

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rosemarie Mahone	:	
	:	
v.	:	C-2023-3042258
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

The undersigned grants Respondent’s oral Motion to Dismiss with prejudice the Formal Complaint of Rosemarie Mahone because Complainant failed to appear at the initial hearing and prosecute the case.

HISTORY OF THE PROCEEDING

On August 15, 2023, Rosemarie Mahone (Ms. Mahone or Complainant) filed the Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne Light or Respondent), alleging Duquesne Light caused a reliability, safety or quality problem with electric service at the service address. Ms. Mahone asserted she experienced significant hardship and financial losses due to an unsafe condition in Respondent’s facilities with frayed electrical lines. Complainant asserted Duquesne Light was responsible for the faulty condition but failed to maintain and/or perform repairs on the faulty facilities. Complainant averred that Respondent’s failure led to her furnace, television and computer being destroyed, forced her to incur costs for electrical repairs, and necessitated a

stay at a hotel when the furnace stopped working in January 2023. For requested relief, she asked the Commission to order Respondent to cover the costs to replace her furnace, television and computer, as well as the cost to stay in a hotel.

On September 5, 2023, Duquesne Light filed its Answer and, separately, filed Preliminary Objections. In its Answer, Respondent acknowledged it provides electric service to Ms. Mahone at the service address (704 Whitney Avenue, Pittsburgh, Pennsylvania). Duquesne Light denied generally all material allegations in the Complaint and acknowledged Complainant's electrician replaced the electric panel at the service address in December 2022. Respondent noted Complainant did not notify it prior to installing the new panel, as required by Respondent's tariff. Duquesne Light acknowledged it found deterioration on the weatherproofing but alleged the service line was operational and safe.

In its Preliminary Objections, Duquesne Light provided a Notice to Plead and averred portions of the Complaint should be dismissed where Complainant sought to receive compensation for emotional or financial losses. Respondent asserted the Commission lacks jurisdiction to grant the relief Complainant sought and that portion of the Complaint requesting monetary damages should be dismissed.

On October 13, 2023, the Preliminary Objections were assigned to Administrative Law Judge (ALJ) Emily I. DeVoe as a Motion Judge to issue a decision on the Preliminary Objection and then transfer any remaining issues to the Mediation Unit of the Office of Administrative Law Judge (OALJ). On October 17, 2023, ALJ DeVoe issued the Interim Order Granting Preliminary Objections and Transferring to Mediation Unit. ALJ DeVoe granted the Preliminary Objections and dismissed Complainant's claims for monetary damages. The matter was transferred to the Mediation Unit on the remaining issues.

On November 29, 2023, a mediation session was scheduled but Complainant did not attend, and the parties did not resolve the dispute.

By Call-In Telephone Hearing Notice dated January 8, 2024, the OALJ notified the parties an initial telephonic hearing was scheduled for February 20, 2024, before ALJ Katrina L. Dunderdale. On January 10, 2024, the presiding officer issued a Prehearing Order which, *inter alia*, advised the parties that continuances would only be granted if requested, the request must be received five business days prior to the hearing and requests would be granted only in situations where sufficient cause was shown to exist.

In her Complaint, Ms. Mahone agreed to receive service of documents via the Commission's e-Filing system, and she provided a valid electronic mail address for that service. Accordingly, the Hearing Notice and Prehearing Order were eServed on Complainant in the ordinary course of the Commission's business to the email address Ms. Mahone provided to and registered with the Commission. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission as undeliverable.

On February 20, 2024, the presiding officer convened the hearing at 10:03 a.m., at which time Complainant was not present or represented by counsel. Respondent was represented by Megan E. Rulli, Esquire, who appeared with Joshua Copeland, the General Manager for Field Operations for Duquesne Light, and Roxanne Morris, the Supervisor of Regulatory Consumer Relations for Duquesne Light. Ms. Mahone did not call into the hearing conference bridge and the presiding officer took a recess at 10:06 a.m., to give Ms. Mahone additional time to call in to the hearing conference bridge and to provide Ms. Mahone with an opportunity to join the telephonic hearing. The presiding officer reconvened the hearing at 10:16 a.m. but Ms. Mahone continued to be absent. Complainant did not contact the presiding officer or the OALJ to explain whether some impediment had made her timely appearance impossible or to communicate that she was unavailable to attend the hearing.

After reconvening at 10:16 a.m., Duquesne Light made an oral Motion to Dismiss with prejudice for failure to appear and prosecute the Complaint. Respondent asserted Complainant received notice of the hearing date and time in the Hearing Notice dated January 8, 2024, and in the Prehearing Order dated January 10, 2024. Respondent noted it still provides electric service to Complainant at the service address. Further, Respondent asserted it sent

proposed exhibits to Complainant on February 13, 2024, which noted the date and time for the hearing. Respondent asserted two telephone attempts were made to Complainant – on February 16, 2024, and on February 19, 2024 – and voicemail messages were left on both attempts. The presiding officer advised Respondent that the oral Motion to Dismiss would be taken under advisement and concluded the hearing at 10:19 a.m. The hearing record closed on February 20, 2024, upon the conclusion of the telephonic hearing, pursuant to 52 Pa. Code § 5.431(a).¹

FINDINGS OF FACT

1. Complainant is Rosemarie Mahone, who receives electric service at 704 Whitney Avenue, Pittsburgh, Pennsylvania (service address).
2. Respondent is Duquesne Light Company, an electric distribution company which provides residential electric service at the service address.
3. The Hearing Notice dated January 8, 2024, and the Prehearing Order dated January 10, 2024, were eServed on Complainant at the email address provided to and registered with the Commission by Complainant on the Complaint form and were not returned to the Commission as undeliverable.
4. Complainant was not present and did not participate in the hearing on February 20, 2024. (Tr. 1-21).
5. Complainant did not contact the Commission, OALJ or the presiding officer to explain how her failure to appear at the hearing was unavoidable.

¹ The regulation at 52 Pa. Code § 5.431(a) indicates the hearing record closes at the conclusion of a hearing unless otherwise directed by the presiding officer or the Commission.

DISCUSSION

Burden of Proof

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Ms. Mahone, as the complainant, is the proponent of a rule or order. Therefore, Complainant bears the burden of proving by a preponderance of the evidence that Respondent violated the Public Utility Code or a regulation or order of the Commission.² Ms. Mahone must show the utility is responsible or accountable for the problem described in the Complaint.³ Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are provided with notice and the opportunity to appear and be heard.⁴

Dismissal of Complaint for Failure to Appear and Prosecute

Ms. Mahone did not appear at the time scheduled for the February 20, 2024, hearing and no one appeared to represent Ms. Mahone at the hearing. The date, time and location of the hearing, as well as how to call into the telephonic hearing, was listed in the Hearing Notice, dated January 8, 2024, and in the Prehearing Order, dated January 10, 2024.

The OALJ electronically served the Hearing Notice and the Prehearing Order to Complainant as that was her requested method by serving the same at the email address Ms. Mahone provided to and registered with the Commission. Accordingly, it must be presumed that these documents sent to Complainant were received by Complainant.⁵

² *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

³ *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

⁴ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

⁵ *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).

Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of Ms. Mahone to appear and participate in the hearing.⁶ If Ms. Mahone could not appear, for any reason, then it was the responsibility of Ms. Mahone to notify the presiding officer immediately about the impediment or dilemma.⁷

Section 332(f) of the Public Utility Code, 66 Pa. C.S. § 332(f), 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[.]

In this proceeding, Ms. Mahone did not call into the telephonic hearing as specified in the Hearing Notice and in the Prehearing Order. The Hearing Notice clearly indicated Complainant was to call in to the hearing and provided Complainant with the Commission's toll-free conference bridge number and PIN number to do so. The Hearing Notice also provided an address and telephone number where Ms. Mahone could reach the presiding officer if additional information was needed prior to the hearing.

Further, the Commission provided Ms. Mahone with notice of the consequences if she did not appear and participate in the hearing. The Hearing Notice 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.

⁶ *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002).

⁷ *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

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).

Since Ms. Mahone did not appear or participate in the hearing, despite receiving two written notices of the date and time of the hearing, the hearing was held in accordance with 66 Pa.C.S. § 332(f) and 52 Pa. Code § 5.245. Accordingly, Respondent’s attorney moved to dismiss with prejudice the Complaint for failure to appear.

The party who failed to appear at the hearing had the burden of explaining why her failure to appear was unavoidable.⁸ When there are no facts in the record that the party’s failure to appear was unavoidable, a complaint should be dismissed with prejudice.⁹ To date, there has been no communication to the OALJ or the presiding officer by, or on behalf of, Complainant explaining why Complainant’s failure to appear at the hearing was unavoidable.

Because Ms. Mahone did not contact the presiding officer or the OALJ to explain her absence or to explain why she was unavailable at the time of the hearing, Ms. Mahone failed to take advantage of the opportunity provided to her in which to appear and prosecute the Complaint against Respondent by presenting evidence to support the allegations. As a result, Complainant failed to sustain the burden of proof. Accordingly, Respondent’s oral Motion to Dismiss the Complaint will be granted, and the Complaint will be dismissed in the Ordering Paragraphs below.

⁸ 66 Pa.C.S. § 332(a); *Herr v. West Duquesne Light Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

⁹ *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Volgstadt v. UGI Penn Natural Gas*, Docket No. F-02266429 (Opinion and Order entered Sept. 12, 2008); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. West Duquesne Light Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

CONCLUSIONS OF LAW

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

2. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

3. Complainant, as the proponent of a rule or order, has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

4. Complainant, by failing to appear at the scheduled hearing, waived the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

5. 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); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

6. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

7. When a complainant fails to appear for a scheduled conference or hearing and a complainant's failure to appear does not appear to be unavoidable, the complaint may be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. West Duquesne Light Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

8. By failing to appear for the hearing and proffer any evidence to support the Formal Complaint, Complainant failed to meet the burden of proving that Complainant is entitled to the relief requested. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of Duquesne Light Company to dismiss the Formal Complaint filed at Rosemarie Mahone v. Duquesne Light Company at Docket No. C-2023-3042258, is granted.

2. That the Formal Complaint filed by Rosemarie Mahone at Rosemarie Mahone v. Duquesne Light Company at Docket No. C-2023-3042258, is dismissed.

3. That the Secretary mark this case as closed.

Date: May 16, 2024

/s/
Katrina L. Dunderdale
Administrative Law Judge