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File #: 167945

August 23, 2019

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

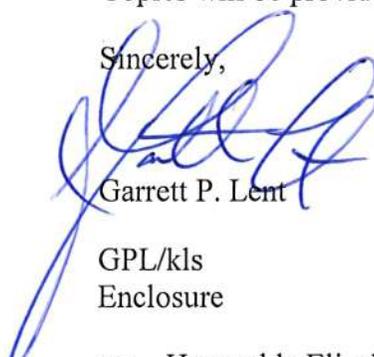
Re: Roger Brodzinski v. PPL Electric Utilities Corporation
Docket No. C-2019-3011939

Dear Secretary Chiavetta:

Enclosed for filing is the Preliminary Objection of PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) to the Complaint of Roger Brodzinski in the above-referenced proceeding. PPL Electric originally filed the Preliminary Objection on August 22, 2019. However, the Company is re-filing the Preliminary Objection with any references to account numbers fully redacted or removed.

Copies will be provided as indicated on the Certificate of Service.

Sincerely,



Garrett P. Lent

GPL/kls
Enclosure

cc: Honorable Elizabeth Barnes (*w/enclosure*)
Certificate of Service

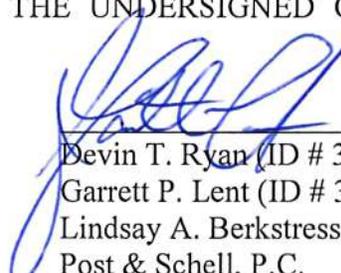
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Roger Brodzinski,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2019-3011939
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY ANSWER THE ENCLOSED PRELIMINARY OBJECTION WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTION MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL FOR PPL ELECTRIC UTILITIES CORPORATION.

Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID # 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
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Phone: 202-737-6302
E-mail: crenner@w-r.com

Date: August 23, 2019

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Roger Brodzinski,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2019-3011939
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTION OF
PPL ELECTRIC UTILITIES CORPORATION TO THE
COMPLAINT OF ROGER BRODZINSKI**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) and hereby files this Preliminary Objection, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Commission dismiss the above-captioned Formal Complaint (“Complaint”) filed by Roger Brodzinski (“Complainant”) in its entirety and with prejudice.

The instant Complaint challenges PPL Electric’s planned installation of a new automated metering infrastructure (“AMI”) meter at 430 S. Front Street, Sunbury, PA 17801 due to alleged adverse health effects. (Complaint ¶¶ 4-5.) This is the second Formal Complaint (“Second Complaint”) filed by the Complainant raising these issues. The Complainant’s first Formal Complaint was filed at Docket No. C-2018-3006234 (“First Complaint”) and remains pending before the Commission for final disposition. True and correct copies of the First Complaint and the Second Complaint are attached hereto as **Appendix A** and **Appendix B**, respectively.

As explained herein, the Commission should summarily dismiss the Second Complaint because the issues regarding the installation of the AMI meter at this property, as well as the alleged adverse health effects, are already the subject of the ongoing litigation involving the First Complaint that is currently pending before the Commission.

In support thereof, PPL Electric states as follows:

I. BACKGROUND

1. PPL Electric is a “public utility” and an “electric distribution company” as those terms are defined under the Public Utility Code, 66 Pa. C.S. §§ 102 and 2803, subject to the regulatory jurisdiction of the Commission.

2. PPL Electric furnishes electric distribution, transmission, and provider of last resort electric supply services to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of twenty-nine counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania.

3. On August 2, 2019, PPL Electric was served with the above-captioned Second Complaint, which challenges the Company’s planned installation of a new AMI meter at 430 S. Front Street, Sunbury, PA 17801 due to alleged adverse health effects. *See* Appendix B.

4. PPL Electric herein files this Preliminary Objection to the Second Complaint. For the reasons explained below, PPL Electric respectfully requests that the Commission summarily dismiss the Second Complaint because the issues regarding the installation of the AMI meter at this property, as well as the allegations of adverse health effects, are already the subject of an ongoing litigation involving the First Complaint that is currently pending before the Commission.

II. STANDARD OF REVIEW

5. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a) (emphasis added).

6. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlt.*, 910 A.2d 775, 781 (Pa. Cmwlt. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlt. 2005)). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlt. 2007). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

7. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. See *Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlt. 1987).

Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

III. PRELIMINARY OBJECTION

A. PRELIMINARY OBJECTION NO. 1 – THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE ISSUES IT RAISES ARE ALREADY THE SUBJECT OF AN ONGOING LITIGATION

8. PPL Electric incorporates by reference Paragraphs 1 through 7 as if fully set forth herein.

9. The Second Complaint should be dismissed in its entirety because the Complainant's issues are already the subject of an ongoing litigation involving his First Complaint. *See* 52 Pa. Code § 5.101(a)(6).

10. As explained previously, the Complainant challenges PPL Electric's planned installation of a new AMI meter at 430 S. Front Street, Sunbury, PA 17801 due to alleged adverse health effects. Appendix B ¶¶ 4-5.

11. On November 29, 2018, PPL Electric was served with the Formal Complaint filed by Roger Brodzinski against the Company at Docket No. C-2018-3006234 (*i.e.*, the First Complaint), which also challenged the planned installation of a new AMI meter at 430 S. Front Street, Sunbury, PA 17801. *See* Appendix A.

12. On August 5, 2019, the Commission issued the ALJ's Initial Decision dismissing the First Complaint due to the Complainant's failure to appear at the duly-noticed hearing and prosecute his Complaint. *See Brodzinski v. PPL Elec. Utils. Corp.*, Docket No. C-2018-3006234 (Aug. 5, 2019) (Initial Decision). A true and correct copy of the Initial Decision is attached hereto as **Appendix C**.

13. The Initial Decision dismissing the First Complaint remains pending before the Commission at Docket No. C-2018-3006234.

14. The service address and account number listed in the instant Second Complaint are identical to those at issue in the First Complaint.

15. Through the instant Second Complaint, the Complainant is seeking to litigate the same factual and legal issues that were raised or could have been raised in the First Complaint.

16. Under Section 5.101(a)(6) of the Commission's regulations, a party may file a preliminary objection if there is the "[p]endency of a prior proceeding." 52 Pa. Code § 5.101(a)(6).

17. "This preliminary objection is also referred to as the doctrine of *lis pendens*." *Shan v. Verizon Pa. Inc.*, 2012 Pa. PUC LEXIS 34, at *7 (Order entered Jan. 12, 2012).

18. The doctrine of *lis pendens* "is designed to protect a defendant from having to defend several suits on the same cause of action at the same time." *Hillgartner v. Port Auth.*, 936 A.2d 131, 137 (Pa. Cmwlth. 2007) (citations omitted).

19. The application of *lis pendens* "is purely a question of law determinable from an inspection of the records in the two causes." *Id.* (internal quotation marks omitted) (quoting *Procacina v. Susen*, 447 A.2d 1023, 1025 (Pa. Super. 1982)).

20. The doctrine requires proof that: (1) "the prior case is the same"; (2) "the parties are substantially the same"; and (3) "the relief requested is the same." *Hillgartner*, 936 A.2d at 137 (citations omitted).

21. Here, the first prong of the *lis pendens* test is met because: (1) both the instant Second Complaint and the First Complaint are contesting PPL Electric's planned installation of the new AMI meter at 430 S. Front Street, Sunbury, PA 17801; and (2) both of the Complaints allege that the new AMI meter should not be installed at that property due to alleged adverse health effects.

22. The second prong of the test is met because the Complainant filed both of the Complaints against PPL Electric. Therefore, the parties are the same.

23. Finally, the third prong of the test is met because in both Complaints, the Complainant has requested that PPL Electric not install the new AMI meter at 430 S. Front Street, Sunbury, PA 17801.

24. For these reasons, the instant Second Complaint should be dismissed because the claims and issues raised therein are already the subject of an ongoing litigation involving the First Complaint.

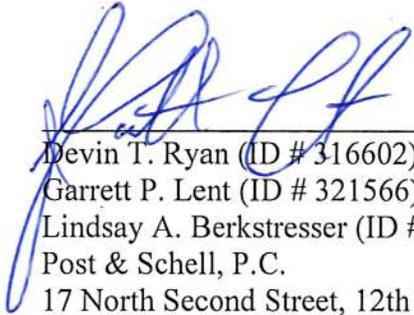
WHEREFORE, PPL Electric respectfully requests that the above-captioned Formal Complaint be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(6).

IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the above-captioned Formal Complaint filed by Roger Brodzinski at Docket No. C-2019-3011939 be dismissed in its entirety pursuant 52 Pa. Code § 5.101(a)(6).

Respectfully submitted,

Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID # 205681)
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Phone: 610-774-2599
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E-mail: crenner@w-r.com

Date: August 23, 2019

Attorneys for PPL Electric Utilities Corporation

APPENDIX A

**FORMAL COMPLAINT FILED BY ROGER
BRODZINSKI AGAINST PPL ELECTRIC
UTILITIES CORPORATION AT DOCKET NO.
C-2018-3006234 (FIRST COMPLAINT)**

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an informal complaint.

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name ROGER D BRODZINSKI

Street 430 S. FRONT ST.

City SUNBURY State PA Zip 17801-3016

County NORTHUMBERLAND

Telephone Number(s) Where We Can Contact You During the Day:

(570) 301-6676 (home) () (mobile)

E-mail Address (optional): sunsetcliff@gmail.com

Utility Account Number (from your bill) [REDACTED]

RECEIVED
2018 NOV 29 AM 10:38
PA PUC
SECRETARY'S BUREAU

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name

Street/P.O. Box

City State Zip

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

PPL ELECTRIC UTILITIES 2 NORTH 9TH STREET CPC-GENN1 ALLENTOWN, PA 18101-1175

Brodzinski

3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- ELECTRIC WASTEWATER/SEWER
- GAS TELEPHONE/TELECOMMUNICATIONS (local, long distance)
- WATER MOTOR CARRIER (e.g. taxi, moving company, limousine)
- STEAM HEAT

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain). **I am asking for a hearing on the safety risks of smart meters.**

Biodzinski

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space:

I wish to stay in service with my current analogue meter. I do not consent to the so called "smart meter" which is planned for installation in 2019.

I wrote to PPL to inform them I do not consent to a "smart meter". In their reply they tell me if I deny the smart meter, they will NOT sell me electricity. This meter will be located just inches from my head, for 16 hours a day.

I do not want any smart meter on my property. I do not consent. I wish to continue to purchase electricity as I have done for the past 30+ years.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

Brodzinski

6. Protection From Abuse (PFA)

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

Brodzinski

- c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

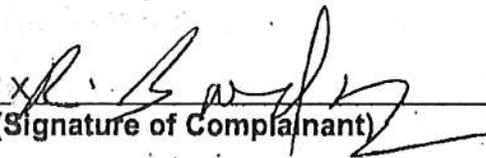
Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. Verification and Signature

You must sign your complaint. Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink**. **If you do not sign the Formal Complaint, the PUC will not accept it.**

Verification:

I ROGER D. BRODZINSKI, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).


(Signature of Complainant)

November 27, 2018
(Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee. If the Formal Complaint is **not signed** by one of these individuals, the PUC **will not accept it**.

10. Two Ways to File Your Formal Complaint

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

Note: Formal Complaints sent by fax or e-mail will **not** be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.



17120-007999

Harrisburg PA 17120

Secretary
Federal Public Utility Commission
400 NORTH ST



HARRISBURG PA 17120
NOV 27 1981

Brodzinski
430 S. FRONT ST
SUNBURY PA
17801

APPENDIX B

**FORMAL COMPLAINT FILED BY ROGER
BRODZINSKI AGAINST PPL ELECTRIC
UTILITIES CORPORATION AT DOCKET NO.
C-2019-3011939 (SECOND COMPLAINT)**

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an informal complaint.

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name Mr Roger Brodzinski

Street/P.O. Box 430 S. Front St

City Sunbury State PA Zip 17801-3016

County Northumberland

Telephone Number(s) Where We Can Contact You During the Day:

(570) 301-6676 (home) () (mobile)

E-mail Address (optional): sunsetcliff@gmail.com

Utility Account Number (from your bill)

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

____ PPL Electric Utilities 2 North 9th St. CPC-GENN1 _____ Allentown PA
18101-1175 _____

December 2014 1

3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint

(check only one): ELECTRIC WASTEWATER/SEWER

GAS TELEPHONE/TELECOMMUNICATIONS (local, long distance)

WATER MOTOR CARRIER (e.g. taxi, moving company, limousine)

STEAM HEAT

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places

and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific**

information. The utility is threatening to shut off my service or has already shut off my service.

I would like a payment agreement.

Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.

I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.

PPL demands I have the radiation spewing smart meter.. My home meter is about 3 feet from where my head is 14 hours a day. Such exposure to radiation, for long periods of time causes cancer. The state that there is no proof the meter causes cancer. Yet- they furnish no liability declaration sheet to pay for damages. There is no proof that the PPL smart meters *doesn't* cause cancer. In Docket No. C-2018-3006234, they sent an interrogatory full of intrusive questions that invade my privacy. I must plead the 5th amendment on that. Once your meter gives me cancer, you will not escape paying. Until and unless you have held a loved one in your arms as she died of cancer, you cant possibly know PPL smart meters are safe. Safe at close range. PPL is not acting in good faith. In the records, A PPL customer, had her Dr advise that she not be near the radioactive PPL smart meters... and yet- PPL in on this quest to force this. Castle doctrine, trumps the lame story that state law mandates smart meters. The

Constitution of the Commonwealth of Pennsylvania does not allow for such intrusions. Oddly enough my neighbors who are Amish and Menonite manage quite well with out PPL toxic meter mandate.

Other (explain).

PPL arranged a continuance on Docket No. C-2018-3006234- and the PUC granted it. However, when I asked for more time, PPL, the PUC went ahead and had the hearing with out me. I may file a complaint with the Deptment of Justice in regards to this, and the violation of ADA title II.

December 2014 2

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

I do NOT consent to a PPL smart meter just 3 feet from my human body for many hours a day. PPL is a corporation.. A corporation can not go to jail, and it can not get cancer. PPL had placed a burden on me.... Accept cancer in order to be connected to electricity. I dont want to hear that I cant opt out of the toxic smart meter. The human people are the Commonwealth. As such the Commonwealth can not force high risk intrusive gadgetry onto/into my home.

Under castle doctrine, a mans home is his castle.

We will continue our business as we have for the past 55 years. NO SMART METER ON MY HOUSE/body.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can

order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

December 2014 3

6. Protection From Abuse (PFA)

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company

representative about this
complaint?

YES NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

December 2014 4

- c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

PPL atty, Post & Schell mentioned agreeing/settling out of court. Yet- the terms are precisely the same as before this complaint was filed. No real attempt to settle was initiated on PPL behalf. Check out the letter.. It is a NON settlement item.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name I request the court appoint me one free of charge

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

You must sign your complaint. Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in ink. If you do not sign the Formal Complaint, the PUC will not accept it.

Verification

:

I Roger Brodzinski , hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

*Roger Brodzinski August 2, 2019 year
of our Lord*

(Signature of Complainant) (Date)

_____ Title of authorized employee
or officer (only applicable to corporations, associations, partnerships, limited liability
companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification must be signed by an authorized officer or authorized employee. If the Formal Complaint is not signed by one of these individuals, the PUC will not accept it.

10. Two Ways to File Your Formal Complaint

Electronically. You must create an account on the PUC's eFiling system, which may be

accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

**Secretary Pennsylvania Public Utility
Commission 400 North Street
Harrisburg, Pennsylvania 17120**

Note: Formal Complaints sent by fax or e-mail will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.

APPENDIX C

**AUGUST 5, 2019 INITIAL DECISION DISMISSING
THE FIRST COMPLAINT FILED BY ROGER
BRODZINSKI AGAINST PPL ELECTRIC
UTILITIES CORPORATION**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Roger Brodzinski

v.

PPL Electric Utilities Corporation

:
:
:
:
:

C-2018-3006234

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.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 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.

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF LEHIGH

I, Philip J. Walnock, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



PHILIP J. WALNOCK

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA FIRST CLASS DELIVERY

Roger D. Brodzinski
430 S. Front Street
Sunbury, PA 17801-3016

Date: August 23, 2019



Garrett P. Lent