

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John J. Lucianetti

v.

Metropolitan Edison Company

:
:
:
:
:

C-2020-3015999

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This decision dismisses the Complaint filed in this matter due to Complainant’s failure to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On January 13, 2020, John J. Lucianetti (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Met-Ed). Checking the “other” box on the Formal Complaint form, Complainant alleged, “[O]n 2 December 2019, Met-Ed due to a field crew error introduced a high power surge greater than 50,000 amps resulting in property and dwelling damage.” Complainant averred, *inter alia*, the surge resulted in “thousands of dollars in damage” to his residence and personal property located at 67 Briarleigh Drive, East Stroudsburg, Pennsylvania (service location). As relief, Complainant requested that all his expenses to repair the damage be reimbursed by Respondent.

On February 4, 2020, Respondent filed an Answer and New Matter. Respondent admitted it provides utility service to Complainant at the service location and that during a winter storm on December 2, 2019, an outage affected the service location. Respondent averred, *inter alia*, the outage occurred when a static wire on a transmission line owned by PP&L Utilities, Inc. (PPL) came into contact with a circuit owned by Respondent. Respondent argued that any resulting damage was not due to any improper conduct on its part but was due to events beyond its control. Furthermore, Respondent argued it has provided reasonable and adequate service to Complainant. Finally, in its New Matter, Respondent alleged the Commission lacks jurisdiction to grant Complainant's request for damages.

On February 4, 2020, Respondent also filed Preliminary Objections. Respondent contended that the Commission lacks jurisdiction to award monetary damages and requested, *inter alia*, that the claims related to monetary damages be stricken. The Preliminary Objections contained a Notice to Plead, requiring Complainant to file a response within 10 days of service.

Complainant did not file a response to the Preliminary Objections.

On March 12, 2020, the Commission issued a Motion Judge Assignment Notice, assigning this matter to the undersigned.

On March 12, 2020, an Interim Order was issued granting in part and dismissing in part Respondent's Preliminary Objections.

By Notice dated April 28, 2020, the Commission scheduled this matter for a telephonic hearing on Tuesday, May 26, 2020, at 10:00 a.m. The Notice advised the Parties they were responsible for calling into the conference at the scheduled date and time. The Notice reads, "**At 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 Presiding Officer.**" (emphasis in original). The Notice also provides, "*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*" (emphasis in original). The Notice included

the toll-free bridge number, the PIN number, and instructions on how to call into the conference bridge.

A Prehearing Order was issued dated May 5, 2020, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation, and the Commission's policy encouraging settlements. The Prehearing Order provides, "**You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**" (emphasis in original). The Prehearing Order also included the toll-free bridge number, the PIN number, and instructions on how to call into the conference bridge.

The Notice and Prehearing Order were sent to the email address Complainant listed for himself on his Complaint pursuant to the Commission's *Emergency Order* which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Governor's *Proclamation of Disaster Emergency*.¹

The undersigned called into the conference bridge for the hearing on May 26, 2020, at approximately 10:00 a.m. Respondent's counsel, Margaret Morris, Esq., and witnesses were on the conference bridge. Complainant was not on the conference bridge. In an attempt to give Complainant additional time to call into the conference bridge, the undersigned waited until 10:05 a.m. to convene the hearing. At 10:05 a.m., Complainant still had not called into the conference bridge, and the undersigned convened the hearing in Complainant's absence. Respondent's counsel advised she spoke to Complainant the week prior to the hearing and discussed with him the date and time for the hearing, the call-in instructions, and the orders that had been issued in this case.

Respondent did not offer any testimony or evidence, but rather made a Motion to Dismiss the Complaint (Motion) due to Complainant's failure to appear at the hearing. The

¹ See, *Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 at 4 (Order Entered March 20, 2020). The Governor's *Proclamation of Disaster Emergency* was in response to the COVID-19 pandemic.

undersigned informed counsel that the Motion would be taken under advisement and adjourned the hearing at 10:10 a.m. The hearing record closed upon the adjournment of the hearing.

FINDINGS OF FACT

1. Complainant in this case is John J. Lucianetti.
2. Respondent in this case is Metropolitan Edison Company, a jurisdictional public utility.
3. The service address is 67 Briarleigh Drive, East Stroudsburg, Pennsylvania.
4. On January 13, 2020, Complainant filed a Complaint with the Commission against Respondent.
5. By Notice dated April 28, 2020, the Commission scheduled this matter for an initial telephonic hearing on Tuesday, May 26, 2020, at 10:00 a.m.
6. On May 5, 2020, a Prehearing Order was issued.
7. The Notice and Prehearing Order were not sent by first-class mail to Complainant but were sent to the email address Complainant listed for himself on his Complaint.
8. The April 28, 2020 Notice and the May 5, 2020 Prehearing Order advised the Parties they must call into the hearing on the scheduled date and time using the toll-free bridge number and PIN number; the Administrative Law Judge would not call them for the May 26, 2020 hearing; and they may lose their case if they did not call into the May 26, 2020 hearing.

9. Complainant did not call into the conference bridge to participate in the hearing on May 26, 2020.

10. Complainant did not contact the undersigned to request a continuance.

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.

By Notice dated April 28, 2020, the Commission scheduled this matter for a hearing to be held on May 26, 2020, at 10:00 a.m. A Prehearing Order issued May 5, 2020 also advised the Parties of the date and time of the hearing.

The Notice and Prehearing Order were sent to the email address Complainant listed for himself on his Complaint pursuant to the Commission's *Emergency Order* which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Governor's *Proclamation of Disaster Emergency*.² At the hearing on May 26, 2020, Respondent's counsel advised she spoke to Complainant the week prior to the hearing and he was aware of the scheduled date and time of the hearing, as well as the Orders issued in this case. Counsel advised that Complainant had actual notice of the hearing.

Under these circumstances, Complainant had an opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of Complainant have been fully protected. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161101 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

² See, *Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 at 4 (Order Entered March 20, 2020). The Governor's *Proclamation of Disaster Emergency* was in response to the COVID-19 pandemic.

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of 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 the Complaint, Complainant has failed to meet this burden. Under these circumstances, the Complaint may be dismissed. *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 parties and subject matter of 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 he is entitled to the relief 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 Complaint of John J. Lucianetti at Docket No. C-2020-3015999 for failure to prosecute is granted.

