

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Bocsy	:	
	:	
v.	:	F-2025-3055088
	:	
Duquesne Light Company	:	

**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 at a hearing and prosecute the Complaint.

**HISTORY OF THE PROCEEDING**

On May 6, 2025, James Bocsy (Mr. Bocsy or Complainant) filed a Formal Complaint (Complaint) against Duquesne Light Company (DLC or Respondent), which was a timely appeal of a decision of the Commission’s Bureau of Consumer Services (BCS) concerning the Informal Complaint filed at BCS No. 4036564.<sup>1</sup> Complainant alleged there were incorrect charges on his bills and DLC was wrong to remove a \$1,500 credit from Complainant’s account. Complainant requested the Commission order DLC to replace the \$1,500 credit and provide an additional credit for the overpriced bills DLC

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<sup>1</sup> BCS’s decision on the Informal Complaint is dated March 13, 2025.

issued over the previous two years. In the Complaint, Mr. Bocsy requested to receive service of all documents by First Class Mail.<sup>2</sup>

On June 2, 2025, DLC filed its Answer in which it admitted returning \$1,428.48 to the Department of Health and Human Services (DHHS) in unused Low Income Heating Assistance Program (LIHEAP) funds pursuant to its vendor agreement with DHHS. DLC denied incorrect charges were on Complainant's bills.

Also, on June 2, 2025, DLC filed its Preliminary Objections alleging the Commission lacked subject matter jurisdiction because the Complaint concerned how LIHEAP grants are applied pursuant to the vendor agreement with DHHS. DLC requested the Commission dismiss the Complaint or, at least dismiss the portion of the Complaint concerning the refund of the unused LIHEAP funds.

On July 14, 2025, the Office of Administrative Law Judge (OALJ) issued a Motion Judge Assignment Notice assigning Administrative Law Judge Katrina L. Dunderdale (ALJ Dunderdale or presiding officer) to handle preliminary matters including the Preliminary Objections. Thereafter, on July 15, 2025, the presiding officer issued the Interim Order, which denied the Preliminary Objections of Respondent, and referred the proceeding to schedule an initial hearing.

On July 18, 2025, the OALJ issued an Initial Call-In Telephone Hearing Notice, which scheduled an initial hearing to be conducted on September 11, 2025. The Hearing Notice provided the parties with the Toll-Free Bridge Number to call and the PIN to enter to participate in the telephonic hearing. The Hearing Notice further stated as follows:

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<sup>2</sup> While Complainant and Respondent communicated, in part, by email, the presiding officer served Complainant's copy of documents by First Class Mail.

**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 July 18, 2025, the presiding officer served a Prehearing Order on the parties which reminded the parties of the date and time of the hearing. The Prehearing Order again stated the failure to appear warning. Additionally, the Prehearing Order informed the parties about the applicable procedural rules and again included the procedure to follow for requesting a continuance.

The Hearing Notice and Prehearing Order were served on Complainant in the ordinary course of the Commission’s business to the mailing address Complainant provided to the Commission. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

The presiding officer convened the initial hearing as scheduled on September 11, 2025, at which time Complainant was not present. Respondent was represented by Megan Rulli, Esquire (Ms. Rulli), who appeared with Jennifer Ervin, a Universal Service Analyst 3, and Roxanne Morris, a Supervisor of Regulatory Consumer Relations for DLC. The court reporter was also present. Complainant was not present at the start of the hearing and the hearing proceeded in Complainant’s absence, after taking a recess until 10:15 a.m. No testimony was taken, and no exhibits were introduced into

the record. Respondent moved to dismiss the Complaint with prejudice for Complainant's failure to appear and prosecute his Complaint. The presiding officer took this motion under advisement.

During the hearing, Respondent asserted Complainant received many notices about the date and time of the hearing including the Hearing Notice, the Prehearing Order and the proposed exhibits sent to Complainant by Respondent on September 4, 2025, which included a copy of the hearing notice. Further, Respondent noted Complainant had an initial hearing before the Commission on August 20, 2025, at Docket No. C-2025-3053828, at which Complainant failed to appear. Respondent asked the presiding officer to take judicial notice of the proceeding at Docket No. C-2025-3053828,<sup>3</sup> as well as a separate proceeding involving Complainant at Docket No. F-2024-3048366,<sup>4</sup> which were proceedings Complainant failed to appear at the scheduled hearings. Respondent argued Mr. Bocsy's Complaint herein should be dismissed and dismissed with prejudice, pursuant to 52 Pa. Code §§ 5.245<sup>5</sup> and 5.371.<sup>6</sup> It should be noted Respondent did not disclose the existence of the two other proceedings prior to the initial hearing, did not allege Complainant's failure to appear in the Answer or notify Complainant in New Matter that the two other proceedings might be cited in this proceeding.

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<sup>3</sup> On September 19, 2025, the OALJ issued the Initial Decision of ALJ Emily DeVoe which dismissed the Formal Complaint without prejudice for failure to appear and prosecute the Formal Complaint of James Bocsy.

<sup>4</sup> On January 14, 2025, the OALJ issued the Initial Decision of ALJ Mary Long which dismissed the Formal Complaint of David Bocsy, Complainant's brother, for failure to appear and prosecute the Formal Complaint. The Initial Decision was made final on February 14, 2025, when the Commission issued the Final Order, pursuant to 66 Pa.C.S. § 332(h).

<sup>5</sup> The provision at 52 Pa. Code § 5.245(a)(1) states that "a party who fails to be represented at a scheduled conference or hearing ... will be deemed to have waived the opportunity to participate in the conference or hearing."

<sup>6</sup> The provision at 52 Pa. Code § 5.371(a)(1) states that the "Commission or the presiding officer may, on motion, make an appropriate order if ... a party fails to appear, ... as required under this subchapter."

Although the transcript from the initial hearing was received on September 19, 2025, the hearing record closed on September 11, 2025, at the conclusion of the hearing, pursuant to 52 Pa. Code § 5.431(a).<sup>7</sup> This decision grants Respondent's motion to dismiss the Complaint with prejudice.

### FINDINGS OF FACT

1. Complainant is James Bocsy.
2. Respondent is Duquesne Light Company.
3. On May 6, 2025, Complainant filed a Complaint against Respondent.
4. On June 2, 2025, Respondent filed the Answer to the Complaint generally denying the Complaint.
5. On June 2, 2025, Respondent filed Preliminary Objections against Complainant, alleging the Commission does not have subject matter jurisdiction over a vendor agreement between Respondent and the DHHS.
6. On July 15, 2025, the presiding officer issued the Interim Order which denied the Preliminary Objections and referred the proceeding for scheduling of an initial hearing.

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<sup>7</sup> The provision at 52 Pa. Code § 5.431(a) states the hearing “record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.”

7. On July 18, 2025, the OALJ served an Initial Call-In Telephone Hearing Notice scheduling an initial telephonic hearing on September 11, 2025.

8. On July 18, 2025, the presiding officer issued a Prehearing Order providing additional information to the parties regarding the hearing.

9. The Commission served both the July 18, 2025 Hearing Notice and July 18, 2025 Prehearing Order on Complainant by First-Class Mail to the mailing address Complainant provided in the Complaint.

10. Neither the July 18, 2025 Hearing Notice nor the July 18, 2025 Prehearing Order were returned to the Commission as undeliverable.

11. Both the July 18, 2025 Hearing Notice and July 18, 2025 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 a hearing.

12. The presiding officer convened the initial hearing on September 11, 2025, at which time Complainant was not present and Respondent was present with its witnesses.

13. During the hearing, the presiding officer took a brief recess until 10:15 a.m., to give Complainant an opportunity to connect to the telephonic hearing.

14. Complainant failed to appear and participate in the scheduled telephonic hearing on September 11, 2025.

15. The court reporter, Counsel for Respondent and its witnesses were present and prepared to proceed at the September 11, 2025 hearing.

16. Respondent made an oral motion to dismiss the Complaint with prejudice due to Complainant's failure to appear herein, his failure to appear at hearings in two other formal complaint proceedings and his failure to prosecute the Complaint.

17. Complainant has not contacted the Commission to explain why his 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 July 18, 2025, Complainant was served a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. Second, on July 18, 2025, Complainant was served a Prehearing Order which reminded the parties of the date and time of the hearing, and how to participate.

Further, both documents advised the parties, *inter alia*, how to request a continuance prior to the hearing if needed. Finally, both 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 complaints. Both the Hearing Notice 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 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 his/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 Office of Administrative Law Judge 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. Further, the Hearing Notice and in the Prehearing Order notified Complainant that dismissal with prejudice might result if he failed to appear and meet his burden of proof. Lastly, Complainant has not communicated to the presiding officer since the hearing to indicate he was unavailable to appear and to request a new hearing. Thus, it is appropriate to dismiss the Complaint and 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.

Respondent's motion 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).

