

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Bocsy	:	
	:	
v.	:	F-2024-3048366
	:	
Duquesne Light Company	:	

**INITIAL DECISION**

Before  
Mary D. Long  
Administrative Law Judge

**INTRODUCTION**

A Formal Complaint of a utility customer is dismissed because the Complainant did not attend and participate in the hearing and did not provide an unavoidable reason to justify the failure to appear.

**HISTORY OF THE PROCEEDING**

On April 10, 2024, David Bocsy (Complainant) filed a formal complaint against Duquesne Light Company.<sup>1</sup> The Complainant alleged that there were incorrect charges on his bill because the house was vacant, therefore the bill should only reflect a

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<sup>1</sup> The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 3963564, which dismissed Complainant's informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

monthly service charge. The Complainant also noted that electric service was terminated for “false safety reasons.”

Duquesne Light filed an answer on May 2, 2024, which denied the material allegations of the complaint and stated that the Complainant was correctly billed for service. Duquesne Light also averred that service was properly terminated due to an unsafe condition at the meter.

On June 20, 2024, the matter was assigned to me and scheduled for a hearing on August 8, 2024. The hearing convened as scheduled. Megan E. Rulli, Esquire appeared along with three witnesses on behalf of Duquesne Light. The Complainant did not appear. Ms. Rulli moved that the complaint be dismissed due to the Complainant’s failure to appear. I took the motion under advisement.

On August 9, 2024, the Complainant contacted my office and requested that the hearing be rescheduled as an in-person hearing. He claimed that he had not received the hearing notice and that he thought he would be contacted.<sup>2</sup> Although there was no indication that the Complainant had not received the hearing notice and prehearing order,<sup>3</sup> in an abundance of caution, I granted the request for a continuance.

The hearing was rescheduled as an in-person hearing for September 25, 2024. On August 13, 2024, a further hearing notice was mailed to the Complainant and served on Duquesne Light. A prehearing order was also served on August 13, 2024.

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<sup>2</sup> Complainant selected the option on his complaint form that he wanted to be served all documents from the PUC, including all hearing notices, orders and related documents, by First-Class Mail. Complaint ¶ 9.

<sup>3</sup> A hearing notice and prehearing order were served by First-Class mail on June 20, 2024. There is nothing in the docket indicating that either document was returned by the U.S. Postal Service.

On September 24, 2024, the Complainant contacted my office claiming that he was in the hospital and requested that the September 25, 2024, hearing be rescheduled. Counsel for Duquesne Light agreed to the continuance but noted that this is the second continuance request by the Complainant and that Duquesne Light was unlikely to agree to any further continuances. Duquesne Light also requested that the rescheduled hearing be conducted by telephone. By interim order entered September 24, 2024, I granted the continuance but noted that I was unlikely to grant any further continuance requests. I also directed the Parties to confer and agree on dates and times and to discuss whether the hearing should be conducted by telephone or in-person.

As directed, counsel for Duquesne Light filed a status report which included dates when all Parties and witnesses are available. Counsel also noted that the Parties were unable to reach an agreement regarding the format of the hearing. Counsel represented that the Complainant requested an in-person hearing because Complainant's brother, James Bocsy, intended to present the meter base for inspection at the hearing. Duquesne Light opposed the in-person hearing request because, among other things, the Complainant has other means, such as photographs or testimony, to present evidence regarding the meter base; the Complainant has a history of requesting untimely continuances; and the additional travel, time and expense that would be incurred by the Parties.

By interim order issued on October 16, 2024, I held that an in-person hearing was not necessary at this time. The order stated that the Complainant could submit photographs of the meter base and could ask James Bocsy to testify as a witness if

he wished to do so.<sup>4</sup> The October 16, 2024, Interim Order also directed that a hearing be scheduled for November 20, 2024, at 1:30 p.m. and warned that no further continuances or extensions would be granted absent emergency circumstances.

On October 17, 2024, the Office of Administrative Law Judge issued a hearing notice scheduling the hearing for November 20, 2024, at 1:30 p.m. Also on October 17, 2024, I issued a further prehearing order which noted the time and date of the hearing.

The hearing convened as scheduled. Megan Rulli, Esquire, appeared on behalf of Duquesne Light. The Complainant did not appear. Ms. Rulli made a motion to dismiss the complaint. I granted the motion to dismiss. Following the receipt of the transcript, the record closed by interim order on December 11, 2024.

#### FINDINGS OF FACT

1. The Complainant is David Bocsy.
2. The Respondent is Duquesne Light Company, a jurisdictional public utility.
3. Hearing notices which included the time and date of hearings were served on the Complainant by First-Class mail on June 20, 2024, August 13, 2024, and October 17, 2024.

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<sup>4</sup> The interim order also informed the Complainant that James Bocsy cannot act as Complainant's legal representative unless he is a licensed attorney.

4. Prehearing orders which included the time and date of the hearing were served on the Complainant by First-Class mail on June 20, 2024, August 13, 2024, and October 17, 2024.

5. The hearing notices and prehearing orders served on June 20, 2024 and October 17, 2024 provided the Complainant with the toll-free bridge telephone number and PIN to call and participate in the hearing, the procedure for requesting a continuance and the possible consequences of failing to appear at the hearing.

6. None of the hearing notices or prehearing orders were returned by the U.S. Postal Service as undeliverable.

7. The Complainant did not contact the Commission to explain why he did not appear at the hearing.

## DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.<sup>5</sup> The fundamental tenets of due process are notice and an opportunity to be heard.<sup>6</sup> However, the right to due process is not absolute.<sup>7</sup> The Commonwealth Court has consistently held that where a party fails to avail themselves of the opportunity to be heard without good cause, the proceeding may

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<sup>5</sup> *Pa. Bankers Ass'n v. Pa. Dept. of Banking*, 965 A.2d 956 (Pa. 2008) (*Pa. Bankers Ass'n*); *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

<sup>6</sup> *Pa. Bankers Ass'n*.

<sup>7</sup> *Goetz v. Dep't of Env't Res.*, 613 A.2d 65 (Pa. Cmwlth. 1992).

be dismissed and there is no violation of due process.<sup>8</sup> The Commission has codified this principle in its regulations:

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

(1) Be deemed to have waived the opportunity to participate in the conference or hearing.

(2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.

(3) Not be permitted to recall witnesses who were excused for further examination.<sup>[9]</sup>

A hearing notice and a prehearing order were sent to the Complainant by email and by First-Class mail. The Complainant was aware of how to contact the Office of Administrative Law Judge because he had done so on two other occasions. The October 16, 2024, Interim Order as well as the October 17, 2024, Hearing Notice and Prehearing Order all informed the Complainant that if he did not appear for the hearing that his complaint could be dismissed.

I noted on the record when the November 20, 2024 hearing convened, that I had received documents regarding the complaint from James Bocsy which purport to request that James Bocsy be added as a party to the complaint. None of the documents were filed with the Commission's Secretary's Bureau and James Bocsy also did not

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<sup>8</sup> See *Fountain Cap. Fund, Inc. v. Pa. Sec. Comm'n*, 948 A.2d 208 (Pa. Cmwlth. 2008), and the cases cited therein.

<sup>9</sup> 52 Pa. Code § 5.425(a).

appear at the hearing. James Bocsy does not appear to be an attorney. None of these documents excuse David Bocsy from appearing at the hearing.<sup>10</sup>

The Complainant had notice of the date and time of the hearing. The Commission afforded the Complainant ample opportunity to appear and request relief from the Commission. Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of the Complainant to appear and participate in the hearing.<sup>11</sup> If the Complainant could not appear, for any reason, then it was his responsibility to notify the presiding officer immediately about the impediment or dilemma.<sup>12</sup>

Section 332(a) of the Public Utility Code<sup>13</sup> places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the Complainant has the burden of demonstrating that the facts alleged in the Complaint are true and that he is entitled to the relief that he requested. By not appearing for the scheduled hearing to present evidence, the Complainant failed to meet this burden of proof. Consequently, the complaint must be dismissed.

In conclusion, the 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 but failed to appear without explanation. Under these circumstances, the Complainant had

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<sup>10</sup> See Tr. 13-15.

<sup>11</sup> *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).

<sup>12</sup> 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

<sup>13</sup> 66 Pa.C.S. § 332(a).

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.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 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 mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982).

4. The Complainant had notice of the hearing convened for his benefit, therefore due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

5. By failing to appear at the scheduled hearing, the Complainant has waived his claims and has failed to sustain the burden of proof. 66 Pa.C.S. § 332; 52 Pa. Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion to dismiss the formal complaint of David Bocsy vs. Duquesne Light Company, Docket F-2024-3048366 is granted.
2. That the formal complaint of David Bocsy vs. Duquesne Light Company, Docket F-2024-3048366 is dismissed.
3. That the Secretary mark the docket closed.

Date: January 14, 2025

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/s/  
Mary D. Long  
Administrative Law Judge