

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Roberta Mendolia

v.

Duquesne Light Company

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C-2023-3044471

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision grants Respondent’s oral motion to dismiss a Formal Complaint because Complainant failed to appear at the initial hearing to prosecute her case.

HISTORY OF THE PROCEEDING

On November 28, 2023, Roberta E. Mandolia (Ms. Mandolia or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne Light or Respondent), alleging she was having a reliability, safety, or quality problem with her electric service because of power outages. More specifically, Complainant alleged that between November 27 and 28, 2023, Respondent took too long to fix a power outage. For relief, Ms. Mandolia requested that the Commission order Duquesne Light to fix power outages in a timely manner and to compensate her for her inconvenience.

On December 19, 2023, Duquesne Light filed an Answer and New Matter. Duquesne Light admitted it provided electric service to Ms. Mandolia at a duplex, 1973-1975 Crafton Boulevard, Pittsburgh, Pennsylvania (Service Address), and denied all other material allegations of the Complaint. More specifically, Duquesne Light denied that Ms. Mandolia experienced any momentary or sustained electric service interruption at the Service Address on November 27, 2023, or November 28, 2023.

In New Matter, Duquesne Light alleged as follows:

Complainant's duplex residence is served by overhead lines fed by Circuit No. 4382. Upon receipt of the Complaint, the Company reviewed a two-year interruption record detail ("IRD") for the Service Address. The IRD does not include service interruptions lasting less than two minutes. The Company's records show no sustained or momentary interruptions for the Service Address at the dates/times alleged by Complainant.^[1]

For relief, Respondent requested that the matter be referred to the Commission Mediation Unit.

On January 22, 2024, the matter was referred to the Office of Administration Law Judge's (OALJ) Mediation Unit. However, mediation did not achieve resolution of the Complaint.

By Call-In Telephone Hearing Notice (Notice) dated March 8, 2024, the OALJ notified the parties that an initial telephonic hearing was scheduled in this matter before me for April 16, 2024. The Notice cautioned the Parties 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.

¹ New Matter ¶ 15.

On March 8, 2024, as the presiding officer, I issued a Prehearing Order which, *inter alia*, advised the parties that (1) continuances would only be granted if requested; (2) the request must be received five business days prior to the hearing; and (3) requests would be granted only in situations where sufficient cause was shown to exist.

When she filed her Complaint, Complainant requested service of documents upon her via eService. Accordingly, the Hearing Notice and Prehearing Order were eServed upon Complainant in the ordinary course of the Commission's business, to the email address she registered with the Commission. There is no indication in the record that eService of the Hearing Notice or the Prehearing Order failed as undeliverable to Complainant.

On April 16, 2024, the hearing convened at 10:13 a.m. However, Complainant was not present or represented by counsel. Respondent was represented by David R. Beane, Esquire, who appeared with three witnesses. Due to Ms. Mandolia's failure to appear at the hearing, Duquesne Light made a motion to dismiss the Complaint for Complainant's failure to appear to prosecute her case. The motion was taken under advisement. The hearing adjourned at 10:52 a.m. The hearing record closed on April 16, 2024, upon the conclusion of the telephonic hearing, pursuant to 52 Pa. Code § 5.431(a).² This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant, Roberta Mendolia, receives electric service from Respondent at 1973-1975 Crafton Boulevard, Pittsburgh, Pennsylvania.
2. Respondent, Duquesne Light Company, is a jurisdictional electric distribution company which provides residential electric service at the Service Address.

² 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.

3. The Hearing Notice and Prehearing Order, both dated March 8, 2024, were eServed upon the Complainant in ordinary course of the Commission’s business.

4. There is no indication in the record that eService of the Hearing Notice or the Prehearing Order failed as undeliverable to Complainant.

5. Complainant failed to appear and participate in the hearing held on April 16, 2024.

6. Complainant did not contact the Commission or the presiding officer to offer any reason to explain that her failure to appear at the hearing was unavoidable.

DISCUSSION

Burden of Proof and Due Process

Pursuant to Section 332(a) of the Public Utility Code, the burden of proof is on the proponent of a rule or order.³ In this proceeding, Ms. Mendolia, 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.⁴ Ms. Mendolia must show the utility is responsible or accountable for the problem described in the Complaint.⁵ 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.⁶

³ 66 Pa.C.S. § 332(a).

⁴ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁵ *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

⁶ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

Dismissal of Complaint for Failure to Appear and Prosecute

Ms. Mendolia did not appear at the time scheduled for the April 16, 2024, hearing, and no one appeared to represent Ms. Mendolia. The date, time, and location of the hearing, as well as how to call into the telephonic hearing, were listed in both the Hearing Notice and the Prehearing Order, each dated March 8, 2024.

Complainant registered for the Commission's eFile service. Accordingly, The Office of Administrative Law Judge eServed the Hearing Notice and the Prehearing Order via eService. There is no indication in the record that eService failed as undeliverable to Ms. Mendolia. Accordingly, it must be presumed that these documents sent to Complainant were received by Complainant.⁷ Once notice of a hearing and the opportunity to be heard were provided, it was the responsibility of Ms. Mendolia to appear and participate in the hearing.⁸ If Ms. Mendolia could not appear, for any reason, then it was the responsibility of Ms. Mendolia to notify the presiding officer immediately about the impediment or dilemma.⁹

Section 332(f) of the Public Utility 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.^{10]}

⁷ *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).

⁸ *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. 28, 2002).

⁹ *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

¹⁰ 66 Pa.C.S. § 332(f).

In this proceeding, Ms. Mendolia 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 into the hearing and provided Complainant with the Commission's toll-free conference bridge number and PIN number to do so. The Prehearing Order also provided an address and telephone number where Ms. Mendolia could reach the presiding officer if additional information was needed prior to the hearing.

Since Ms. Mendolia 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 the Complaint for Complainant's failure to appear to prosecute the Complaint.

The party who fails to appear at a hearing has the burden of explaining why his/her failure to appear was unavoidable.¹¹ When there are no facts in the record that the party's failure to appear was unavoidable, a complaint may be dismissed with prejudice.¹² To date, there has been no communication to the Office of Administrative Law Judge or the presiding officer by, or on behalf of, Complainant explaining why Complainant's failure to appear at the hearing was unavoidable.

Because Ms. Mendolia did not contact the presiding officer or the Office of Administrative Law Judge to explain her absence, Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the Complaint against Respondent by presenting evidence to support the allegations. As a result, Complainant failed to sustain her burden of proof.

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

¹² *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 Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

Notably, Ms. Mendolia filed her Formal Complaint as a self-represented Complainant. When a complainant is self-represented and does not expressly elect to be served electronically, the Commission refrains from dismissing the complaint with prejudice for failure to prosecute. Instead, the Commission has held due process dictates the complaint just be dismissed.¹³ However, in the present case, Ms. Mendolia expressly elected eService, and there is no indication in the record that eService failed. Accordingly, Respondent's oral motion to dismiss the Complaint will be granted, and the Complaint will be dismissed with prejudice in the ordering paragraphs below.

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); 52 Pa. Code § 5.245(a).

3. Complainant, as the proponent of a rule or order, has the burden of proof in this matter. 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 eServed 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).

¹³ See *Hoyt v. Columbia Gas of PA, Inc.*, Docket No. F-2022-3032680 (Opinion and Order entered Apr. 20, 2023).

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 there are no facts in the record that a party's failure to appear at a hearing was 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 Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

8. Complainant failed to meet the burden of proving that she 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 Complaint filed in *Roberta Mendolia v. Duquesne Light Company* at Docket No. C-2023-3044471 is granted.

2. That the Formal Complaint filed by Roberta Mendolia in *Roberta Mendolia v. Duquesne Light Company* at Docket No. C-2023-3044471 is dismissed with prejudice.

3. That the Secretary mark this case as closed.

Date: July 11, 2024

/s/
Conrad A. Johnson
Administrative Law Judge