

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Garrett Heiges	:	
	:	
v.	:	C-2019-3014653
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

This decision grants a motion to dismiss for failure to prosecute because the complainant failed to appear at the hearing at the designated date and time despite being given notice of the hearing and an opportunity to be heard.

HISTORY OF THE PROCEEDING

On November 26, 2019, Garrett Heiges filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Met Ed or the company), docket number C-2019-3014653. The complaint was served on the same date. In his complaint, Mr. Heiges averred that Met Ed is threatening to terminate his service or has already terminated his service. In the requested relief section of the formal complaint, Mr. Heiges indicated that he requests a payment arrangement.

On December 16, 2019, Met Ed filed an answer to the formal complaint denying the material averments in the complaint.

On May 1, 2020, a hearing notice was issued setting an initial telephonic hearing for this matter for June 23, 2020 at 10:00 a.m. and assigning me as the presiding officer. A prehearing order dated May 26, 2020 was also issued setting forth various procedural rules that would govern the hearing. Of note, the hearing notice stated that the parties must call in to the hearing on the date and time scheduled or the case will be dismissed. Similarly, the prehearing order stated, among other things, that: “If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.” Both the hearing notice and the prehearing order were sent to Complainant via Eservice. Neither document was returned as undeliverable.

The hearing convened on June 23, 2020, as scheduled. Teresa Harrold, Esquire, appeared on behalf of Met Ed with two witnesses: Laurie Parker and Jordan Pineiro. No one appeared on behalf of the Complainant. Ms. Harrold moved to dismiss the complaint for failure to appear and prosecute. The record closed on June 23, 2020. The motion is ripe for a decision.

FINDINGS OF FACT

1. The Complainant in this case is Garrett Heiges.
2. The Respondent in this case is Metropolitan Edison Company.
3. The service address is 11 Bentz Mill Rd., East Berlin, PA.
4. No one called in to the hearing as instructed on the hearing notice and in the prehearing order on behalf of the Complainant.
5. The hearing was delayed 10 minutes to accommodate any delay for anyone appearing at the hearing on behalf of the Complainant.
6. Complainant received Eservice notice of the hearing on or about May 1, 2020.

7. Complainant received notice of the hearing when he was served a prehearing order on May 26, 2020.

8. Neither the hearing notice nor the prehearing order were returned to the Commission as undeliverable.

9. Both the hearing notice and the prehearing order indicated that a party may lose the case if they do not appear and take part in the hearing.

DISCUSSION

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). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “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). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, based on a reading of the complaint, Mr. Heiges claims he is eligible for a payment agreement in order to avoid termination of his electric service. Therefore, Mr. Heiges has 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 accorded notice and the opportunity to be heard. Id.

No one appeared on behalf of Mr. Heiges at the date and time set for the hearing in his case despite receiving notice of the hearing. 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 prehearing order and hearing notice were sent to Complainant by Eservice and neither were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to the Complainant in the ordinary course of business were received by him. Morella v. PECO Energy Company, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); Zirkel v. Philadelphia Gas Works, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). Of note, the hearing notice and the prehearing order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

Mr. Heiges had notice and an opportunity to be heard in this proceeding but chose not to appear. He did not pre-serve any premarked exhibits and did not make any request for a continuance of the hearing prior to June 23, 2020. Therefore, 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 the company moved to have the complaint dismissed with prejudice for lack of prosecution. By failing to appear and present any evidence in support of his complaint, Complainant has failed to carry his burden of proof. Thus, it is appropriate to dismiss the complaint. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892

(Order entered December 26, 1995). Accordingly, the merits of the complaint will not be addressed in this Initial Decision.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter 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 accorded notice and the 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. Heiges' due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

7. Mr. Heiges failed to carry his burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Metropolitan Edison Company to dismiss the formal complaint of Garrett Heiges at docket number C-2019-3014653 for failure to prosecute is granted.
2. That the formal complaint filed by Garrett Heiges against Metropolitan Edison Company at docket number C-2019-3014653 is hereby dismissed.
3. That this matter be marked closed.

Date: July 1, 2020

_____/s/
Elizabeth H. Barnes
Administrative Law Judge