

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

George Morris	:	
	:	
v.	:	C-2022-3031049
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Dennis J. Buckley
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 to prosecute his Complaint.

HISTORY OF THE PROCEEDING

On February 22, 2022, George Morris (Complainant) filed a Formal Complaint (Complaint) with the Commission alleging that on or around October 28, 2021, an electric surge occurred in his home and that the surge damaged his property. Complainant further alleged that Metropolitan Edison Company (Met-Ed or Respondent) was responsible for the incident and for consequent damages. The Complainant further asserted that Met-Ed has not been responsive to his concerns and his requests that Met-Ed address what Complainant says are repeated outages at his residence. Complainant asked, in part, that the Commission order Met-Ed to reimburse him for \$1,600 which Complainant claims as expenses related to the power surge.

On March 16, 2022, Met-Ed filed an Answer and New Matter to the Complaint. In its Answer, Met-Ed denied the factual allegations in the Complaint and denied that it had failed to provide safe, adequate and reasonable service as required by the Public Utility Code (Code) and the rules and regulations of the Commission. In its New Matter, Met-Ed asserted that the Commission does not have authority to award damages and asked that the request be stricken. The New Matter was endorsed with a Notice to Plead, but no responsive pleading was filed.

On March 16, 2022, Met-Ed also filed a Preliminary Objection to Complainant's request for the award of damages. Met-Ed asserted that the Commission does not have authority to order the payment of damages and asked that the claim for damages be stricken from the Complaint. The Preliminary Objection was endorsed with a Notice to Plead, but no responsive pleading was filed.

On April 19, 2022, an Order was issued sustaining Met-Ed's Preliminary Objection, striking the request for damages, and directing that this case be set for hearing on the remaining quality of service issues.

On May 16, 2022, a hearing Notice was issued setting July 7, 2022, as the date for a telephonic evidentiary hearing in this case.

On June 29, 2022, Complainant filed a letter/Motion for Continuance. The requested continuance was based on the need for more time for Complainant to review Met-Ed's proposed hearing exhibits. The request was not objected to by Met-Ed, was granted and the hearing was cancelled. The hearing was subsequently rescheduled for September 20, 2022.

On September 16, 2022, a second letter/Motion requesting a continuance was filed by Complainant, this time on the basis of witness unavailability. Met-Ed did not oppose the request, and a continuance was granted until November 22, 2022.

On September 20, 2022, Met-Ed made an informal request for continuing the hearing scheduled for November 22, 2022, on the basis of witness non-availability. Complainant did not object to that request, which was granted.

On September 22, 2022, a hearing Notice was issued rescheduling the telephonic evidentiary hearing for December 1, 2022.

On December 1, 2022, a telephonic evidentiary hearing convened pursuant to Notice. Complainant did not appear. Margaret A. Morris, Esquire, appeared on behalf of Met-Ed and had available Dominic Lacata, an employee of Met-Ed who was prepared to offer testimony. Counsel for Met-Ed moved to dismiss the Complaint on the basis of Complainant's failure to appear.

Complainant has not contacted the Office of Administrative Law Judge (OALJ) to explain his absence on December 1, 2022, or to request a rescheduled hearing. The record in this case closed on December 16, 2022, with the filing of the hearing transcript by the court reporter with the Secretary of the Commission.

For the reasons set forth, below, Met-Ed's Motion to Dismiss is sustained, and the Complaint filed at Docket No. C-2022-3031049 is dismissed with prejudice.

FINDINGS OF FACT

1. The Complainant in this proceeding is George Morris.
2. The Respondent in this proceeding is Metropolitan Edison Company.
3. On February 22, 2022, Complainant filed a Formal Complaint against Met-Ed.

4. On March 6, 2022, Met-Ed filed an Answer in which it denied the allegations in the Complainant.
5. On May 16, 2022, a telephonic hearing Notice was sent to the parties which scheduled an initial telephonic hearing for July 7, 2022.
6. On July 5, 2022, a telephonic hearing Notice was sent to the parties re-scheduling the hearing in this case on September 20, 2022.
7. On September 22, 2022, a telephonic hearing Notice was sent to the parties re-scheduling the hearing in this case for December 1, 2022.
8. Each one of the three hearing Notices contained the following language: FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.
9. Each of the hearing notices was electronically served on Complainant at the email address he provided to the Commission.
10. None of the three hearing Notices sent to Complainant were returned to the Commission as undeliverable.
11. Counsel for Met-Ed spoke with Complainant at length the day before the hearing on December 1, 2022, and Complainant was fully aware that a hearing would be held on that day. Tr. at 3.
12. Complainant failed to appear at the scheduled date and time for the hearing.

13. The Complainant did not withdraw or settle his complaint against Met-Ed, nor did he request a further continuance of the hearing.

14. Complaint has not contacted the undersigned or OALJ to explain why his failure to appear the hearing was unavoidable.

DISCUSSION

In this case, Complainant alleged that on or around October 28, 2021, an electric surge occurred in his home and that the surge damaged his property. Complainant further alleged that Met-Ed was responsible for the incident and for consequent damages. The Complainant further asserted that Met-Ed has not been responsive to his concerns and his requests that Met-Ed address what Complainant says are repeated outages at his residence. Met-Ed denied the allegations in the Complaint.

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*, 70 A.2d 854 (Pa. 1950). As the party seeking relief from the Commission, Mr. Morris 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.*

Complainant did not appear at the date and time set for the hearing in his case, despite notice of the hearing having been sent to him by the Secretary of the Commission.

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 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).

Because this matter was continued three times, the parties received three hearing Notices. Each hearing Notice contained the following language:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

The Hearing Notices were electronically served to the email address provided by Complainant to the Commission. None of them were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to the Complainant were received by the Complainant. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

No request for a postponement or continuance of the December 1, 2022, hearing was received by my office or by the OALJ. Mr. Morris had notice of the hearing and an opportunity to be heard in this proceeding but chose not to appear. Therefore, the Complainant's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

During the hearing, counsel for Met-Ed moved for dismissal of the Complaint for lack of prosecution. By failing to appear and present any evidence in support of his Complaint, Mr. Morris failed to carry his burden.

Counsel for Met-Ed also stated that she had spoken with Complainant at length the day before the hearing, and that Complainant was fully aware that a hearing would be held on December 1, 2022. Tr. At 3.

When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

In sum, at the hearing on December 1, 2022, Counsel for Met-Ed moved for the dismissal of the Complaint as Complainant had not appeared. Counsel also asked that the Complaint be dismissed with prejudice. The latter possible outcome was specifically stated in the hearing Notices sent to Complainant. Although ample due process was afforded Complainant he did not appear at hearing. In this case, Complainant's absence was not inadvertent or unavoidable, and time and resources were expended by Met-Ed and the Commission without result. Thus, Met-Ed's Motion to Dismiss is granted, and the Complaint will be dismissed with prejudice. *Jefferson v. UGI Utils., Inc.*, Docket No. Z 00269892 (Opinion and Order entered Dec. 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. 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*, 70 A.2d 854 (Pa. 1950).
4. The Commission is required to provide due process to the parties appearing before them. This due process requirement is satisfied when the parties are provided with notice and an opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa. Cmwlth 1984).
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. Morris' due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).
7. By failing to appear to prosecute his case, Mr. Morris failed to carry his burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Metropolitan Edison Company to dismiss the Formal Complaint of George Morris at Docket No. C-2022-3031049, for failure to prosecute is granted.
2. That the Formal Complaint filed by George Morris at George Morris v. Metropolitan Edison Company, Docket No. C-2022-3031049 is dismissed with prejudice.
3. That this matter be marked closed.

Date: February 22, 2023

_____/s/
Dennis J. Buckley
Administrative Law Judge