**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Zakkiyah Salahuddin :

:

v. : F-2015-2463441

:

Metropolitan Edison Company :

**INITIAL DECISION**

Before

Joel H. Cheskis

Administrative Law Judge

INTRODUCTION

This Decision grants a Motion to Dismiss for Failure to Prosecute because the Complainant failed to appear for the Hearing at the designated date and time despite being given notice of the Hearing.

HISTORY OF THE PROCEEDING

On January 14, 2015, Zakkiyah Salahuddin filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against Metropolitan Edison Company (Met-Ed or “the Company”), Docket Number F-2015-2463441. The Complaint was a timely appeal of a decision of the Commission’s Bureau of Consumer Services at case number 3241299. In her Complaint, Ms. Salahuddin averred that Met-Ed is threatening to shut off her utility service or has already shut off her service, there are incorrect charges on her bill and she is having a reliability, safety or quality problem with her utility service. Ms. Salahuddin provided significant detail regarding her Complaint and concluded that she would like the matter investigated by the Commission and all incorrect charges credited to her account. Ms. Salahuddin attached several copies of her bill to her Complaint in support of her argument.

On February 11, 2015, Met-Ed filed an Answer with New Matter in response to Ms. Salahuddin’s Complaint. Met-Ed admitted or denied the various averments made by Ms. Salahuddin in her Complaint, including denying that there are incorrect charges on her bill. Met-Ed stated that at all relevant times it has acted reasonably and in performance of all applicable laws. In its New Matter, which was accompanied by a Notice to Plead, Met-Ed averred that Ms. Salahuddin has made no payments since establishing service despite her obligation to do so and that Met-Ed is authorized to begin suspension or termination procedures if undisputed charges become delinquent. Met-Ed requested that the Complaint be dismissed in its entirety with prejudice. Met-Ed attached several documents to its Answer in support of its position.

Ms. Salahuddin did not file an Answer to Met-Ed’s New Matter.

On April 7, 2015, the Commission issued a Telephone Hearing Notice scheduling an Initial Telephonic Hearing for this matter for Wednesday, May 13, 2015 at 10:00 a.m. and assigning me as the Presiding Officer. Of note, the Hearing Notice stated, among other things, that: “Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.” A Prehearing Order dated April 9, 2015 was issued establishing the procedural issues pertaining to the Hearing. Similar to the Hearing Notice, the Prehearing Order stated that “if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.” Both the Hearing Notice and the Prehearing Order were sent to Ms. Salahuddin at the address provided on her Complaint via first-class mail. Neither were returned to the Commission as undeliverable.

The hearing convened on May 13, 2015 as scheduled. Margaret Morris, Esquire appeared on behalf of Met-Ed. No one appeared on behalf of the Complainant.

The record in this case consists of the hearing transcript of nine (9) pages. The record closed in this proceeding when the transcript was filed with the Commission on May 22, 2015. This Initial Decision memorializes the ruling at the conclusion of the Hearing granting Met-Ed’s Motion to Dismiss the Complaint for failure to prosecute.

FINDINGS OF FACT

1. The Complainant in this case is Zakkiyah Salahuddin.
2. The Respondent in this case is Metropolitan Edison Company.
3. The Service Address is 324 St. John Street, Easton, PA.
4. No one appeared at the Hearing on behalf of Ms. Salahuddin. Tr. 1, 4.
5. Ms. Salahuddin received notice of the Hearing when the Commission sent her a Hearing Notice to the address she provided on her Complaint on April 7, 2015. Tr. 5.
6. Ms. Salahuddin also received notice of the Hearing when the Commission sent her a Prehearing Order to the address she provided on her Complaint on April 9, 2015. Tr. 5.
7. Neither the Hearing Notice nor the Prehearing Order was received back by the Commission as undeliverable.
8. Multiple attempts were made to reach Ms. Salahuddin to connect her to the Hearing at the designated time and date and each time a message was received that the telephone number is not in service. Tr. 5.
9. During the Hearing, counsel for Met-Ed indicated that she has had no contact with Ms. Salahuddin regarding the Complaint despite several attempts to reach her. Tr. 6-7.
10. The start of the Hearing was delayed approximately 20 minutes to accommodate any delay for Ms. Salahuddin. Tr. 1, 5.

1. Both the Hearing Notice and the Prehearing Order issued in this matter stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

DISCUSSION

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). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). In this proceeding, based on a reading of her Complaint, Ms. Salahuddin seeks to have charges on her bill corrected, among other things, and, therefore, has the burden of proof in this proceeding.

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 accorded notice and the opportunity to be heard. Id.

No one appeared on behalf of Ms. Salahuddin at the date and time set for the hearing in her case despite notice of the hearing. Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

**§ 5.245. Failure to appear, proceed or maintain order in proceedings.**

1. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:
2. Be deemed to have waived the opportunity to participate in the conference or hearing.
3. Not be permitted to reopen the disposition of a matter accomplished at the conference or hearing.
4. Not be permitted to recall witnesses who were excused for further examination.

52 Pa.Code § 5.245(a).

The Hearing Notice and the Prehearing Order were sent to Ms. Salahuddin by regular first class mail. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Ms. Salahuddin in the ordinary course of business were received by Ms. Salahuddin. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. Ct. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Super. Ct. 221, 444 A.2d 658 (1982). Of note, both the Hearing Notice and the Prehearing Order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. Counsel for Met-Ed also indicated that she has had no contact with Ms. Salahuddin regarding this matter despite several attempts to reach her to discuss the case. Tr. 6-7.

No one appeared on behalf of Ms. Salahuddin at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, Ms. Salahuddin had notice and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, Ms. Salahuddin’s due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, counsel for Met-Ed moved to have the Complaint dismissed with prejudice for lack of prosecution. Tr. 7. By failing to appear and present any evidence in support of her Complaint, Ms. Salahuddin has failed to carry her burden. Thus, the Complaint must be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z‑00269892 (Order entered December 26, 1995). Accordingly, the merits of the Complaint will not be addressed in this Initial Decision.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding.
2. 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).
3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).
4. 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 accorded notice and the opportunity to be heard. Id.
5. 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 to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa.Code § 5.245(a).
6. Ms. Salahuddin’s due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa. Code § 5.245(a).
7. Ms. Salahuddin failed to carry her burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Metropolitan Edison Company to dismiss the formal Complaint of Zakkiyah Salahuddin at Docket Number F-2015-2463441 for failure to prosecute is granted.
2. That the formal Complaint filed by Zakkiyah Salahuddin at Docket Number F-2015-2463441 is hereby dismissed with prejudice.
3. That this matter be marked closed.

Date: May 29, 2015 /s/

Joel H. Cheskis

Administrative Law Judge