

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Debra Hobdy	:	
	:	
v.	:	F-2024-3050384
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint for lack of prosecution.

HISTORY OF THE PROCEEDING

On July 22, 2024, Debra Hobdy (Ms. Hobdy or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne Light or Respondent), alleging that the utility was threatening to shut off her service or had already shut off her service.¹ The Complaint did not contain a request for relief, nor state how Ms. Hobdy wanted her Complaint to be resolved. *See* Complaint ¶ 5.

¹ The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 3978772, which

On August 19, 2024, Duquesne Light filed an Answer, in part, admitting that it had served Ms. Hobdy with a termination notice and denying that the termination notice was in violation of the Public Utility Code, the Commission's regulations or the Company's Commission-approved tariff.

By Call-In Telephone Hearing Notice dated August 28, 2024, the Office of Administrative Law Judge notified the parties that an initial telephonic hearing was scheduled before me for October 24, 2024, at 10:00 a.m. 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.

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 August 28, 2024, as the presiding officer, I issued a Prehearing Order. The Prehearing Order reminded the Parties to call on the date and time of the hearing, October 24, 2024, at 10:00 a.m., and use the Toll-Free Bridge Number and enter the PIN

dismissed Complainant's informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

to participate in the telephonic hearing. The Prehearing Order also informed the Parties about the applicable procedural rules, included the procedure to follow for hearing continuances and again stated the **FAILURE TO APPEAR** warning.

When she filed her Complaint, Ms. Hobdy requested service of documents to her via email service. Complaint ¶ 9. Accordingly, on August 28, 2024, the Hearing Notice and Prehearing Order were emailed to Complainant in the ordinary course of the Commission's business to the email address she provided to the Commission. There is no indication in the record that email service of the Hearing Notice or the Prehearing Order failed as undeliverable to Complainant.

On October 24, 2024, the hearing convened at 10:03 a.m. However, Complainant was not present or represented by counsel. Respondent was represented by Megan E. Rulli, Esquire, who appeared with witness, Roxanne Morris.

Accordingly, I briefly recessed the hearing from 10:09 a.m. until 10:25 a.m., to permit additional time for Ms. Hobdy to appear or to contact the Office of Administrative Law Judge (OALJ) to explain her absence. The conference bridge remained open with counsel for Duquesne Light and the court reporter in the call, and I waited for Ms. Hobdy to join the hearing.

When the hearing was reconvened at 10:25 a.m., Ms. Hobdy had not dialed-in to the hearing nor contacted the OALJ to explain her absence. Therefore, the hearing proceeded in her absence. As a result, counsel for Duquesne Light moved for dismissal of the Complaint with prejudice for lack of prosecution. I informed counsel that the motion would be taken under advisement, and an Initial Decision would be

issued. The hearing was adjourned, thereby closing the record on October 24, 2024, pursuant to 52 Pa. Code § 5.431(a).²

The court reporting service filed the transcript, consisting of 14 pages, with the Commission on November 6, 2024. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant is Debra Hobdy.
2. Respondent, Duquesne Light Company, is a jurisdictional electric distribution company which provides residential electric service to Pennsylvania customers.
3. Complainant requested service of documents to her via email service. Complaint ¶ 9.
4. The Hearing Notice and Prehearing Order, both dated August 28, 2024, were electronically served on Complainant at the email address provided by Complainant in the Complaint and were not returned to the Commission as undeliverable. Tr. 9.
5. The Hearing Notice and Prehearing Order informed Complainant that if she failed to take part in the hearing and present evidence on the issue(s) raised, her case may be dismissed with prejudice.

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.

6. Complainant failed to appear and participate in the hearing held on October 24, 2024. Tr. 8-10, 13.

7. 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. Tr. 11-12.

8. When Complainant failed to appear for the hearing, Respondent made an oral motion to dismiss the Complainant with prejudice for lack of prosecution. Tr. 10-11.

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. Hobdy, as Complainant, is the proponent of a rule or order. Therefore, Complainant bears the burden of proving by a preponderance of evidence that Respondent violated the Public Utility Code or a regulation or order of the Commission.⁴ Ms. Hobdy 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. Hobdy did not appear at the time scheduled for the October 24, 2024, hearing. No one appeared to represent Ms. Hobdy 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 and in the Prehearing Order, both dated August 28, 2024.

Complainant requested communication with the Commission via email. Accordingly, the OALJ emailed the Hearing Notice and the Prehearing Order to Complainant by serving the same at the email address Ms. Hobdy provided and registered with the Commission. There is no indication in the record that delivery of either email failed or was otherwise undeliverable to Ms. Hobdy. Accordingly, it must be presumed that these documents sent to Ms. Hobdy were received by Ms. Hobdy.⁷ Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of Ms. Hobdy to appear and participate in the hearing.⁸ If Ms. Hobdy could not appear, for any reason, then it was the responsibility of Ms. Hobdy to notify the presiding officer immediately about the impediment or dilemma.⁹

⁷ *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 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).

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 (Order entered Jan. 24, 2002).

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

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]

In this proceeding, Ms. Hobdy 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 Hearing Notice also provided an address and telephone number where Ms. Hobdy could reach the presiding officer if additional information was needed prior to the hearing.

Since Ms. Hobdy 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 applicable legal standards.¹¹ Accordingly, Respondent's attorney made an oral motion to dismiss the Complaint with prejudice because of Ms. Hobdy's failure to appear for the hearing and to prosecute her Complaint.

The party who fails to appear at a hearing has the burden of explaining why his/her failure to appear was unavoidable.¹² When there are no facts in the record that the party's failure to appear was unavoidable, a complaint may be dismissed with prejudice.¹³

¹⁰ 66 Pa.C.S. § 332(f).

¹¹ 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245.

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

¹³ *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).

To date, there has been no communication to 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. Hobdy did not contact the presiding officer or OALJ to explain her absence or to explain why she was unavailable, 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.

Notably, Ms. Hobdy 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 that the complaint just be dismissed.¹⁴ However, in the present case, Ms. Hobdy expressly elected email service, and there is no indication in the record that electronic service failed. Accordingly, Respondent's oral motion to dismiss the Complaint with prejudice will be granted 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).

¹⁴ See *Hoyt v. Columbia Gas of Pa., Inc.*, Docket No. F-2022-3032680 (Opinion and Order entered May 30, 2023).

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 emailed to a party with no notification that service failed is presumed received. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 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).

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. *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 with prejudice the Formal Complaint filed in Debra Hobdy v. Duquesne Light Company at Docket No. F-2024-3050384 is granted.
2. That the Formal Complaint filed by Debra Hobdy in Debra Hobdy v. Duquesne Light Company at Docket No. F-2024-3050384 is dismissed with prejudice.
3. That the Secretary mark this case as closed.

Date: January 14, 2025

/s/
Conrad A. Johnson
Administrative Law Judge