

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Steve Bixby	:	
	:	
v.	:	C-2019-3008552
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Andrew M. Calvelli  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses, with prejudice, a formal complaint due to the Complainant's failure to appear at the initial hearing and prosecute his complaint.

**HISTORY OF THE PROCEEDING**

On March 14, 2019, the Complainant, Steve Bixby, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Met Ed) at Docket No. C-2019-3008552. In his complaint, Mr. Bixby requested that Met Ed remove all charges from his account that came from his mother-in-law's Met Ed account. He stated that her debts should be paid from her estate upon the sale of her house.

On April 4, 2019, Met Ed filed an answer to Mr. Bixby's complaint. In its answer, Met Ed averred that the Complainant is responsible for the charges from his mother-in-law's account because he was a resident of the service location at issue. Met Ed requests that the complaint be dismissed.

On April 10, 2019, the Commission issued a Call-In Telephone Hearing Notice by which it scheduled an initial call-in telephonic hearing for Tuesday, May 14, 2019, at 10:00 a.m., and assigned me as the Presiding Officer. The hearing notice instructed the parties to connect to the telephonic hearing by calling the telephone and PIN numbers provided, and that failure to do so would result in dismissal of the complaint. A notation on the notice stated, “*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (Emphasis in the original).

The hearing convened, as scheduled, at 10:00 a.m. on May 14, 2019. John L. Munsch, Esquire, had connected to the telephonic hearing on behalf of Met Ed. Mr. Bixby had not connected to the hearing. I waited approximately 12 minutes in the event the Complainant was running late. He never connected to the hearing.

I checked with the Office of Administrative Law Judge, as well as my e-mail and phone messages. The hearing notice sent to the Complainant had not been returned to the Commission as undeliverable and he had not called in to discuss the hearing schedule. Met Ed’s counsel moved to dismiss the complaint with prejudice due to the Complainant’s failure to appear at the hearing and prosecute his complaint.

The hearing concluded at approximately 10:16 a.m. and a brief transcript was generated. I closed the record on June 5, 2019, upon the Commission’s receipt of the transcript. This Initial Decision grants Met Ed’s motion to dismiss the complaint with prejudice for failure of the Complainant to appear and prosecute his complaint.

#### FINDINGS OF FACT

1. The Complainant in this proceeding is Steve Bixby.
2. The Respondent in this proceeding is Metropolitan Edison Company.

3. On March 14, 2019, the Complainant filed a formal complaint against Met Ed.
4. On April 4, 2019, Met Ed filed an answer to the complaint.
5. On April 10, 2019, a Call-In Telephone Hearing Notice was sent to the parties which scheduled an initial telephonic hearing for Tuesday, May 14, 2019, at 10:00 a.m.
6. The hearing notice instructed the parties to connect to the telephonic hearing at the scheduled date and time by calling the telephone and PIN numbers provided.
7. The hearing notice instructed the Complainant that failure to connect to the telephonic hearing at the scheduled date and time would result in dismissal of the complaint.
8. A notation on the hearing notice stated, “*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (Emphasis in the original).
9. The hearing notice was sent to Mr. Bixby by first class mail to the address provided by him on his complaint form.
10. The hearing notice that was sent to the Complainant was not returned to the Commission as undeliverable.
11. The Complainant never connected to the telephonic hearing.
12. The Complainant failed to appear at the scheduled date and time for the hearing.

## DISCUSSION

Mr. Bixby filed a formal complaint against Met Ed in which he alleges he is improperly being held responsible for charges from his mother-in-law's account. He requests that the charges at issue be removed from his account.

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, Mr. Bixby bears 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 provided with notice and an opportunity to be heard. Id.

No one appeared on behalf of Mr. Bixby at the date and time set for the telephonic hearing in his case, despite notice of the hearing having been provided. 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).

The hearing notice was sent to Mr. Bixby by first class mail to the address provided by him on his complaint form. The notice was not returned to the Commission as undeliverable. Accordingly, it may be presumed that the notice sent to the Complainant in the ordinary course of business was 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, 449 A.2d 658 (1982). As noted above, the hearing notice informed the parties that they may lose the case if they fail to appear and present evidence on the issues raised.

No request for a postponement or continuance of the hearing was received by my office. Mr. Bixby had notice of the hearing and an opportunity to be heard in this proceeding but chose not to participate. 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).

During the hearing, counsel for Met Ed moved for dismissal of the complaint, with prejudice, for lack of prosecution. By failing to appear and present any evidence in support of his complaint, Mr. Bixby 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).

#### 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.Cmwlt. 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 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. Bixby'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. Bixby failed to carry his burden of proof in this proceeding.

