

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Daniel Bowers	:	
	:	
v.	:	C-2018-3000176
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

The undersigned grants Respondent’s oral Motion to Dismiss a formal complaint because Complainant failed to appear at the initial hearing and prosecute the case.

HISTORY OF THE PROCEEDING

On February 12, 2018, Daniel Bowers (Mr. Bowers or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Met Ed or Respondent), alleging his new rental had electricity but Met Ed shut off his utility service without warning after he called to have service transferred into his name. Mr. Bowers alleged Met Ed now demands he have the electric lines inspected. Mr. Bowers averred he has been without electric service since the 2017/2018 winter season. Complainant requested the Commission order Met Ed to turn the electricity back on and conduct its own inspection because Complainant was a tenant without authority to make repairs at the service address.

On March 21, 2018, Met Ed filed an answer and admitted it previously provided electric service to Complainant until December 28, 2017 when Met Ed's employee found tampering of Met Ed's meter. Met Ed also denied its actions were not in compliance with the Commission's regulations and statutes because it was appropriate to require a certified electrical inspector inspect the service address to ensure the safety of the electric service after the tampering occurred.

By Telephone Hearing Notice dated June 27, 2018, the Office of Administrative Law Judge notified the parties an initial telephonic hearing in this case was scheduled for Wednesday, August 8, 2018, at 10:00 a.m. On June 28, 2018, the presiding officer issued a Prehearing Order which, *inter alia*, advised the parties continuances would only be granted if requested and only in rare situations where sufficient cause was shown to exist.

The time and date of the August 8, 2018 hearing was included in the June 27, 2018 hearing notice and in the June 28, 2018 Prehearing Order. The hearing notice specified how to call into the hearing on the scheduled day and at the scheduled time. The hearing notice stated in bold, underlined print that the case would be dismissed if Complainant failed to call into the hearing.

After verifying the names and job titles of Met Ed's witnesses and what attempts Met Ed made to communicate with Complainant prior to the hearing, the presiding officer attempted to convene the telephonic hearing as scheduled on August 8, 2018, at 10:12 a.m. Complainant failed to appear for the hearing. Met Ed was present and prepared to present its evidence along with the testimony of two witnesses. The presiding officer called a recess in order to ascertain from her staff if Mr. Bowers had called or sent any form of communication explaining his absence and/or requesting a continuance.

The presiding officer went back on the record at 10:30 a.m., at which time Mr. Bowers continued to be absent from the initial hearing. Counsel for Respondent made an oral motion to dismiss with prejudice due to Complainant's failure to appear and prosecute the complaint. Counsel noted Complainant's current account balance was zero as of the day of the

hearing. Counsel noted Met Ed had not billed Complainant yet for approximately 45 days' worth of electric service from the date his rental began until the date Met Ed discovered the tampered meter. The presiding officer noted on the record the request to dismiss would be taken under advisement. The hearing concluded at 10:33 a.m. The hearing record closed on August 8, 2018 upon the conclusion of the telephonic hearing.

FINDINGS OF FACT

1. Complainant and ratepayer of record is Daniel Bowers, who resides at 1178 W. Stateside Drive, Danielsville, Pennsylvania (service address).
2. Respondent in this proceeding is Metropolitan Edison Company which provided electric service at the service address until December 28, 2017.
3. The hearing notice dated June 27, 2018, and the Prehearing Order dated June 28, 2018, were sent to the address provided by Complainant in the formal complaint and were not returned as undeliverable.
4. Complainant was not present and did not participate in the August 8, 2018 hearing.
5. Respondent was ready to proceed with its witnesses at the date and time scheduled for the hearing.

DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S.A. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the proponent of a rule or order. Therefore, Complainant bears the burden of proving by a preponderance of the evidence that Respondent violated the Public Utility Code or a regulation

or order of the Commission.¹ Complainant must show the utility is responsible or accountable for the problem described in the complaint.²

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 afforded notice and the opportunity to appear and be heard.³

Mr. Bowers did not appear at the time scheduled for the August 8, 2018 hearing, and he did not participate in the August 8, 2018 hearing. The date, time and location of the hearing were listed in the hearing notice, dated June 27, 2018, and in the Prehearing Order, dated June 28, 2018.

The Office of Administrative Law Judge mailed both the hearing notice and Prehearing Order to Complainant at the address provided in the formal complaint. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of Complainant to appear and participate in the hearing.⁴ If Complainant cannot appear, for any reason, then it is the responsibility of Mr. Bowers to notify the presiding officer immediately of the impediment.

Section 332(f) of the Public Utility Code, 66 Pa.C.S.A. § 332(f), 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....

¹ *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

² *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

³ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

⁴ *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).

Since Complainant did not appear or participate in the hearing, despite receiving two notices of the date and time of the hearing, the hearing was held in accordance with 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245. Respondent's attorney moved to dismiss the complaint with prejudice for failure to prosecute. Respondent's motion was taken under advisement.

The hearing record closed on August 8, 2018, pursuant to 52 Pa.Code § 5.431(a) and (b) which provides:

(a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.

(b) After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.

In this proceeding, Complainant did not call into the hearing as specified in the hearing notice and Prehearing Order. The hearing notice and Prehearing Order clearly indicated Complainant was to call. These documents provided the Commission's toll-free conference bridge number and PIN number. The hearing notice and Prehearing Order clearly provided an address and telephone number where Complainant could reach the presiding officer if a continuance request and/or additional information was needed by Complainant prior to the hearing.

Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the formal complaint against Met Ed by presenting evidence to support the allegations. As a result, Complainant failed to sustain the burden of proof. Accordingly, Respondent's oral motion to dismiss the formal complaint will be granted, and the formal complaint in this matter will be dismissed in the Ordering Paragraphs below.⁵

⁵ *Volgstadt v. Metropolitan Edison Company*, Docket No. F-02266429 (Order entered September 12, 2008) and *Martin Jefferson v. Met Ed Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); *El-Ayazra v. Metropolitan Edison Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S.A. § 701.
2. Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).
3. The hearing record closed at the conclusion of the hearing on August 8, 2018. 52 Pa.Code § 5.431(a).
4. Complainant, by failing to appear at the scheduled hearing, waived the opportunity to participate in the hearing. 66 Pa.C.S.A. § 332(f).
5. 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 Securities*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).
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 Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).
7. Complainant failed to sustain the burden of proof. 66 Pa.C.S.A. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of Metropolitan Edison Company to dismiss the formal complaint filed by Daniel Bowers against Metropolitan Edison Company at Docket No. C-2018-3000176 is granted.
2. That the formal complaint filed by Daniel Bowers against Metropolitan Edison Company at Docket No. C-2018-3000176 is dismissed.
3. That the Secretary mark this case as closed.

Date: August 9, 2018

/s/
Katrina L. Dunderdale
Administrative Law Judge