

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kimberly Rineer	:	
	:	
v.	:	C-2018-3005053
	:	
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 September 14, 2018, Kimberly Rineer (Ms. Rineer or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent) at Docket Number C-2018-3005053. The complaint was served upon Respondent on October 2, 2018.

In the complaint, Ms. Rineer averred that she has been suffering since the installation of an electric smart meter was attached to her house on August 5, 2017. Complainant claimed she can hear the frequencies from the meter and averred they have a deleterious health effect. Complainant requested PPL be directed to remove the AMI meter on her service property and replace it with an analog meter. She further demanded damages in the amount of \$1,000 per

occupant of the residence “including four-legged ones” for every day the alleged harms have occurred. Complaint Par. 5.

On October 22, 2018, the Respondent filed an Answer and Preliminary Objections. The Answer admitted that the Respondent provides electric service to the Complainant at the address shown on the complaint. However, the Answer denied the AMI meter has caused, contributed to, or exacerbated any illnesses or will cause, contribute to or exacerbate any illnesses. The Answer contended that the Respondent is required to install the smart meter at Complainant’s property subject to the requirements of Act 129 of 2008 and that it has the right to terminate service for failure of the customer to permit access to the meter. The Preliminary Objections contended that the Complainant’s request for damages should be dismissed because the Commission has no power to award damages. On November 28, 2018, the Preliminary Objections were granted in part and denied in part. The request for damages was stricken from the complaint and the remaining issues were to proceed to hearing.

On November 29, 2018, a Telephone Hearing Notice was issued scheduling a hearing for June 25, 2019 and assigning the case to me. On December 6, 2018, Complainant filed a letter requesting that her hearing be held after the holidays. As her hearing was scheduled for June 25, 2019, I considered that to be after the winter holidays, and did not treat the letter as a motion for continuance. On March 15, 2019, a Prehearing Order was issued. The Hearing Notice stated that the Presiding Officer would contact Complainant at the telephone number listed on her complaint on June 25, 2019. The Prehearing Order stated all parties and witnesses must be available at the phone numbers on the Telephone Hearing Notice issued November 29, 2018. The Order also notified Complainant that she would lose this case if she did not participate in the hearing and present evidence on the issues raised. Prehearing Order Paragraph No. 5 at 2. The Hearing Notice and Prehearing Order were sent to Ms. Rineer at the address provided on her complaint via first-class mail. The postal authorities did not return the Hearing Notice or Prehearing Order to the Commission as being undeliverable to Ms. Rineer.

On April 4, 2019, PPL mailed the Complainant and Presiding Officer a letter proposing its conference bridge be used for the June 25, 2019 hearing. On May 24, 2019, PPL

submitted pre-marked exhibits and direct testimony. On June 13, 2019, PPL filed a Motion to Compel Discovery Responses.

The hearing convened at 10:00 a.m. on June 25, 2019 as scheduled. Devin Ryan, Esquire, and Curtis Renner, Esquire, appeared as counsel of record for PPL on the PPL conference bridge line. Also present were PPL Witnesses Kevin Durkin, Donald Vinciguerra, 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 at 10:00 a.m. resulted in the Presiding Officer leaving a voice mail to call into the conference bridge with the phone number and password provided. After waiting a reasonable amount of time for Complainant to appear, the presiding officer went on the record of the hearing at 10:15 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 Complainant via e-mail and regular mail on May 24, 2019, and that the cover letter attached to the company's exhibits reminded Ms. Rineer of the hearing. Counsel indicated Ms. Rineer corresponded with Mr. Ryan via e-mail as late as June 12, 2019, and that she did not request a continuance of the hearing. Further, I checked my e-mail inbox just before the hearing started and there was no request from Complainant for a continuance. The record closed on June 25, 2019. The oral motion to dismiss is ripe for a decision.

FINDINGS OF FACT

1. The Complainant in this case is Kimberly Rineer.
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 June 25, 2019.

4. Complainant received notice of the hearing on or about November 29, 2018 through a Telephone Hearing Notice.

5. The Hearing Notice and Prehearing Order were mailed to the address Complainant provided on her complaint.

6. The Hearing Notice and Prehearing Order were not returned to the Commission by the postal authorities as being undeliverable to Ms. Rineer.

7. Ms. Rineer made no request to continue the June 25, 2019 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). "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. Rineer filed a complaint against PPL seeking to have the smart meter installed at her property removed. Ms. Rineer, 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.Cmwlt. 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. Rineer at the date and time set for the hearing despite notice of the hearing. During the hearing, counsel for PPL, Devin Ryan, Esquire, indicated that he had sent a copy of the company's exhibits to Ms. Rineer via e-mail and regular mail on May 24, 2019, with a cover letter reminding Ms. Rineer of the date and time of the hearing, and that the documents were confirmed as delivered. Mr. Ryan also stated that he had

sent Ms. Rineer an e-mailed letter on June 5, 2019 at 10:47 a.m. to which Ms. Rineer replied on June 12, 2019. I find Ms. Rineer had proper notice of the hearing and failed to appear. 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 Notice and Prehearing Order were sent to Ms. Rineer by regular first class mail and were not returned to the Commission as being undeliverable. Accordingly, it must be presumed that the Hearing Notice and Prehearing Order sent to Ms. Rineer in the ordinary course of business were received by Ms. Rineer. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 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, 449 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. Rineer had returned his e-mail of June 5, 2019 with a reply, but never requested a continuance of the hearing.

No one appeared on behalf of Ms. Rineer at the time of the hearing. Nor did anyone ever request a postponement or continuance of the June 25, 2019 hearing. As such, Ms. Rineer 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. Rineer 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. PPL's Motion to Compel filed on June 13, 2019 shall be dismissed as moot because the underlying complaint is dismissed.

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. Rineer'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. Rineer failed to carry her burden of proof in this proceeding because she failed to appear and prosecute her complaint at the hearing.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the formal complaint of Kimberly Rineer at Docket Number C-2018-3005053 for failure to prosecute is granted.

2. That the formal complaint filed by Kimberly Rineer at Docket Number C-2018-3005053 is hereby dismissed with prejudice.

3. That PPL Electric Utilities Corporation's Motion to Compel filed on June 13, 2019 is dismissed as moot.

