

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Janet E. Cole	:	
	:	
v.	:	C-2018-3003023
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint because Complainant failed to appear at the initial hearing, no longer wished to pursue the Formal Complaint and failed to prosecute the Formal Complaint.

HISTORY OF THE PROCEEDING

On June 18, 2018, Janet E. Cole (Ms. Cole or Complainant) filed the Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Met Ed) alleging she did not want a smart meter installed on her property for various reasons including privacy concerns, violation of her rights and domestic security, concerns about wireless transmissions and the use of personal data, the legality of surveillance devices, lack of disclosure of information by the Commission, health and safety concerns, fire hazards

and Complainant's concerns regarding how her specific health issues will be affected by the installation of a smart meter. As relief, Complainant requested an order specifying no smart meter will be installed on her property. Complainant did not provide a valid email address for service of documents and did not register for the Commission's eFiling service. Accordingly, service of documents in this proceeding consisted of service through the United States Postal Service (USPS).

On July 17, 2018, Respondent filed an Answer and New Matter which generally denied the allegations in the Complaint. Respondent averred Complainant refused to allow the Company access to install a smart meter at Complainant's home, which refusal constituted legal grounds to terminate electric service at the service location. Respondent further averred it is required by Act 129 of 2008 (Act 129),¹ to install the smart meter.

Also on July 17, 2018, Respondent filed Preliminary Objections (PO's) against Complainant. In the PO's, Respondent asserted it was deploying smart meters within its service territory, consistent with the provisions in Act 129, and the facts in the Complaint did not constitute a violation of any law over which the Commission had jurisdiction to administer. Further, Respondent argued Complainant did not allege Met Ed violated any regulation or order of the Commission. For relief, Met Ed requested the Commission grant the PO's, strike Ms. Cole's request for an exemption from the installation of a smart meter, and dismiss the Complaint in its entirety with prejudice.

On July 25, 2018, Complainant filed a letter with the Secretary's Bureau asking for an extension of time in which to reply to Respondent's Answer and New Matter and PO's.

¹ 66 Pa.C.S. §§ 2803, 2806.1, 2807, 2811, 2813-2815.

On August 9, 2018, the OALJ issued the Motion Judge Assignment Notice, assigning the proceeding to ALJ Watson to resolve issues arising during the preliminary phase.

Also, on August 9, 2018, ALJ Watson issued the Interim Order Granting in Part Complainant's Request for Extension of Time to Reply to Respondent's Answer and New Matter and Preliminary Objections (Interim Order dated August 9, 2018), in which ALJ Watson ordered Complainant to file a responsive pleading to Respondent's PO's no later than September 10, 2018.

On October 10, 2018, ALJ Watson issued the Interim Order Establishing Initial Litigation Schedule. In addition to providing detailed explanations about procedural issues, ALJ Watson ordered both parties to submit in writing, on or before January 10, 2019, a full list of every witness providing factual evidence and every expert witness providing expert testimony. ALJ Watson ordered the parties to engage in discovery with each other before March 19, 2019, and the parties were to provide a status report about the prehearing activities by April 12, 2019.

Also, on October 10, 2018, ALJ Watson issued the Interim Order Denying Preliminary Objections in which ALJ Watson denied Respondent's PO's and ordered the proceeding at Docket No. C-2018-3003023 should proceed.

On November 26, 2018, Met Ed filed a Motion to Compel Responses to Interrogatories and Document Requests (Motion to Compel). In its Motion to Compel, Respondent asserted it served interrogatories and document requests (Discovery Requests) on Complainant on November 5, 2018, seeking information and documents related to Complainant's allegations about smart meters. Respondent asserted it received a letter from Complainant on November 15, 2018, objecting to the Discovery Requests on the grounds it was impossible for her to respond within the timeframe provided and

many inquiries were irrelevant, duplicative and/or an invasion of privacy. Respondent requested a Commission order compelling Ms. Cole to respond fully and completely within five business days and, if Complainant did not comply with the Commission order, the Commission should dismiss the Complaint in its entirety.

On the same date, November 26, 2018, Complainant filed a Petition for Judicial Determination of Jurisdiction (Petition of Jurisdiction).² Complainant requested clarification concerning whether: 1) the presiding officer has jurisdiction to issue decisions on complaints filed by a person or by a fictitious entity only; and 2) the presiding officer has jurisdiction to order the Commission to change policy, procedures, rules or rulings. Complainant asserted the Commission improperly interprets Act 129, and she contended she would interpret any silence by the presiding officer on the subject, after ten days, to be an admission by the presiding officer that the OALJ did not have jurisdiction over Complainant's claims.

On November 27, 2018, ALJ Watson issued the Interim Order Setting Deadline for Respondent to File Responsive Pleading and/or Objections to Complainant's Petition for Judicial Determination of Jurisdiction (Interim Order dated November 27, 2018), directing Respondent to file a responsive pleading on or before December 14, 2018.

On November 30, 2018, Ms. Cole sent the Opposition to Metropolitan Edison Company's Motion to Compel (Opposition to Compel Motion) to the Secretary's

² The Petition of Jurisdiction was dated November 18, 2018 and was received in the Secretary's Bureau on November 21, 2018. The Petition of Jurisdiction was missing an original signature, and the Secretary's Bureau returned the Petition of Jurisdiction on November 21, 2018. Complainant returned the signed document, which was received in the Secretary's Bureau on November 26, 2018.

Bureau, with a copy to the presiding officer and Respondent,³ in which Ms. Cole contended she was not provided sufficient time in which to respond to the Motion to Compel. Ms. Cole further argued she had not been given sufficient time in which to respond to the interrogatories and requests for documents, given her obligations at home, her family and other obligations. Ms. Cole argued Met Ed had no right to insist on getting information about members of her family, or about her own employment history, health history or education history.

On December 14, 2018, Met Ed filed its response to Complainant's Petition of Jurisdiction. In the letter, Met Ed asserted the Petition of Jurisdiction should be denied and Complainant should withdraw the Complaint since she questions if the presiding officer and the OALJ have jurisdiction.

On December 27, 2018, ALJ Watson issued the Interim Order Granting Motion of Metropolitan Edison Company to Compel Responses to Interrogatories and Document Requests (Interim Order dated December 27, 2018). In the Interim Order dated December 27, 2018, ALJ Watson denied Complainant's objections to answering the interrogatories and document requests propounded by Met Ed, and Complainant was ordered to answer the interrogatories and document requests on or before January 31, 2019.

On the same date, December 27, 2018, ALJ Watson issued the Interim Order Denying Notice and Petition for Judicial Determination of Jurisdiction filed by Complainant on November 26, 2018 (Interim Order Denying Petition of Jurisdiction). ALJ Watson ruled Complainant's request failed to state in a clear and concise manner the

³ The Opposition to Compel Motion was received in the Commission's Pittsburgh office on December 6, 2018, but was not received in the Secretary's Bureau until December 13, 2018.

controversy and uncertainty underlying her petition and/or the relief which Complainant sought.

On January 4, 2019, ALJ Watson issued the Interim Order Granting Motion of Metropolitan Edison Company to Compel Responses to Interrogatories and Document Requests (Interim Order dated January 4, 2019). ALJ Watson granted Respondent's Motion to Compel Discovery Responses (dated November 26, 2018), denied Complainant's objections to the discovery requests and ordered Complainant to file full and complete responses to the discovery requests on or before February 1, 2019.

On January 29, 2019, ALJ Watson issued the Interim Order Amending the Order Entered on December 27, 2018 Correcting the Deadline for Complainant to Provide Responses to Interrogatories and Document Requests to February 1, 2019 (Interim Order dated January 29, 2019), which amended the Interim Order dated December 27, 2018 to reflect the correct deadline for Complainant to serve full and complete responses was February 1, 2019 and not January 31, 2019.

On March 28, 2019, ALJ Watson issued the Interim Order Revising Litigation Schedule. ALJ Watson modified the litigation schedule originally outlined in an order entered on October 10, 2018, because ALJ Watson received a request on March 22, 2019, from Complainant requesting an extension of 60 days' time in which to complete discovery. ALJ Watson ordered the parties to conclude discovery by April 29, 2019, ordered status reports by July 31, 2019 and required the parties to provide available dates for the initial hearing between August 8, 2019 and September 5, 2019.

On April 29, 2019, the Commission received a Motion for Extension of Date for Completing Discovery from Complainant dated April 13, 2019, in which Complainant requested an extension of time due to health issues.

Furthermore, on May 2, 2019, Complainant sent correspondence to ALJ Watson requesting an extension of the discovery period and asked that her doctor's recommendations be followed. Complainant attached a letter from Amy A. Guiles-Lachina, D.O. dated April 30, 2019, stating Complainant was being treated for severe, debilitating pain, multiple other health issues and stating Complainant was not mentally or physically able to comply with the obligations that the current proceeding required. Accordingly, the letter included a request to hold the Complaint and all legal requests in abeyance until such time as Complainant might show some improvement that would permit her to continue with the case. In addition, the letter also asserted, "I strongly suggest that under no circumstances should she have a smart meter placed on her property as I feel it would only exacerbate her problems." The one-page letter contained no medical history, complete diagnosis or prognosis and there was no reference as to what the current litigation involved, what tasks Complainant was able or unable to perform or what areas of litigation present difficulties for Complainant. In addition, the letter included no support for the assertion that the installation of a smart meter would exacerbate Complainant's problems.

Thereafter, on May 9, 2019, ALJ Watson issued an Interim Order (Interim Order dated May 9, 2019) scheduling a prehearing conference for June 20, 2019. Due to a lack of specificity and detail, or a statement of qualifications, in the letter from Amy A. Guiles-Lachina, D.O., the Interim Order dated May 9, 2019 extended the deadline to conclude discovery until May 30, 2019; extended the date for Complainant to submit written direct testimony until June 10, 2019; required Respondent to submit written rebuttal testimony by July 22, 2019; and required the parties to file status reports with available hearing dates, on or before July 31, 2019. ALJ Watson kept the requirement that the parties must provide available dates for the initial hearing between August 8, 2019 and September 5, 2019.

On the same date, May 9, 2019, ALJ Watson issued the Interim Order Extending Litigation Schedule at Request of Complainant, which granted Complainant's request to extend the deadline to complete discovery. The parties were ordered: to conclude discovery by May 30, 2019; Complainant was to provide written direct testimony by June 10, 2019; Respondent was to provide written rebuttal testimony by July 22, 2019; the parties were to provide status reports with proposed hearing dates; and the hearing would be conducted over two consecutive days between August 8, 2019 and September 5, 2019.

On June 7, 2019, ALJ Watson received correspondence from Complainant dated June 4, 2019 requesting ALJ Watson reschedule the prehearing conference scheduled for June 20, 2019. On June 17, 2019, ALJ Watson issued an order granting Complainant's request to reschedule the prehearing conference and advising the parties there was no extension of time with any other deadline previously established.

On July 22, 2019, ALJ Watson received correspondence from Respondent indicating Complainant had not presented or served direct testimony as required by the Interim Order dated May 9, 2019.

On July 31, 2019, ALJ Watson received a status report from Respondent stating Complainant has not provided Respondent with notice of her anticipated witnesses or any written testimony. In addition, Complainant did not file a status report providing dates on which she and her witnesses would be available for a hearing. No information was provided regarding Complainant's health condition since the letter submitted by Complainant on May 2, 2019 and there was no compliance by Complainant with the terms of the interim orders.

On December 31, 2019, ALJ Watson issued an interim order (Interim Order dated December 31, 2019) directing the parties to discuss, prior to January 31, 2020,

possible stipulations or agreements about terms in a Protective Order that would address the disclosure and use of discovery materials and other sensitive information and, on or before February 14, 2020, submit a stipulated or proposed Protective Order to the presiding officer. In the event the parties did not reach an agreement, either party was permitted to submit a request for a Protective Order and a proposed Protective Order to ALJ Watson.

On February 14, 2020, Respondent filed a status report as required. Met Ed noted Complainant sent a written request⁴ to withdraw her Complaint with a caveat that she retain the ability to refile at a “near future date.” Met Ed strenuously opposed Complainant’s request unless the presiding officer granted Complainant’s request with prejudice. Met-Ed argued it had spent a considerable amount of time and resources to prepare its defense, in addition to the Commission’s significant expenditure of resources in moving the proceeding forward. Met Ed contended allowing Ms. Cole to withdraw her Complaint was not in the public interest because Complainant would be able to re-file a complaint with respect to the same or similar allegations. Respondent noted that discovery was complete and requested a one-day telephonic evidentiary hearing be scheduled.

On February 24, 2020, ALJ Watson issued the Interim Order Denying Complainant’s Request to Withdraw Complaint Without Prejudice (Interim Order Denying Withdrawal Request). In addition to denying Complainant’s request to withdraw the Complaint without prejudice, ALJ Watson ordered the parties to comply with the provisions in the Interim Order dated December 31, 2019, and ALJ Watson

⁴ Complainant mailed a letter, dated January 30, 2020, to each Commissioner (who was serving at that time), the presiding officer in Pittsburgh and Respondent’s attorneys. Complainant’s letter was not filed with the Secretary’s Bureau and is not included in the hearing record. ALJ Watson treated the letter as a Petition to Withdraw the Complaint without prejudice.

directed the evidentiary hearing be conducted by telephone on May 7, 2020. Also, on February 24, 2020, ALJ Watson issued the Protective Order.

On March 20, 2020, the Commission issued the Emergency Order at Docket No. M-2020-3019262 concerning the Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements (Emergency Order). The Emergency Order ordered all Commission offices across the state to be closed, and notified the public that the Commission was unable to send or receive mail or documents from or to any of its principal places of business. Accordingly, the Commission waived the requirement for paper filings and ordered it would only accept e-filings of all documents, pursuant to 52 Pa. Code § 1.4, in order to continue operations during the pandemic emergency. Further, the Commission ordered that service of all documents by the Commission on parties would be by electronic means only and service by the parties on Commission staff, as a party or as presiding officers, would be by electronic means only.

On April 3, 2020, Met Ed filed a letter advising ALJ Watson and Complainant that Met Ed would not serve advance rebuttal testimony because Complainant had not presented direct testimony.

On April 13, 2020, ALJ Watson issued the Interim Order Cancelling Hearing Scheduled for May 7, 2020 and Requiring the Parties to Confer Regarding New Hearing Dates and Submit Status Report (April 13, 2020 Interim Order). ALJ Watson noted OALJ's offices closed on March 16, 2020, due to the COVID19 pandemic, and the offices were not expected to open before April 30, 2020. ALJ Watson ordered the parties to provide proposed dates in July 2020 and/or August 2020 when the hearing could be rescheduled and ordered the parties to file a status report.

On April 20, 2020, Complainant sent a letter to the presiding officer and Met Ed via USPS, with a copy provided to each Commissioner (who was serving at that time).⁵ In her letter, Complainant acknowledged being told to update her email address, advised the May 7, 2020, hearing would be continued and knew the Commission could not use the USPS to serve documents due to effects of the then-ongoing COVID19 pandemic. Complainant stated, “I am in no position to state at this time, when I will or will not be mentally competent to participate in an exhausting hearing.”

On May 4, 2020, Met Ed filed a status report indicating Complainant notified Met Ed she was “in no position to state at this time, when [she] will or will not be mentally competent to participate in an exhausting hearing” and she had requested all communications occur via regular postal mail. Met Ed provided dates in July and August of 2020 when it would be available for a telephone evidentiary hearing.

On May 13, 2020, ALJ Watson issued an order noting Complainant did not file a status report and ordering the parties to confer and provide status reports on or before May 20, 2020, with suggested hearing dates. The order noted that ALJ Watson would establish a new hearing date, if the parties did not respond to the order on or before May 20, 2020.

On May 15, 2020, Complainant filed a letter dated May 10, 2020, in which Complainant reiterated her position that she could not provide a definite date when she would be available, and suggested the hearing should be scheduled, “at the end of August, possibly the 25th or 26th and if things have not fallen in place I will have to notify you that I will not be available.”

⁵ This letter was not filed with the Secretary’s Bureau and was not received in the Commission’s Pittsburgh office until October 8, 2020.

On May 20, 2020, Met Ed filed a status report indicating it attempted to confer with Ms. Cole, but Ms. Cole failed to reply. Met Ed requested a one-day telephone hearing and provided suggested dates in July and August of 2020.

On August 3, 2020, the OALJ served a Telephone Hearing Notice, via email and the USPS, to the parties and scheduled the Initial Call-In Telephonic Hearing on August 26, 2020. On the first page, the notice indicated in bold underline text: “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.”

On August 5, 2020, ALJ Watson served the Interim Order Scheduling Telephonic Hearing and Requiring Service of Proposed Exhibits and Documents (Interim Order dated August 5, 2020), which was served on the parties via email and via the USPS. ALJ Watson reminded the parties that the Commission’s offices remained closed (since closing on March 16, 2020 due to the COVID19 pandemic), and the OALJ was conducting hearings by telephone. The order noted the hearing was scheduled for August 26, 2020, and included the following cautionary provision in bold underlined text: “You must call into the hearing on the scheduled day and time. If you fail to do so, your case may be dismissed. You will not be called by the Administrative Law Judge.”

On August 19, 2020, Met Ed served the proposed exhibits on Complainant and ALJ Watson via email and by the USPS.⁶

On August 26, 2020, ALJ Watson convened the initial telephonic hearing at which appeared counsel for Met Ed, Tori Giesler, Esquire, and Lauren Lepkoski, Esquire. Complainant did not appear, and no one appeared as her representative. Met Ed noted

⁶ The Commission’s records reflect the Commission’s Pittsburgh office received this document on October 23, 2020.

receiving a letter dated August 19, 2020 requesting a continuance, which letter had been mailed but not emailed. ALJ Watson noted he did not receive any letter from Ms. Cole. Counsel noted the letter indicated Complainant was cleaning up from recent flooding, was under stress and was frustrated her Complaint had not been withdrawn when she requested it on January 30, 2020. ALJ Watson noted that, in his Interim Order dated August 3, 2020, he had reminded the parties that mail sent via the USPS could not be delivered to the Commission's offices and all parties were to use email communications.

On August 27, 2020 at 8:58 a.m., ALJ Watson served the Interim Order Closing the Hearing Record, and noted a decision would be issued on the Motion to Dismiss made by Met Ed at the hearing on August 26, 2020. The Interim Order was served on Complainant via email, due to the Emergency Order at Docket No. M-2020-3019262.

On August 27, 2020 at 10:10 a.m., the Secretary's Bureau received a letter,⁷ requesting a continuance of the August 26, 2020 hearing, from Complainant. The letter, dated August 19, 2020, was not received in the Commission until August 27, 2020, and was not received in the Commission's Pittsburgh office until October 23, 2020. In her letter, Complainant asserted she did not receive the Interim Order dated August 3, 2020 until August 19, 2020, due to damages at her home caused by a tropical storm on August 2, 2020 and August 4, 2020. Complainant requested the hearing be continued until 2021.

On September 3, 2020, the Commission received the official transcript from the hearing on August 26, 2020, consisting of 16 pages.

⁷ Complainant's letter was mailed via the USPS to the Commission's Pittsburgh office, to Respondent and to each Commissioner (then serving).

On November 4, 2020, the Commission issued the Order at Docket No. M-2009-2092655, concerning Smart Meter Procurement and Installation (November 4, 2020 Order). The Commission noted a decision by the Pennsylvania Commonwealth Court on October 8, 2020 in various smart meter cases in which the appellate court partially affirmed, partially reversed and remanded back to the Commission for further proceedings. As a result, the Commission issued a stay of most formal complaint proceedings then under consideration before the Commission, which involved challenges to the deployment of smart meter technology by electric distribution companies (EDCs) as being in violation of Section 1501 of the Pennsylvania Public Utility Code (Code), 66 Pa.C.S. § 1501, and extended the stay to any formal complaints then pending filed with the Commission. Furthermore, the Commission noted EDCs were not to terminate electric service to any customer who had a pending proceeding before the Commission wherein a complainant challenged an EDC's deployment of smart meter technology. Specifically, the Commission ordered that all active formal complaint proceedings in which a complainant challenged an EDC's deployment of smart meter technology on the grounds the deployment violated Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, and in which an ALJ had not issued an initial decision, was stayed until the Commission would take further action to lift the stay. The November 4, 2020 Order stayed this Complaint proceeding.

On July 15, 2021, the Commission issued the Order at Docket No. M-2020-3019262 which revised its March 2020 Order to reflect the emergency provisions for service and filing of documents would expire on September 30, 2021. The Commission noted the Pennsylvania Legislature passed a Concurrent Resolution (HR106) on June 10, 2021, which terminated the Governor's earlier Proclamation about the COVID19 pandemic on March 6, 2020. The Commission also noted a related action by then-Governor Wolf on June 11, 2021, which provided that the "temporary regulatory flexibility authority" to "Commonwealth agencies" (which during the earlier stages of the pandemic had issued an Order suspending a regulatory statute prescribing the procedures

for conduct of Commonwealth business, or an Order, rule or regulation of a Commonwealth agency) would have those orders extended until September 30, 2021.

On August 16, 2022, the Pennsylvania Supreme Court issued a consolidated opinion⁸ concluding that Act 129 mandated smart meter deployment and required EDCs to install smart meter technology system-wide.

On November 9, 2023, the Commission entered the Order at Docket No. M-2009-2092655 (November 9, 2023 Order) lifting the stay that the Commission implemented by the November 4, 2020 Order. The November 9, 2023 Order lifted the stay on this Complaint proceeding, and directed the parties to proceed to a resolution pursuant to the Commission's regulations governing formal proceedings at 52 Pa. Code §§ 5.1 – 5.631.

On January 17, 2024, the OALJ reassigned the proceeding at Docket No. C-2018-3003023 to ALJ Katrina Dunderdale. Since the date of the telephonic hearing in this matter on August 26, 2020, Complainant has not contacted the presiding officer.

FINDINGS OF FACT

1. Complainant is Janet E. Cole who resides at 630 Euclid Avenue, Temple, Berks County, Pennsylvania (service address) where she currently receives electric service from Respondent.

⁸ *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022) (*Povacz II*).

2. Respondent is Metropolitan Edison Company, an electric distribution company, which provides electric service to Complainant as the account holder at the service address.

3. Due to the impacts from the COVID19 pandemic, all written communications between Complainant, Respondent and the presiding officer in August 2020 were through the email addresses provided by both parties, pursuant to the Commission's Emergency Order entered on March 20, 2020, at Docket No. M-2020-3019262.

4. The hearing notice dated August 3, 2020 and the Interim Order dated August 5, 2020, were served on Complainant by the USPS and by email to the email address provided by Complainant, and the documents were not returned as undeliverable.

5. The hearing notice warned Complainant that, if she failed to call into the hearing at the scheduled date and time, her Complaint "will be dismissed..." and she would "not be called by the Presiding Officer."

6. The Interim Order dated August 5, 2020 warned Complainant the Complaint might be dismissed if Complainant failed to appear at the telephonic hearing.

7. The Interim Order dated August 5, 2020 required any party submitting proposed exhibits or documents to serve a copy of the same on the presiding officer and on the other party by First Class Mail and by email.

8. Complainant was not present at the initial hearing on August 26, 2020, and Respondent was ready to proceed at the date and time scheduled for the hearing.

9. Complainant did not contact the presiding officer or the OALJ by telephone or email prior to August 26, 2020, to indicate she would be unavailable to participate at the hearing on August 26, 2020, nor did she contact the presiding officer or the OALJ to request a continuance prior to August 26, 2020.

10. On August 19, 2020, Complainant sent a letter via First Class Mail to the Commission's Secretary's Bureau, with a copy to Respondent's attorney, requesting a continuance of the initial hearing on August 26, 2020.

11. Complainant did not send the letter via First Class Mail to the presiding officer, and she did not send the letter to the presiding officer via email.

12. On August 27, 2020, the presiding officer issued the Interim Order Closing the Hearing Record, which noted Complainant did not appear at the initial hearing on August 26, 2020.

13. Complainant's letter was not received in the Secretary's Bureau until after the presiding officer served the Interim Order Closing the Hearing Record on the parties.

DISCUSSION

Burden of Proof

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Ms. Cole, as a complainant, is the proponent of a rule or order. Therefore, Ms. Cole bears the burden of proving by a preponderance of the evidence that Met Ed violated the Public

Utility Code or a regulation or order of the Commission.⁹ Ms. Cole must show the utility is responsible or accountable for the problem described in the Complaint.¹⁰

Administrative agencies, like the Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are provided with notice and the opportunity to appear and be heard.¹¹

Notice of Hearing and Service of Documents

In August 2020, the Commission continued to use rules established by the Commission in March 2020 for the service of orders and notices. The Commission's rules were adjusted in March 2020 because of the then-ongoing COVID19 pandemic. On March 20, 2020, the Commission issued the Emergency Order at Docket No. M-2020-3019262 concerning the Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements (Emergency Order). The Emergency Order ordered all Commission offices across the state to be closed and notified the public that the Commission was unable to send or receive mail or documents from or to any of its principal places of business. Accordingly, the Commission waived the requirement for paper filings and ordered it would only accept e-filings of all documents, pursuant to 52 Pa. Code § 1.4, in order to continue operations during the pandemic emergency. Further, the Commission ordered that service of all documents by the Commission on parties would be by electronic means only and service by the parties on Commission staff, as a party or as presiding officers, would be by electronic means only.

Prior to March 6, 2020, all communications to Complainant were served on her via the USPS to the address provided by Complainant in the Complaint: 630 Euclid

⁹ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

¹⁰ *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

¹¹ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

Avenue, Temple, Berks County, Pennsylvania 19560. Beginning after the Commission closed its offices on March 16, 2020, Complainant provided the presiding officer and Respondent with an email address where she could receive service: janeco@ptd.net. As soon as the Commission was able to mail documents after September 2021, the OALJ served documents on Complainant via the USPS and by email.

On January 17, 2024, the OALJ served the Judge Change – Assignment Notice on Complainant via USPS and by email. Neither form of service was returned as undeliverable and the OALJ received confirmation of the electronic receipt on January 17, 2024.

Accordingly, the Commission successfully served Complainant with orders and notices at all times during the pendency of the proceeding, whether before the COVID19 pandemic, during the COVID19 pandemic or after the COVID19 pandemic.¹²

In addition, Complainant was advised in various orders and notices sent by the presiding officer that communication from Complainant must be made via email to the presiding officer and/or his legal assistant. Specifically, the scheduling notice sent on August 3, 2020, as well as the Interim Order dated August 5, 2020, were emailed and sent via the USPS to Complainant.

¹² Service made by First-Class Mail is presumed received if not returned. *Berkowitz v. Mayflower Sec., 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 Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982). Service by electronic mail is presumed received if not returned. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 2024); *Fonzo v. PPL Elec. Utils. Corp.*, Docket No. F-2023-3041304 (Final Order entered Jan. 17, 2024); *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).

Failure to Appear at Hearing

Ms. Cole did not appear at the time scheduled for the hearing on August 26, 2020, and no one appeared to represent Ms. Cole at the hearing. Information concerning the date, time and the location of the hearing, as well as how to call into the telephonic hearing, was listed in the hearing notice, dated August 3, 2020, and in the Interim Order dated August 5, 2020.

The OALJ served both the hearing notice dated August 3, 2020 and the Interim Order dated August 5, 2020 to Complainant via the USPS and email. Neither document was returned as undeliverable. Accordingly, it must be presumed that these documents sent to Complainant were received by Complainant.¹³

Complainant made multiple requests during this proceeding for notices to be sent to her via delivery by the USPS, but the Commission was unable to mail notices by the USPS during the early stages of the pandemic. At some point in 2020, the OALJ regained the ability to mail documents out by the USPS, but the OALJ could not receive documents in its offices on a reliable basis. The only way to notify the presiding officer about a scheduling problem or to request a continuance, prior to September 2021, was to send an email to the presiding officer and/or his legal assistant. During the time when the Commission was unable to receive or send mail reliably through the USPS, Complainant sent numerous communications to the presiding officer during the pendency of this proceeding via email.

Despite knowing that the presiding officer and the Commission could not receive communications via the USPS, Complainant notified the presiding officer of her

¹³ See n.14 *supra*.

continuance request by mailing the same to the Secretary's Bureau in Harrisburg.¹⁴ Complainant did not comply with the provisions of the scheduling order dated August 3, 2020, which specified the parties were to send proposed exhibits or documents by "**first class mail and by email**." [emphasis in original] to the presiding officer in Pittsburgh. Contrary to the clear instructions from the presiding officer, Complainant sent the letter by the USPS to the Secretary's Bureau in Harrisburg. Due to the difficulty with receiving mail in office buildings that were closed due to the pandemic, Complainant's letter requesting a continuance was not received in Harrisburg until August 27, 2020 - the day after the initial telephonic hearing - and after the hearing record was closed. Furthermore, since mailing the letter dated August 19, 2020, Complainant has not inquired or communicated with the presiding officer or the OALJ, as of the date of this Initial Decision, despite receiving an order closing the record.

Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of Ms. Cole to appear and participate in the hearing.¹⁵ If Ms. Cole could not appear or was unavailable, for any reason, then it was the responsibility of Ms. Cole to notify the presiding officer immediately about the impediment or dilemma.¹⁶

Section 332(f) of the Public Utility Code provides in pertinent part:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to

¹⁴ Complainant served a copy of her continuance request via the USPS on Respondent, which was able to receive mail via the USPS.

¹⁵ *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 28, 2002).

¹⁶ The party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat[.¹⁷]

Conclusion

In this proceeding, Ms. Cole did not call into the telephonic hearing as specified in the hearing notice dated August 3, 2020, and in the Interim Order dated August 5, 2020. Both the hearing notice and the Interim Order indicated clearly Complainant was to call and provided Complainant with the Commission's toll-free conference bridge number and PIN number. The hearing notice also provided an email address and telephone number where Ms. Cole could reach the presiding officer, or his legal assistant, if additional information was needed prior to the hearing or to explain if an impediment existed which would prevent her from participating in the hearing.

Since Ms. Cole did not appear or participate in the hearing, despite receiving notice of the date and time of the hearing, the hearing was held in accordance with 66 Pa.C.S. § 332(f) and 52 Pa. Code § 5.245. Respondent's attorney moved to dismiss the Complaint with prejudice for failure of Complainant to appear and prosecute the Complaint. When a complainant fails to appear for a scheduled conference or hearing and a complainant's failure to appear does not appear to be unavoidable, the complaint may be dismissed.¹⁸ Respondent's attorney noted Complainant did not want to pursue the Complaint, as evidenced by her previous request to withdraw the Complaint, her willful refusal to timely and appropriately submit her request for continuance and her failure to

¹⁷ 66 Pa.C.S. § 332(f).

¹⁸ *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. West Duquesne Light Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

appear at the telephonic hearing when she did not receive any order or communication from the presiding officer indicating her continuance request would be granted. Respondent's attorney further noted the presiding officer did not excuse Complainant from appearing at the telephonic hearing and she was in error not to appear at the hearing.

In addition, Ms. Cole did not contact the presiding officer or the OALJ to explain her absence or to explain if she was unavailable, despite being served with an order closing the record. Complainant failed to take advantage of the opportunity provided to her to appear and prosecute the Complaint against Respondent by presenting evidence to support the allegations. As a result, Complainant failed to sustain the burden of proof.

Complainant's behavior and failure to appear are sufficient evidence to show Complainant no longer wishes to pursue her Complaint and to provide evidence in support of her allegations. Accordingly, Respondent's oral motion to dismiss the Complaint will be granted, and the Complaint will be dismissed in the Ordering Paragraphs below.¹⁹

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S. § 701.

¹⁹ *Little v. Pittsburgh Water & Sewer Auth.*, F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Volgstadt v. UGI Penn Nat. Gas*, Docket No. F-02266429 (Opinion and Order entered Sept. 12, 2008); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

2. The due process rights of Complainant have been protected fully in this proceeding. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

3. Complainant, as the proponent of a rule or order, has the burden of proof in this matter. 66 Pa.C.S. § 332(a).

4. By failing to appear at the scheduled hearing, Complainant waived the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

5. Notice served to a party with no notification that service failed is presumed received. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 2024); *Fonzo v. PPL Elec. Utils. Corp.*, Docket No. F-2023-3041304 (Final Order entered Jan. 17, 2024); *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); *Berkowitz v. Mayflower Sec., 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 Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982).

6. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

7. When a complainant fails to appear for a scheduled conference or hearing and a complainant's failure to appear does not appear to be unavoidable, the complaint may be dismissed. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486

(Opinion and Order entered Apr. 22, 2022); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. West Duquesne Light Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of Metropolitan Edison Company to dismiss the Formal Complaint in *Janet E. Cole v. Metropolitan Edison Company*, at Docket No. C-2018-3003023, is granted.
2. That the Formal Complaint filed in *Janet E. Cole v. Met Ed Company*, at Docket No. C-2018-3003023 is dismissed.
3. That the Secretary mark the case as closed.

Date: March 4, 2025

/s/
Katrina L. Dunderdale
Administrative Law Judge