

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Glenda Pink	:	
	:	
v.	:	C-2017-2637828
	:	
PPL Electric Utilities Corporation	:	

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 scheduled hearing despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On December 11, 2017, Glenda Pink (Ms. Pink or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket Number C-2017-2637828. In the complaint, Ms. Pink averred that she wished to opt out of smart meter installation at her property at 223 Selig Rd., Pocono Lake, Pennsylvania. Complainant also averred that House Bill 1564 gives her the right to opt out of smart meter installation.

PPL filed an Answer on January 2, 2018 denying the material averments in the Complaint. PPL admitted to attempting installation of a smart meter on Complainant's residence. However, PPL contended House Bill 1564 was not in effect as law as it has not yet

been passed by the General Assembly. Therefore, there is no opt-out provision and Complainant is not entitled to the relief requested.

On February 14, 2018, a Call-In Telephone Hearing Notice was issued scheduling a hearing for April 13, 2018 and assigning the case to ALJ Jeffrey Watson. On February 27, 2018, a Judge Change Notice/Hearing Cancellation/Reschedule was issued rescheduling the telephonic hearing to April 12, 2018 and assigning me as presiding officer. A Prehearing Order was issued on March 1, 2018. On March 23, 2018, PPL informally requested an unopposed continuance to July 12, 2018. A second Prehearing Order was issued on March 27, 2018 directing the parties to provide each other with copies of all exhibits and reports/statements to be presented at the hearing by July 2, 2018. On March 30, 2018, a Hearing Cancellation/Reschedule Notice was issued rescheduling the hearing from April 12 to July 12, 2018.

The Hearing Notices stated, “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 Administrative Law Judge.” All Hearing Notices and Prehearing Orders were sent to Ms. Pink at the address provided on her complaint via first-class mail. The postal authorities did not return any Hearing Notices or Prehearing Orders to the Commission as being undeliverable to Ms. Pink.

On April 23, 2018, a Motion for Admission *Pro Hac Vice* was filed. On April 24, 2018, an Interim Order was issued admitting Curtis S. Renner, Esquire, *pro hac vice* as counsel on behalf of PPL. On June 1, 2018, PPL submitted a letter request that all expert witnesses submit written direct testimony in advance of the evidentiary hearing. On June 20, 2018, a Second Interim Order was issued directing all expert witness written direct testimony be served upon the opposing party and presiding officer no later than July 2, 2018. On July 2, 2018, PPL submitted pre-marked exhibits and expert witness direct testimony.

The hearing convened at 10:00 a.m. on July 12, 2018 as scheduled. Devin Ryan, Esquire, and Curtis Renner, Esquire, appeared as counsel of record for PPL. Also present were

PPL Witnesses William Hennigan, Scott Larson, Holly Groch, Dr. Mark Israel, and Dr. Christopher Davis. Complainant did not appear. Complainant did not submit pre-marked exhibits for the hearing. A call from the Presiding Officer to the telephone number Complainant provided on her complaint resulted in the Presiding Officer leaving a voice mail to call into the conference bridge. After waiting a reasonable amount of time for Complainant to appear, the presiding officer went on the record of the hearing at 10:16 a.m. PPL's counsel made an oral motion to dismiss complaint with prejudice for failure to appear and prosecute. Counsel for PPL indicated that PPL's exhibits were sent to Ms. Pink via e-mail and regular mail on July 2, 2018, and that the cover letter attached to the company's exhibits reminded Ms. Pink of the date and time of the hearing. Counsel indicated Ms. Pink never returned e-mail messages to settle the matter prior to July 12, 2018. The record closed on July 12, 2018. The oral motion to dismiss is ripe for a decision.

FINDINGS OF FACT

1. The Complainant in this case is Glenda Pink.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. Complainant failed to appear and prosecute her Complaint at the hearing scheduled for July 12, 2018.
4. Complainant received notice of the hearing on or about March 30, 2018, when a Hearing Cancellation/Reschedule Notice was issued rescheduling the hearing from April 12 to July 12, 2018.
5. All Hearing Notices and Prehearing Orders were mailed to the address Complainant provided on her complaint.
6. No Hearing Notices or Prehearing Orders were returned to the Commission by the postal authorities as being undeliverable to Ms. Pink.

7. During the hearing, counsel for PPL indicated that he had sent a copy of the company's exhibits to Ms. Pink via e-mail and regular mail on July 2, 2018, with a cover letter reminding Ms. Pink of the date and time of the hearing, and that the documents were confirmed as delivered.

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). "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. 45, 70 A.2d 854 (1950). In this proceeding, Ms. Pink filed a complaint against PPL seeking to opt out of smart meter installation at her property. Ms. Pink therefore, 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 Ms. Pink at the date and time set for the hearing in her case despite 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 Hearing Notices were sent to Ms. Pink by regular first class mail and were not returned to the Commission as being undeliverable. Accordingly, it must be presumed that the Hearing Notices sent to Ms. Pink in the ordinary course of business were received by Ms. Pink. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Super. 221, 444 A.2d 658 (1982). Moreover, counsel for PPL, Attorney Ryan, indicated that he had sent the company's exhibits prior to the hearing and that they were confirmed as delivered. He also stated Ms. Pink had not returned any of his e-mails.

No one appeared on behalf of Ms. Pink at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, Ms. Pink had notice and an opportunity to be heard in this proceeding but chose not to appear. 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 PPL moved to have the complaint dismissed with prejudice for lack of prosecution. By failing to appear and present any evidence in support of her complaint, Ms. Pink has failed to carry her 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). El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245. 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. 45, 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 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. Ms. Pink's 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. Ms. Pink failed to carry her burden of proof in this proceeding because she failed to appear and prosecute her complaint at the hearing.

