

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas Kachinko

v.

Duquesne Light Company

:
:
:
:
:

F-2023-3043025

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

Thomas Kachinko (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) on September 7, 2023, alleging his electric utility was threatening to shut off his service, alleging there were incorrect charges on his bill and requesting a payment arrangement.¹ Complainant utilized a complaint form provided by the Commission and provided his mailing address and email address on the complaint form. Complainant also initialed the portion of the complaint form indicating he was selecting to utilize email service of documents in this case.

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3897194, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

On October 5, 2023, Duquesne Light Company (Duquesne Light or Respondent) timely filed an answer denying the material averments set forth in the Complaint.

On December 18, 2023, a Call-in Telephonic Hearing Notice (Hearing Notice) was issued scheduling the evidentiary hearing for February 15, 2024, 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 December 19, 2023, 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 emailed upon the parties in the ordinary course of the Commission’s business to the addresses provided by them to the Commission. Complainant was

served electronically by email. The Commission did not receive a return of the Hearing Notice or Prehearing Order by electronic message that delivery of the Hearing Notice or the Prehearing Order to Respondent 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 his failure or inability to attend the hearing.

The record closed on February 15, 2024, upon conclusion of the hearing.

FINDINGS OF FACT

1. Complainant in this proceeding is Thomas Kachinko.
2. Respondent Duquesne Light Company is a jurisdictional public utility providing electric service to Pennsylvania Complainant.
3. On September 7, 2023, Thomas Kachinko filed a Complaint against Duquesne Light Company with the Commission.
4. On October 5, 2023, Duquesne Light Company filed an answer to the Complaint, which averred, in part that Complainant has had three Company-approved payment arrangements and one Commission-approved payment arrangement and defaulted on all of them and that he has used the Commission's process to avoid paying his past due balances or to challenge service terminations for failure to pay his utility bill.
5. By Call-In Telephone Hearing Notice dated December 18, 2023, the Parties were informed that a call-in telephonic hearing in this proceeding would convene on February 15, 2024, at 10:00 a.m.

6. On December 19, 2023, a Prehearing Order was entered providing the Parties with procedural rules regarding the conduct of the hearing, how to participate in the hearing and the procedure to follow to request a continuance of the evidentiary hearing.

7. 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.

8. The Hearing Notice and Prehearing Order informed the Parties that failure to participate in the hearing may result in dismissal of their case.

9. The Hearing Notice and Prehearing Order were served upon Thomas Kachinko by Email, as requested by Complainant on his Complaint, at the address provided by him to the Commission.

10. There is no indication in the record that there was a failure in the delivery of the Hearing Notice or Prehearing Order to Thomas Kachinko.

11. Respondent's counsel and witness were present on February 15, 2024, when the telephonic hearing convened at 10:00 a.m.

12. By approximately 10:17 a.m. on February 15, 2024, Thomas Kachinko had not appeared for the telephonic hearing.

13. There is nothing in the record to indicate that Thomas Kachinko's failure to appear for the telephonic hearing was unavoidable.

14. When Thomas Kachinko 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 December 18, 2023, the Call-In Telephone Hearing Notice was served upon Complainant by the Commission's Email process at the address Complainant provided to the Commission. On December 19, 2023, the Prehearing Order was served upon Complainant by the Commission's email process at the address Complainant provided to the Commission. The Commission did not receive any indication that delivery of the Hearing Notice or Prehearing Order to Complainant had failed. Accordingly, there is a presumption that Complainant received notice of the hearing and elected not to participate in the hearing. *Fonzo v. PPL Elec. Utils. Corp.*, Docket No. F-2023-3041304 (Final Order entered Jan. 17, 2024); *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.

Failure to Appear

Once a hearing is scheduled and the parties are duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 28, 2002). Both the Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing and shall not be permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). However, these provisions in the Code and in the Commission's regulations do not apply if the presiding officer determines that the party's failure to appear at the hearing was unavoidable and that the interests

of the other parties and of the public would not be prejudiced by permitting the reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(b).

The party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022). 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).

Complainant failed to appear for the hearing despite receiving notice and despite the undersigned allowing additional time for Complainant to appear. To date, there has been no communication to the Office of Administrative Law Judge or me by, or on behalf of, Complainant explaining why Complainant's failure to appear at the hearing was unavoidable.

Burden of Proof

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

Section 332(f) of the Code provides in pertinent part:

[a]ny 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 Complainant failed to appear and participate in the scheduled hearing by telephone, his Complaint may be dismissed with prejudice. *See Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F2021-3027107 (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 Complainant's failure to appear for the telephonic hearing was unavoidable. Accordingly, in the ordering paragraphs below the Complaint will be dismissed. *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 served to a party with no notification that service failed is presumed received. *Fonzo v. PPL Elec. Utils. Corp.*, Docket No. F-2023-3041304 (Final Order entered Jan. 17, 2024); *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); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).
4. After being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing and shall not be

permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

5. 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 Apr. 22, 2022); 52 Pa. Code § 5.245.

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

7. 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 Thomas Kachinko for failure to prosecute his Complaint is granted consistent with this decision and these ordering paragraphs.

2. That the Formal Complaint of Thomas Kachinko in *Thomas Kachinko v. Duquesne Light Company*, at Docket No. F-2023-3043025, is dismissed.

