customer service representative for sending bills, but the customer service representative made an error and bills were not sent to the correct address for May, June (1 and 30), and August 2022. Duquesne Light averred that the error had been corrected in its billing system and future bills would be sent to the requested address.

On August 25, 2022, Duquesne Light filed an answer and new matter in response to the Second Complaint. Duquesne Light admitted that an alternate address was provided to a customer service representative for sending bills, but the customer service representative made an error and bills were not sent to the correct address for June, July, and August 2022. Duquesne Light averred that the error had been corrected in its billing system and future bills would be sent to the requested address.

Complainant did not file a response to the new matter in either the First Complaint or Second Complaint proceeding.

On August 25, 2022, Duquesne Light filed a Motion to Consolidate the First Complaint and Second Complaint proceedings because the complaints involved the same parties and contain substantially similar allegations regarding Property 1 and Property 2. Complainant did not file a response to the Motion to Consolidate.

On October 11, 2022, a Call-In Telephone Hearing Notice was served on the parties scheduling both the First Complaint and the Second Complaint proceedings for an initial hearing on November 30, 2022, at 10:00 a.m. The Notice 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 October 13, 2022, the First Interim Order Granting Motion to Consolidate was served on the parties.

On October 13, 2022, the Prehearing Order for Telephone Hearing was served on the parties which 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.

Both the Call-In Telephone Hearing Notice and the Prehearing Order for Telephone Hearing informed Complainant of the need to be represented by legal counsel at the hearing pursuant to 52 Pa. Code §§ 1.21 and 1.22 because Complainant is a corporation.

On November 29, 2022, Michael A. Gruin, Esquire, filed an Entry of Appearance on behalf of Respondent.

The telephone initial hearing convened as scheduled on November 30, 2022. Complainant, a corporation, was not represented by an attorney at the hearing. No individuals or witnesses called into the telephone hearing on behalf of Complainant, including Daniel Lloyd. Michael A. Gruin, Esquire, appeared on behalf of Respondent. One proposed witness for Respondent was present at the hearing. Counsel for Respondent moved that the Formal

Complaints be dismissed due to Complainant's failure to prosecute the complaints. I informed counsel that his oral motion to dismiss would be taken under advisement.

The record closed by Interim Order dated December 21, 2022.

FINDINGS OF FACT

1. Complainant in this case is Indian Head Development LLC, a corporation.
2. Respondent in this case is Duquesne Light Company.
3. No legal counsel or any other representative for Complainant called the conference number at 10:00 a.m. on November 30, 2022, to participate in the scheduled initial hearing or filed a notice of appearance with the Commission's Secretary.
4. Complainant did not request a continuance or contact the Commission to explain its failure to be represented by counsel at the hearing.
5. The Call-In Telephone Hearing Notice noting the date and time of the scheduled telephone hearing, and the Prehearing Order for Telephone Hearing were e-mailed to Complainant at the email address listed for Complainant on the Complaint.
6. Daniel Lloyd did not call in for the scheduled hearing on November 30, 2022.

DISCUSSION

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

¹ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

satisfied when the parties are provided notice and the opportunity to appear and be heard.² Complainant had adequate notice of the time and date of the hearing yet failed to appear or explain why a representative could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss the consolidated Complaints with prejudice.

Paragraph 6 of the Prehearing Order for Telephone Hearing informed Complainant of the need for an attorney in this proceeding. Paragraph 6 provides as follows:

[i]f you are an individual, you may represent yourself or you may have an attorney represent you. All others, including a partnership, *corporation*, trust, association, or governmental agency or subdivision, must be represented an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*.^[3] And, unless you are an attorney, you may not represent someone else.

By Call-In Telephone Hearing Notice dated October 11, 2022, this matter was scheduled for a hearing on November 30, 2022, at 10:00 a.m.

Paragraph 1 of the Prehearing Order for Telephone Hearing informed Complainant that if it failed to participate in the hearing and present evidence in support of its Formal Complaints, the Formal Complaints may be dismissed with prejudice.⁴ 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 places the burden of proof upon the proponent of a rule or order.⁵ As the proponent of a rule or order, Complainant has the burden of demonstrating that the facts alleged in its consolidated Formal Complaints are true and that Complainant is entitled to the relief that it requested. Complainant did not have an attorney enter

² *Id.*

³ 52 Pa. Code §§ 1.21 & 1.22 (emphasis added).

⁴ *See also*, 52 Pa. Code § 5.245.

⁵ 66 Pa.C.S. § 332(a).

an appearance on its behalf and failed to appear for the scheduled hearing to present evidence. Complainant failed to meet its burden of proof. Consequently, the consolidated Formal Complaints must be dismissed.

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, consistent with the Commission's current procedure regarding service.⁶ In addition, Complainant was advised of the requirement that it be represented by an attorney at the hearing, but no attorney entered an appearance with the Commission and no one on behalf of Complainant appeared for the scheduled hearing.

When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice.⁷

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. The consolidated Formal Complaints will be dismissed with prejudice in the ordering paragraphs below.

CONCLUSIONS OF LAW

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

⁶ On September 15, 2021, the Commission adopted an Order at Docket M-2021-3028321 waiving its service requirements at 52 Pa Code §§ 1.53 and providing that all service by the Commission shall be by electronic service. This Order was extended to be effective through April 3, 2023, by Commission Order adopted March 10, 2022, at the same Docket Number.

⁷ *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

2. The due process rights of Complainant have been fully protected in this proceeding. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

3. By failing to appear for the hearing and proffer any evidence to support the consolidated Formal Complaints, Complainant has failed to meet its burden of proving it is eligible for the relief it seeks from the Commission. 66 Pa.C.S. § 332(a); 52 Pa. Code § 5.245(a).

4. A partnership, *corporation*, trust, association, or governmental agency or subdivision, must be represented an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*. And, unless you are an attorney, you may not represent someone else. 52 Pa. Code §§ 1.21 & 1.22.

5. When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion to dismiss by Duquesne Light Company on November 30, 2022, seeking dismissal of the consolidated Formal Complaints of Indian Head Development LLC v. Duquesne Light Company at Docket No. C-2022-3034290 and Docket No.

C-2022-3034309, is granted because Indian Head Development LLC failed to be represented at the hearing and failed to meet its burden of proof.

2. That the Formal Complaint of Indian Head Development LLC v. Duquesne Light Company at Docket No. C-2022-3034290 is dismissed with prejudice.

3. That the Formal Complaint of Indian Head Development LLC v. Duquesne Light Company Docket No. C-2022-3034309, is dismissed with prejudice.

4. That the Secretary's Bureau shall mark Docket No. C-2022-3034290 and Docket No. C-2022-3034309 as closed.

Date: March 14, 2023

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge