

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Earl A. Houck	:	
	:	
v.	:	C-2019-3007964
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This Decision grants a Motion to Dismiss Formal Complaint for failure of the Complainant to appear at the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On February 8, 2019, Earl A. Houck (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Company) objecting to the installation of a smart meter at his residence at 34 Sherman Road, Ottsville, Pennsylvania (service location or service address).

On March 11, 2019, Respondent filed an Answer and New Matter, as well as Preliminary Objections to the Complaint. On April 16, 2019, the Preliminary Objections were denied by Administrative Law Judge (ALJ) Emily I. DeVoe, who had been assigned to preside in this matter.

On April 24, 2019, Respondent filed a Certificate of Service indicating that it forwarded to Complainant Interrogatories and Requests for Production of Documents (Set I) (discovery requests) via first class mail.

On May 8, 2019, Respondent filed a second Certificate of Service regarding its service of Interrogatories and Requests for Production of Documents (Set I) upon Complainant.

On May 21, 2019, ALJ DeVoe convened a telephone prehearing conference. Mr. Earl Houck was present on his own behalf. Ms. Tori Giesler, Esq., and Ms. Lauren Lepkoski, Esq., were present on behalf of Respondent. The Parties discussed, *inter alia*, their exchange of witness information and the outstanding discovery issues. With regard to the exchange of witness information, Complainant advised he would be testifying at a hearing and he was his only witness.

Attorney Giesler advised that Respondent sent its first set of interrogatories and requests for production of documents on April 24, 2019, but that due to an administrative error, the same set of Discovery Requests were re-issued on May 8, 2019. She advised that Respondent considered those requests to have been served on May 8, 2019, instead of April 24, 2019. Complainant advised he received the Discovery Requests but was not certain what to do with them. Attorney Giesler told Complainant where to find the instructions on how to answer the requests.

On June 21, 2019, Respondent filed a Motion to Compel Responses to Interrogatories and Document Requests (Motion to Compel), averring Complainant submitted some answers, but answered “n/a” or “unknown” to others.

The Motion to Compel contained a Notice to Plead, requiring Complainant to file a response within five days. Complainant did not file a response to the Motion to Compel.

On June 28, 2019, ALJ DeVoe issued an Interim Order, granting Respondent’s Motion to Compel and ordering Complainant to submit full and complete responses to all the

Discovery Requests to Respondent's counsel and file a certificate of service no later than July 12, 2019.

On August 2, 2019, Respondent filed a Motion to Dismiss the Complaint of Earl Houck for Failure to Comply with Orders (Motion to Dismiss), averring it had not received any additional discovery responses or had any contact with Complainant after the issuance of the June 28, 2019 Interim Order. As relief, Respondent requested the Complaint be dismissed in its entirety. The Motion to Dismiss contained a Notice to Plead, requiring Complainant to file a response within five days. Complainant did not file a response to the Motion to Dismiss.

On August 12, 2019, ALJ DeVoe issued an Interim Order holding the Motion to Dismiss in Abeyance and giving Complainant one final opportunity to provide discovery responses. Complainant was ordered to provide full and complete responses to all the Discovery Requests by August 23, 2019, and to submit a Status Report by August 30, 2019.

On September 3, 2019, Respondent submitted a Status Report, advising that it had not received any additional discovery responses from Complainant and renewing its Motion to Dismiss.

On September 4, 2019, an Interim Order was entered holding in abeyance the Motion to Dismiss filed by Respondent. In addition, Respondent was directed to file a Motion for Sanctions, Motion in Limine, or other request for relief, if any, by September 18, 2019.

On September 18, 2019, Respondent filed an Amended Motion to Dismiss, averring that Complainant failed to respond its Discovery Requests and the order compelling Complainant to provide his discovery responses. As relief, Respondent requested the Complaint be dismissed in its entirety.

The Amended Motion to Dismiss contained a Notice to Plead, requiring Complainant to file a response within five days. Complainant did not file a response to the Amended Motion to Dismiss.

On October 1, 2019, a Call-In Telephone Status Conference Notice was issued scheduling a status conference for October 22, 2019 at 1:00 p.m.

On October 2, 2019, an Interim Order was entered holding in abeyance the Amended Motion to Dismiss and scheduling the status conference for October 22, 2019 at 1:00 p.m.

On October 22, 2019, a Judge Change Notice was issued, advising the Parties that this proceeding was reassigned to the undersigned Presiding Officer.

On October 22, 2019, the undersigned Presiding Officer convened a telephone status conference. Mr. Earl Houck was present on his own behalf. Ms. Tori Giesler, Esq., and Ms. Lauren Lepkoski, Esq., were present on behalf of Respondent.

The Parties discussed, *inter alia*, their exchange of witness information and the outstanding discovery issues. With regard to the exchange of witness information, Complainant advised he would be testifying at a hearing and he was his only witness. With regard to the outstanding discovery issues, Ms. Giesler advised that Respondent was withdrawing its Discovery Requests and requested an expedited hearing. The Parties discussed proposed hearing dates and agreed to a telephone evidentiary hearing on November 19, 2019 at 10:00 a.m.

On October 23, 2019, a Call-In Telephone Hearing Notice (hearing notice) was issued scheduling the evidentiary hearing for November 19, 2019 at 10:00 a.m.

On October 23, 2019, a Prehearing Order was entered confirming the requirements for the evidentiary hearing scheduled in this proceeding.

On November 19, 2019, the telephone hearing was convened at approximately 10:00 a.m. Ms. Tori Giesler, Esq., and Ms. Lauren Lepkoski, Esq., were present on behalf of Respondent. Complainant did not appear at the hearing, despite receiving notice at the address

listed on his Complaint. Respondent made a Motion to Dismiss the Complaint for failure of Complainant to attend the hearing and to prosecute his Complaint.

The hearing transcript was received by the undersigned Presiding Officer on December 23, 2019.

The record closed upon receipt of the transcript on December 23, 2019.

FINDINGS OF FACT

1. Complainant in this case is Earl Houck.
2. Respondent in this case is Metropolitan Edison Company.
3. On February 8, 2019, Earl Houck filed a Formal Complaint against Metropolitan Edison Company objecting to the proposed installation of a smart meter at his residence.
4. On March 11, 2019, Respondent filed an Answer and New Matter, denying the material averments set forth in the Complaint.
5. On October 22, 2019, the Parties participated in a telephone status conference, wherein the Parties agreed to a telephone evidentiary hearing to be held on November 19, 2019 at 10:00 a.m.
6. On October 23, 2019, a Call-In Telephone Hearing Notice was issued scheduling the evidentiary hearing for November 19, 2019 at 10:00 a.m.
7. The hearing notice advised the Parties of their responsibility to call into the hearing and that the failure to do so would result in the dismissal of the case.

8. On October 23, 2019, an Interim Order was entered confirming the requirements for the evidentiary hearing scheduled in this proceeding.

9. The hearing notice and prehearing order were sent to Complainant at the address listed on his Complaint and were not returned undelivered to the Commission.

10. On November 19, 2019, counsel for Respondent appeared and participated at the hearing. Complainant did not attend the hearing, did not request a continuance and did not provide an explanation for his absence.

11. At the hearing, Respondent made a Motion to Dismiss the Complaint for failure of Complainant to appear and to prosecute the case.

DISCUSSION

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, however, when the administrative agency provides the parties notice and the opportunity to be heard.

Complainant agreed to the hearing date at the time of the status conference on October 22, 2019. In addition, the Commission sent notice of the telephonic hearing to Complainant on October 23, 2019 prior to the hearing scheduled for November 19, 2019, by regular first-class mail to the address stated on the Complaint. The notice was never returned to the sender.

A prehearing order dated October 23, 2019 was also issued to the Parties confirming the requirements for the hearing. The prehearing order, which was mailed to Complainant at the address shown on his Complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by Complainant. *Berkowitz v. Mayflower Securities, 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 Mutual Insurance Co.*, 449 A.2d 658 (Pa.Super. 1982).

Complainant did not appear for the scheduled hearing because he did not call the conference number shown on the October 23, 2019 hearing notice. Under these circumstances, it appears Complainant had ample opportunity to appear and be heard in this proceeding but did not do so. Therefore, the due process rights of Complainant have been fully protected. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent for any request for relief. As the Party bringing this Complaint, Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief. By failing to appear and proffer any evidence to support his Complaint, Complainant has failed to meet this burden. Under these circumstances, the Complaint should be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

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 due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear for the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet his burden of proving that he is entitled to the relief that he seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Metropolitan Edison Company to dismiss the Formal Complaint filed by Earl Houck at Docket No. C-2019-3007964 is granted.

2. That the Formal Complaint filed by Earl Houck against Metropolitan Edison Company at Docket No. C-2019-3007964 is dismissed with prejudice for failure of Complainant to appear for the hearing and prosecute the Complaint.

3. That the docket at Docket No. C-2019-3007964 is marked closed.

Date: February 18, 2020

/s/
Jeffrey A. Watson
Administrative Law Judge