

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Craig Jackson	:	
	:	
v.	:	C-2016-2565262
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION ON REMAND**

Before  
Steven K. Haas  
Administrative Law Judge

**INTRODUCTION**

A customer filed a complaint against an electric distribution company alleging that the utility failed to adhere to a consistent policy for cutting trees in a company right-of-way, harassed him based on his race, and failed to restore his property following vegetation management activity and requesting the utility be prohibited from spraying chemicals on his property. This decision dismisses the complaint because the customer failed to appear at the hearing and prosecute his complaint.

**HISTORY OF THE PROCEEDING**

On August 28, 2016, Complainant, Craig Jackson, filed a formal complaint against Metropolitan Edison Company (Met Ed) alleging, in sum, that Met Ed had not provided reasonable service in a dispute concerning vegetation management on Complainant's property. Mr. Jackson requested, by way of relief, that the company be fined for harassment and failure to adhere to a consistent tree cutting policy, that the company personnel involved be disciplined,

that his property be restored to its original state, and that the company be prohibited from spraying chemicals on his property.

On September 26, 2016, Met Ed filed an answer, new matter and preliminary objections (POs) to Mr. Jackson's complaint. In its answer, Met Ed denied any violation of the Public Utility Code (Code) or the rules and regulations of the Commission. In its new matter, Met Ed averred that the Commission does not have subject matter jurisdiction to determine the scope or validity of a recorded easement. In its POs, Met Ed argued that the Commission does not have jurisdiction over disputes involving real property rights and the interpretation of right-of-way agreements. Accordingly, it requested that these issues be dismissed from the complaint. Met Ed also argued that the Commission does not have the authority to order the payment of monetary damages.

On October 12, 2016, Mr. Jackson filed a response to Met Ed's new matter. In his response he stated, *inter alia*, that Met Ed did not deny spraying dangerous chemicals on his property, nor did it offer any evidence to refute his allegations of discrimination and harassment.

By telephonic hearing notice dated December 19, 2016, the Commission scheduled a telephonic hearing for February 7, 2017, at 10:00 a.m. and assigned Administrative Law Judge (ALJ) Dennis J. Buckley as the Presiding Officer. A prehearing order was issued on December 29, 2016 in which certain procedural requirements associated with participation in the hearing were addressed.

On February 7, 2017, Judge Buckley connected the parties for the hearing. Complainant was present as was Margaret A. Morris, Esquire, counsel for Met Ed. Due to an administrative error, however, a court reporter was not available. Accordingly, ALJ Buckley held an informal, off-the-record prehearing conference with the parties. Based on this discussion, ALJ Buckley determined that the case was not yet ready to be heard.

A second prehearing order was issued on February 9, 2017. In this order, Judge Buckley clarified that the Commission does not have the authority to order the payment of

monetary damages. Judge Buckley also stated that the Commission does not have the jurisdiction or authority to resolve allegations of harassment due to race, to discipline utility personnel for alleged harassment due to racial profiling, to direct the discipline or termination of utility employees, or to make any determination other than whether the utility violated specific provisions of the Code or the rules and regulations of the Commission. Judge Buckley also directed the Complainant to amend and augment his original complaint with a written filing with the Secretary of the Commission stating, with specificity, which of his properties were affected by Met Ed's alleged conduct, because up to that point Complainant had refused to provide this information despite repeated requests from Met Ed. Complainant was encouraged to supply any additional relevant facts in the amended complaint that would allow the Presiding Officer and the Commission to understand the case and for Met Ed to present its defense.

On March 20, 2017, a further hearing notice was issued setting April 18, 2017, as the date for an evidentiary hearing in this case.

On April 11, 2017, having been informed by counsel for Met Ed that Complainant had failed to comply with Met Ed's discovery requests, and being aware that no amended complaint had been filed as directed, Judge Buckley set forth in a third prehearing order the potential consequences for failure to respond to discovery and for failure to comply with the orders of a Presiding Officer.

Also on April 11, 2017, a hearing notice was issued setting April 13, 2017 as the date for another telephonic prehearing conference in this case. The purpose of the prehearing conference was to address Complainant's failure to object to or answer Met Ed's discovery requests or to comply with the requirements of the second prehearing order. That prehearing conference was held on April 13, 2017. After an extended discussion, counsel for Met Ed moved to dismiss the Complaint for failure of the Complainant to respond to discovery or to comply with the ALJ's order. Judge Buckley took Met Ed's motion under consideration and advised the parties that a written motion to dismiss would be required by Met Ed with an opportunity for Complainant to file an answer to the same.

On May 5, 2017, Met Ed filed a motion to dismiss and attached a notice to plead, which informed the Complainant that he had twenty days from the date of service in which to file an answer to the motion. Met Ed argued for dismissal in its motion on the grounds that the Complainant (1) failed to comply with ALJ Buckley's orders, and (2) failed to respond to Met Ed's discovery requests. The Complainant did not file an answer to Met Ed's motion to dismiss.

In an initial decision issued on April 18, 2018, ALJ Buckley granted Met Ed's motion to dismiss and dismissed Mr. Jackson's complaint with prejudice. Met Ed's motion was granted due to the Complainant's failure to comply with ALJ Buckley's second prehearing order and for his failure to provide responses to Met Ed's discovery requests.

By Opinion and Order entered August 27, 2018, the Commission reversed Judge Buckley's initial decision and remanded the matter to the Office of Administrative Law Judge for such further hearings as may be necessary. In reversing the initial decision, the Commission noted that Judge Buckley had incorrectly concluded that the Commission does not have jurisdiction to hear allegations of discrimination or harassment based on race. It concluded that Judge Buckley's second prehearing order incorrectly limited the scope of the hearing to preclude the Complainant's allegations regarding Met Ed's discrimination in the provision of utility service. The Commission noted, "Section 1501 expressly required that the utility's provision of service be conducted in a reasonable manner. Section 1502 expressly provides that *a utility may not discriminate in any manner* in the provision of utility rates and service. Therefore, the Code prohibits any discrimination, racial or otherwise, in the utility's provision of service." Opinion and Order, p. 8 (emphasis in the original).

By call-in hearing telephone hearing notice dated August 16, 2018, the Commission scheduled a hearing in this matter before ALJ Buckley for October 2, 2018. By Judge Change Notice dated September 6, 2018, the parties were informed that the ALJ had been changed from Judge Buckley to Judge Steven Haas.

On August 22, 2018, Met Ed served on the Complainant, via both electronic and first-class mail, its Set II Interrogatories and Document Requests. Objections to Met Ed's

requests were due by August 31, 2018 and answers were due by September 10, 2018. The Complainant did not object to Met Ed's requests, nor did he provide answers to the requests. As a result, Met Ed filed a motion to compel responses to its Set II discovery requests on September 12, 2018. A notice to plead was properly attached to Met Ed's motion to compel. The Complainant did not file a response to the motion.

By order dated September 19, 2018, I granted Met Ed's motion to compel and directed the Complainant to provide answers to Met Ed's discovery requests within seven days of the date of the order or face possible sanctions. By electronic mail dated September 28, 2018, I was informed by counsel to Met Ed that Mr. Jackson had not provided answers to Met Ed's requests as directed in my September 19, 2018 order.

The call-in telephonic hearing was convened as scheduled on October 2, 2018, at 10:00 a.m. Counsel to Met Ed, along with three company witnesses, connected to the conference call for the hearing as directed in the call-in hearing notice. Mr. Jackson did not connect to the conference call as directed.

Out of an abundance of caution, I called the conference call-in number and personal identification number (PIN) identified on the August 16, 2018 hearing notice showing Judge Buckley as the Presiding Officer in the event that Mr. Jackson mistakenly used that call-in information for the hearing. He had not called in to that number. In a further effort to contact the Complainant, I dialed the telephone number listed by Mr. Jackson on his formal complaint form to try to reach him for the hearing. Mr. Jackson did not answer that number. Accordingly, the hearing was conducted in his absence. Counsel for Met Ed made an oral motion to dismiss the complaint, with prejudice, due to the Complainant's failure (1) to comply with my September 19, 2018 order granting Met Ed's motion to compel, and (2) to appear at the hearing and prosecute his complaint. I informed Met Ed that I would take the motions under advisement.

I waited ten days before ruling on Met Ed's motion to give the Complainant an opportunity to contact me or the Commission to explain his failure to appear at the hearing if he so chose. To date, he has not contacted me or the Commission. Accordingly, I closed the record

on October 12, 2018 and, as explained below, I will grant Met Ed's motion to dismiss and dismiss Mr. Jackson's formal complaint, with prejudice, for failure to appear and prosecute his complaint.

#### FINDINGS OF FACT

1. The Complainant in this case is Craig Jackson.
2. The Respondent in this case is Metropolitan Edison Company.
3. On August 28, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. On September 26, 2016, the Respondent filed an answer, new matter and preliminary objections to the complaint.
5. By notice dated December 19, 2016, the Commission scheduled a telephonic hearing in this matter for February 7, 2017.
6. On December 29, 2016, Judge Buckley issued a prehearing order in which certain procedural requirements associated with participation in the hearing were addressed.
7. On February 7, 2017, ALJ Buckley contacted the Complainant and counsel to Met Ed for the telephonic hearing but, through an administrative error, there was no court reporter.
8. Judge Buckley conducted an informal, off-the-record prehearing conference with the parties on February 7, 2017.
9. Judge Buckley issued a second prehearing order on February 9, 2017 in which he stated, *inter alia*, that the Commission does not have the authority to order the payment

of monetary damages, nor does it have jurisdiction to resolve allegations of harassment or discrimination based on race.

10. Judge Buckley directed in his second prehearing order that the Complainant file an amended complaint and provide additional information related to his allegations, including the identification of the specific properties that were affected by Met Ed's alleged conduct.

11. By notice dated March 20, 2017, the Commission scheduled a hearing for April 18, 2017.

12. On April 11, 2017, Judge Buckley issued a third prehearing order in which he instructed the parties about potential consequences for failure to respond to discovery requests and for failure to comply with the orders of a Presiding Officer.

13. On April 11, 2017, a prehearing conference notice was issued setting April 13, 2017, as the date for an on the record prehearing conference.

14. During the April 13, 2017 prehearing conference, counsel to Met Ed made an oral motion to dismiss Mr. Jackson's complaint due to Complainant's failure to provide responses to Met Ed's discovery requests and his failure to comply with the directives in Judge Buckley's second prehearing order.

15. Met Ed was directed to file a written motion to dismiss, giving the Complainant an opportunity to file an answer thereto.

16. On May 5, 2017, Met Ed filed a written motion to dismiss Mr. Jackson's formal complaint to which was attached a notice to plead.

17. The Complainant did not file a response to Met Ed's motion to dismiss.

18. By initial decision issued on April 18, 2018, Judge Buckley granted Met Ed's motion to dismiss due to the Complainant's failure to respond to Met Ed's discovery requests or to comply with the directives in his second prehearing order.

19. By Opinion and Order entered August 27, 2018, the Commission reversed Judge Buckley's initial decision and remanded the case to the Office of Administrative Law Judge for further hearings as may be necessary.

20. In reversing Judge Buckley, the Commission stated that he had incorrectly concluded that the Commission does not have jurisdiction to hear allegations of discrimination or harassment based on race.

21. By call-in telephone hearing notice dated August 16, 2018, the Commission scheduled a hearing before Judge Buckley on October 2, 2018 and provided Judge Buckley's conference call in number and PIN to connect to the hearing.

22. By judge change notice dated September 6, 2018, the parties were informed that the ALJ in this proceeding had been changed from ALJ Buckley to ALJ Steven Haas and my conference call-in number and PIN were provided to connect to the hearing.

23. Both the August 16, 2018 and September 6, 2018 notices informed the parties that they may lose the case if they do not take part in the hearing and present facts on the issues raised.

24. On August 22, 2018, counsel to Met Ed served on the Complainant, via both electronic and first-class mail, its Set II Interrogatories and Document Requests.

25. The Complainant did not object or provide answers to any of Met Ed's discovery requests.

26. On September 12, 2018, Met Ed filed a motion to compel responses to its Set II discovery requests to which was properly attached a notice to plead.

27. The Complainant did not file a response to Met Ed's motion to compel.

28. By order dated September 19, 2018, I granted Met Ed's motion to compel and directed the Complainant to provide responses to Met Ed's requests within seven days of the date of the order, or by September 26, 2018.

29. Mr. Jackson did not provide responses to Met Ed's discovery requests as directed in my September 19, 2018 order.

30. The October 2, 2018 hearing was convened as scheduled at 10:00 a.m.

31. Met Ed's counsel and three witnesses connected to the conference call for the hearing, but the Complainant had not connected to the call.

32. Out of an abundance of caution, I dialed the conference call-in number and entered the PIN that were listed on the August 16, 2018 call-in telephone hearing notice that had been sent to the parties and that listed Judge Buckley as the ALJ. Mr. Jackson was not on the line.

33. Out of an abundance of caution, I called the telephone number listed by Mr. Jackson on his formal complaint form. No one answered that call.

34. Counsel to Met Ed made a motion during the hearing to dismiss Mr. Jackson's formal complaint with prejudice due to the Complainant's failure to comply with my order granting Met Ed's motion to compel and provide answers to Met Ed's discovery requests, and also due to his failure to appear at the hearing and prosecute his complaint and meet his burden of proof.

35. The Complainant did not withdraw or settle his complaint against Met Ed or request a continuance of the hearing.

36. The Complainant failed to appear at the scheduled time for the hearing.

### DISCUSSION

The Complainant is requesting that Met Ed be fined for harassment and failure to adhere to a consistent tree cutting policy, that the company personnel involved be disciplined, that his property be restored to its original state, and that the company be prohibited from spraying chemicals on his property.

Counsel for Met Ed moved for dismissal of the complaint, with prejudice, on two grounds: (1) Complainant's failure to comply with my order granting Met Ed's motion to compel and to provide responses to the company's discovery requests; and (2) Complainant's failure to appear for the hearing and prosecute his complaint. As discussed below, I will grant Met Ed's motion to dismiss for failure of the Complainant to appear at the hearing and prosecute his complaint, despite having been provided notice of the hearing date and time. As a result, Met Ed's motion to dismiss on other grounds is rendered moot and will not be addressed in this decision.

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). As the party seeking relief from the Commission, the Complainant bears the burden of proof.

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 with notice and an opportunity to be heard. Id.

No one appeared on behalf of Mr. Jackson at the date and time set for the call-in telephonic hearing in this case despite notice of the hearing and call-in instructions having been sent to him at the address provided by him on his complaint form.

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.**

(a) 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 thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa.Code § 5.245(a).

On August 16, 2018, a call-in telephonic hearing notice was sent to the parties. The notice was sent to Mr. Jackson at the address provided by him on his formal complaint form. This notice identified Judge Buckley as the presiding officer and indicated that a call-in telephonic hearing would be held on Tuesday, October 2, 2018, at 10:00 a.m. The notice provided the toll-free conference call telephone number and PIN for use to connect to the hearing. Subsequently, on September 6, 2018, a judge change notice was sent to the parties indicating that the ALJ in this proceeding had been changed from Judge Buckley to Steven K. Haas. This notice again indicated that a call-in telephonic hearing would be held on Tuesday, October 2, 2018, at 10:00 a.m. This notice provided the toll-free conference call telephone

number and a different PIN than the one shown on the August 16, 2018 notice for use to connect to the hearing. This notice was also sent to Mr. Jackson at the address provided by him on his formal complaint form. Neither of the hearing notices were returned to the Commission as undeliverable. Accordingly, it is presumed that these documents sent to the Complainant in the ordinary course of business were received by him. 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. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa.Super. 221, 444 A.2d 658 (1982).

Both the August 16, 2018 and the September 6, 2018 notices stated in bold and underlined lettering, “[a]t the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.” Both notices further stated, “Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.”

Mr. Jackson did not call in to connect to the conference call to participate in the hearing. No request for a postponement or continuance of the hearing was received by my office. Mr. Jackson had notice and an opportunity to be heard in this proceeding but did not appear. Therefore, the Complainant’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).

Out of an abundance of caution, recognizing that the August 16, 2018 notice listed a different conference call PIN, I dialed the conference call-in number and PIN listed on the August 16, 2018 notice in case Mr. Jackson mistakenly attempted to connect to the hearing using the information contained on that notice. Mr. Jackson had not called in on that line. In addition, as a further effort to try to reach Mr. Jackson for the hearing, I called the telephone number provided by him on his formal complaint form. Mr. Jackson did not answer that number either. In light of the fact that Mr. Jackson did not connect to the hearing, and having exhausted all other means available to me to try to reach him for the hearing, I proceeded in his absence, at which point counsel to Met Ed made the motions to dismiss described above.

By failing to appear and present any evidence in support of his complaint, Mr. Jackson failed to meet his burden of proof. Thus, the complaint will be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995). As noted, Met Ed's motion to dismiss on other grounds is rendered moot and will not be addressed.

### 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. 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 provided with notice and an 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 thereafter 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. Mr. Jackson'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. Mr. Jackson failed to meet his burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Metropolitan Edison Company to dismiss, with prejudice, the formal complaint filed by Craig Jackson at Docket No. C-2016-2565262 for failure to prosecute and meet his burden of proof is granted.

2. That the formal complaint filed by Craig Jackson against Metropolitan Edison Company at Docket No. C-2016-2565262 is dismissed with prejudice.

3. That the Secretary mark the docket closed.

Date: October 12, 2018

\_\_\_\_\_  
/s/  
Steven K. Haas  
Administrative Law Judge