

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rason Harris	:	
	:	
v.	:	F-2024-3051146
	:	
Duquesne Light Company, and	:	
Inspire Energy Holdings, LLC	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint with prejudice for the failure of Complainant to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On August 28, 2024, Rason Harris (Complainant or Ms. Harris) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (DLC or Respondent DLC).¹ The

¹ Complainant filed the appeal form on August 8, 2024, and filed the Formal Complaint on August 28, 2024. As such, the Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3986636, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

Complainant alleges that there were incorrect charges on her billing statements. For relief, Complainant requested the Commission order DLC to return to her some of the high charges, security deposit and shut-off charges. In her Complaint, Complainant selected the option to receive all communications from the Commission via email at the email address provided by Complainant on the Complaint. Complaint ¶ 9.²

On October 3, 2024, DLC filed an answer in which it denied the material allegations of fact and conclusions of law in the Complaint. Respondent DLC requested the Commission dismiss the Complaint. On the same day, DLC filed Preliminary Objections and asserted the Complaint should be dismissed because the Complaint failed to join an indispensable party, namely, Inspire Energy Holdings, LLC (Inspire). DLC noted the Complaint asserted Complainant did not want to receive electric generation supply (EGS) from Inspire and did not sign up for EGS service.

On October 29, 2024, the Commission's Office of Administrative Law Judge (OALJ) issued the Motion Judge Assignment Notice, assigning the disposition of the Preliminary Objections to me as the Motions Judge.

On October 30, 2024, I issued the Interim Order that granted in part the Preliminary Objections and joined Inspire as an indispensable party. The Interim Order required DLC to serve its Answer and Preliminary Objections on Inspire, instructed Inspire to file an objection to being joined or an answer to the Complaint by November 21, 2024, and instructed Complainant and/or Inspire to file a response to the Interim Order (as appropriate) by December 3, 2024.

² Both Respondents and the Commission served documents, including the hearing notice and the Prehearing Order, on Complainant by the United States Postal Service.

On November 21, 2024, Inspire filed its Answer and New Matter. Inspire generally denied violating the Public Utility Code and the Commission's orders and regulations. In New Matter, Inspire asserted the Commission did not have jurisdiction over the supply prices charged by EGSs and lacked the authority to require Inspire to issue refunds to customers.

On December 5, 2024, the OALJ served a Call-In Telephone Hearing Notice (12/5/24 Notice) on the parties scheduling an initial telephonic hearing on February 12, 2025, and the case was assigned to me. The Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN to call and 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).

On the same day, December 5, 2024, a Prehearing Order was served on the parties which reminded the parties of the date and time of the hearing. The Prehearing Order again stated the consequences if a party failed to appear. Additionally, the Prehearing Order informed the parties about the applicable procedural rules and included the procedure to follow to request a hearing continuance.

In the ordinary course of the Commission's business, the Hearing Notice and Prehearing Order were served via U.S. First-Class Mail to Complainant at the street address provided by her to the Commission. The Commission did not receive any return mail that the Hearing Notice or the Prehearing Order sent to Complainant's address were undeliverable.

On February 4, 2025, DLC filed a letter with the Commission, requesting the reschedule of the hearing on February 12, 2025, due to a scheduling conflict for the attorney representing DLC. DLC asserted neither Complainant nor Inspire opposed the request to reschedule. Also, on February 4, 2025, the OALJ served the Hearing Cancellation Notice on the parties, which cancelled the hearing scheduled on February 12, 2025.

On February 13, 2025, the OALJ served a Call-In Telephone Hearing Notice on the parties rescheduling the initial telephonic hearing to March 25, 2025. The Hearing Notice dated February 13, 2025 (2/13/25 Notice) provided the parties with the same information provided in the 12/5/24 Notice, including instructions on how to participate in the telephonic hearing, the consequences if a party fails to appear to participate and the procedure to use if a continuance is needed.

On March 25, 2025, the hearing convened as scheduled. Megan Rulli, Esquire, appeared on behalf of DLC along with one witness and was ready to proceed. Bryce Beard, Esquire, appeared on behalf of Inspire along with one witness and was ready to proceed. The court reporter was also present. Complainant was not present at the start of the hearing. After a short recess to allow time for Complainant to appear, the hearing proceeded in Complainant's absence. No testimony was taken, and no exhibits were introduced into the record. At the hearing, both DLC and Inspire moved separately to dismiss the Complaint with prejudice for Complainant's failure to appear and prosecute her Complaint. I took the motions under advisement. Complainant has not

contacted the Commission to explain why her failure to appear at the hearing was unavoidable.

The record closed on March 25, 2025, at the conclusion of the hearing, pursuant to Section 5.431 of the Commission’s regulations, 52 Pa. Code § 5.431.³ This decision grants the oral motions to dismiss the Complaint with prejudice requested by DLC and Inspire.

FINDINGS OF FACT

1. Complainant is Rason Harris.
2. Respondent is Duquesne Light Company.
3. On August 28, 2024, Complainant filed the Complaint against Respondent DLC.
4. On October 3, 2024, Respondent DLC filed an answer to the Complaint.
5. By Order entered October 30, 2024, Inspire Energy Holdings, LLC was joined as an indispensable party.
6. On November 21, 2024, Respondent Inspire Energy Holdings, LLC filed an answer and new matter to the Complaint.

³ The provisions at 52 Pa. Code § 5.431(a) state the hearing “record will be closed at the conclusion of the hearing unless otherwise directed by the Presiding Officer or the Commission.”

7. On February 13, 2025, a Call-In Telephone Hearing Notice was served on Complainant scheduling an initial telephonic hearing on March 25, 2025, at 10:00 a.m.

8. On December 5, 2025, a Prehearing Order for Telephone Hearing was served on Complainant providing additional information regarding the hearing.

9. Both the Hearing Notice and Prehearing Order were served on Complainant by U.S. First-Class Mail to the postal address Complainant provided to the Commission.

10. Both the Hearing Notice and Prehearing Order provided Complainant with the toll-free bridge telephone number and PIN to call and participate in the hearing, and, *inter alia*, the procedure for requesting a continuance and the possible consequences of failing to appear at the hearing.

11. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

12. Complainant failed to appear and participate in the scheduled telephonic hearing on March 25, 2025.

13. The court reporter, counsels for DLC and Inspire, with the respective witnesses, were present and prepared to proceed at the March 25, 2025 hearing.

14. Complainant has not contacted the Commission to explain why her failure to appear at the hearing was unavoidable.

DISCUSSION

Due Process and Notice

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Id.*

The record shows that Complainant was provided notice and the opportunity to be heard. First, on December 5, 2024, and again on February 13, 2025, Complainant was served a Hearing Notice which advised the parties of the date and time of the scheduled hearing, and how to participate. Second, on December 5, 2025, Complainant was served a Prehearing Order which reminded the parties of the date and time of the hearing, and how to participate. Further, the documents advised the parties, *inter alia*, how to request a continuance prior to the hearing if needed. Finally, the documents advised Complainant that failure to appear may result in dismissal with prejudice, which means that Complainant would be barred from filing another complaint raising the same claim(s) and issues(s) presented in the dismissed complaint.

The Hearing Notices and Prehearing Order were served by U.S. First-Class Mail to the address provided on the Complaint. Neither document was returned as being undeliverable. Accordingly, it must be presumed that this mail was received by Complainant. *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).

Complainant had notice of the hearing on March 25, 2025, and an opportunity to be heard in this proceeding. Therefore, Complainant's due process rights

have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

Failure to Appear, Waiver and the “Unavoidable” Standard

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 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 OALJ or me by, or on behalf of, Complainant explaining why Complainant's failure to appear at the hearing was unavoidable.

Consequently, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the Complaint, Complainant's absence was not unavoidable, and the Complaint should be dismissed with prejudice.

Burden of Proof and Dismissal of Complaint

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

As the proponent of any request for relief, Complainant bears the burden of proof. By failing to participate and proffer any evidence to support the Complaint, Complainant has failed to meet this burden. Thus, it is appropriate to dismiss the Complaint with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered Mar. 14, 2019) (citing *Jefferson v. UGI*

Utils., Inc., Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995)). Accordingly, the merits of the Complaint will not be addressed.

Respondents' motions to dismiss with prejudice will be granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to 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 mailed via U.S. First-Class Mail to a party and not returned to the Commission as undeliverable is presumed 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. 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. If there are no facts in the record that a party's failure to appear at a hearing 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).

6. Complainant's due process rights have been fully protected and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. As the party seeking relief, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

8. By failing to participate in the hearing and proffer any evidence to support the complaint, Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Duquesne Light Company's oral motion to dismiss the Formal Complaint of Rason Harris at Docket No. F-2024-3051146 is granted.

2. That Inspire Energy Holdings, LLC's oral motion to dismiss the Formal Complaint of Rason Harris at Docket No. F-2024-3051146 is granted.

3. That the Formal Complaint filed by Rason Harris in *Rason Harris v. Duquesne Light Company and Inspire Energy Holdings, LLC*, Docket No. F-2024-3051146, is hereby dismissed with prejudice.

4. That the Secretary's Bureau shall mark Docket No. F-2024-3051146 as closed.

Date: April 22, 2025

_____/s/
Katrina L. Dunderdale
Administrative Law Judge