

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Roger Brodzinski	:	
	:	
v.	:	C-2018-3006234
	:	
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 November 29, 2018, Roger Brodzinski (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket Number C-2018-3006234. In the complaint, Mr. Brodzinski averred that he wished to opt out of smart meter installation at his service property.

PPL filed an Answer on December 19, 2018 denying the material averments in the Complaint.

On December 28, 2018, a Telephone Hearing Notice was issued scheduling a hearing for July 18, 2019 and assigning the case to me. A Prehearing Order was issued on January 4, 2019. On March 21, 2019, a Telephone Hearing Notice was issued rescheduling the

hearing to July 31, 2019. Both Telephone Hearing Notices and the Prehearing Order indicated that a party may lose this case if they do not appear at the hearing. On June 18, 2019, PPL served its proposed direct testimony and exhibits upon the Complainant and presiding officer. On April 3, 2019, PPL mailed Complainant and the presiding officer a letter offering a conference bridge number and passcode for the Telephonic Hearing on July 31, 2019.

On June 23, 2019, Complainant sent the Office of Administrative Law Judge a letter notifying me that his phone number listed on the March 21, 2019 Hearing Notice was incorrect and indicating the correct number to call. The letter was added to the docket on June 24, 2019. On July 12, 2019, PPL filed a Motion to Compel Responses to Discovery.

All Hearing Notices and the Prehearing Order were sent to Mr. Brodzinski at the address provided on his complaint via first-class mail. The postal authorities did not return any Hearing Notices or the Prehearing Order to the Commission as being undeliverable to Mr. Brodzinski.

The hearing convened at 10:00 a.m. on July 31, 2019 as scheduled. Devin Ryan, Esquire, and Curtis Renner, Esquire, appeared as counsel of record for PPL. 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 10:00 a.m. call from the Presiding Officer to the telephone number Complainant provided on his complaint and the number provided in the letter correspondence from Complainant dated June 23, 2019, resulted in the Presiding Officer leaving a voice mail asking the complainant to call into the conference bridge number by 10:15 a.m. Complainant did not call into the conference number.

After waiting until 10:15 a.m. for Complainant to call in to the conference call, the presiding officer went on the record of the hearing at 10:16 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 Mr. Brodzinski via e-mail and regular mail on June 18, 2019, and that the cover letter attached to the company's exhibits reminded Mr.

Brodzinski of the date and time of the hearing. The record closed on July 31, 2019. The oral motion to dismiss is ripe for a decision.

FINDINGS OF FACT

1. The Complainant in this case is Roger Brodzinski.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. Complainant failed to appear and prosecute his Complaint at the hearing scheduled for July 31, 2019.
4. A Hearing Cancellation/Reschedule Notice was issued on March 21, 2019 rescheduling the hearing from July 18, 2019 to July 31, 2019.
5. All Hearing Notices and Prehearing Orders were mailed to the address Complainant provided on his complaint.
6. No Hearing Notices or the Prehearing Order were returned to the Commission by the postal authorities as being undeliverable to Mr. Brodzinski.
7. All Hearing Notices and the Prehearing Order indicated that a party may lose this case if they fail to appear for the hearing.
8. During the hearing, counsel for PPL indicated that he had sent a copy of the company's exhibits to Mr. Brodzinski via e-mail and regular mail on June 18, 2019, with a cover letter reminding Mr. Brodzinski 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, Mr. Brodzinski filed a complaint against PPL seeking to opt out of smart meter installation at his property. Mr. Brodzinski, 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 Mr. Brodzinski at the date and time set for the hearing in his 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 Mr. Brodzinski by regular first class mail and were not returned to the Commission as being undeliverable. Accordingly, it must be presumed the Hearing Notices sent to Mr. Brodzinski in the ordinary course of business were received by Mr. Brodzinski. 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. Further, Complainant mailed the Office of Administrative Law Judge a letter correcting the telephone number on the notices. Thus, it is evident he received the notices and chose not to appear. When the corrected phone number was called, Complainant did not answer his phone at 10:00 a.m. Even though a message and opportunity to call into the conference bridge was afforded Complainant by the presiding officer, Mr. Brodzinski did not dial into the conference call number provided by PPL in its April 3, 2019 letter and provided by the presiding officer in her voicemail message.

No one appeared on behalf of Mr. Brodzinski at the time of the hearing. Nor did anyone ever a postponement or continuance of the hearing. As such, Mr. Brodzinski 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. Brodzinski has failed to carry his 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. Mr. Brodzinski'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. Mr. Brodzinski failed to carry his burden of proof in this proceeding because he failed to appear and prosecute his complaint at the hearing.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the formal complaint of Roger Brodzinski at Docket Number C-2018-3006234 for failure to prosecute is granted.

2. That the formal complaint filed by Roger Brodzinski at Docket Number C-2018-3006234 is hereby dismissed with prejudice.

3. That the Motion of PPL Electric Utilities Corporation to Compel Discovery Responses filed on July 12, 2019 is denied as moot.

4. That Docket Number C-2018-3006234 shall be marked closed by the Secretary's Bureau.

Date: August 2, 2019

/s/
Elizabeth H. Barnes
Administrative Law Judge