

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|------------------------------------|---|----------------|
| William D. Haas | : | C-2018-3005984 |
| | : | C-2018-3005986 |
| | : | C-2018-3005987 |
| v. | : | C-2018-3005988 |
| | : | C-2018-3005995 |
| | : | C-2018-3005997 |
| 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 October 25, 2018, William Haas (Mr. Haas or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket Number C-2018-3005984, averring that the deployment of any smart meters on his property at 180 White Haven Road, Bear Creek, Pennsylvania, constitutes a violation of the utility's requirements to comply with 66 Pa. Code §§ 1501 and 1502, which require safe services to each individual customer based on the customer's unique needs. Complaint at 1-3. The Complaint was served upon Respondent on November 14, 2018. Also on October 25, 2018, Mr. Haas filed five similar complaints involving five other properties he owns including: 1) 33 Cove Road, Bear Creek, PA at C-2018-3005986; 2) 96 White Haven Road at C-2018-3005987;

3) 98 White Haven Rd. at C-2018-3005988; 4) 500 White Haven Rd. at C-2018-3005995; and 5) 94 White Haven Rd. at C-2018-3005997. These additional five complaints were also served upon Respondent on November 14, 2018.

On December 4, 2018, Respondent filed Answers to the six complaints. The Answers admitted that the Respondent provides electric service to the Complainant at the addresses shown on the complaints. However, the Answers denied the AMI meter has caused, contributed to, or exacerbated any illnesses or will cause, contribute to or exacerbate any illnesses. The Answers contended that the Respondent is required to install the smart meter at Complainant's properties subject to the requirements of Act 129 and that it has the right to terminate service for failure of the customer to permit access to the meters. On December 6, 2018, PPL filed a Motion to Consolidate, which was granted by an Order Consolidating Cases issued January 7, 2019.

On January 14, 2019, a Call-In Telephone Hearing Notice was issued scheduling a hearing for 10:00 a.m. on June 26, 2019 and assigning the consolidated cases to me. On January 17, 2019, a Prehearing Order was issued. The Hearing Notice stated that the failure to call into the hearing at the toll-free number provided would result in a dismissal of the case. The Prehearing Order stated, "You will lose this case if you do not take part in this hearing and present evidence on the issues raised." Prehearing Order Paragraph No. 5 at 2. The Hearing Notice and Prehearing Order were sent to Mr. Haas at the mailing address provided on his complaints, P.O. Box 251, Bear Creek, PA 18602, via first-class mail. The postal authorities did not return the Hearing Notice or Prehearing Order to the Commission as being undeliverable to Mr. Haas.

On May 1, 2019, PPL mailed Complainant and the presiding officer written direct testimony and exhibits that it planned to utilize at the hearing. On June 13, 2019, PPL filed a Motion to Compel Discovery Responses. The hearing convened at 10:00 a.m. on June 26, 2019 as scheduled. Devin Ryan, Esquire, and Curtis Renner, Esquire, appeared as counsel of record for PPL on the 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 his complaint at 10:05 a.m. resulted in the Presiding Officer leaving a voice mail to call into the conference bridge with the phone number and password provided. The presiding officer went on the record of the hearing at 10:25 a.m. PPL's counsel made an oral motion to dismiss the 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 1, 2019, and that the cover letter attached to the company's exhibits reminded Mr. Haas of the hearing date and time. 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 26, 2019. The oral motion to dismiss is ripe for a decision.

FINDINGS OF FACT

1. The Complainant in this case is William D. Haas.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. Complainant failed to appear and prosecute his consolidated complaints at the hearing scheduled for June 26, 2019.
4. Complainant received notice of the hearing on or about January 14, 2019.
5. The Hearing Notice and Prehearing Order were mailed to the mailing address Complainant provided on his complaints.
6. Neither the Hearing Notice nor Prehearing Order were returned to the Commission by the postal authorities as being undeliverable to Complainant.
7. During the hearing, counsel for PPL indicated that he had sent a copy of the company's exhibits to Complainant via e-mail and regular mail on May 1, 2019, with a cover letter

reminding Mr. Haas of the date and time of the hearing, and that the documents were confirmed as delivered.

8. Mr. Haas made no request to continue the June 26, 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, Mr. Haas filed complaints against PPL seeking to opt out of smart meter installation at his properties. Mr. Haas, 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 afforded notice and the opportunity to be heard. Id.

No one appeared on behalf of Mr. Haas at the date and time set for the hearing 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 Notice and Prehearing Order were sent to Mr. Haas 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 Mr. Haas in the ordinary course of business were received by Mr. Haas. 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 written testimony and exhibits prior to the hearing and that they were confirmed as delivered.

No one appeared on behalf of Mr. Haas at the time of the hearing. Nor did anyone ever request a postponement or continuance of the June 26, 2019 hearing. As such, Mr. Haas 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 his complaint, Mr. Haas has failed to carry his burden of proof. Thus, it is appropriate to dismiss the complaints. 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 complaints 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 complaints are 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 afforded 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. Mr. Haas' 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. Haas failed to carry his burden of proof in this proceeding because he failed to appear and prosecute his consolidated complaints at the hearing.

