

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Samuel Scamacca	:	
	:	
v.	:	C-2019-3007306
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Elizabeth H. Barnes  
Administrative Law Judge

**INTRODUCTION**

This Decision grants an oral 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 January 15, 2019, Samuel Scamacca (Mr. Scamacca or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket Number C-2019-3007306. In the complaint, Mr. Scamacca averred that he is being harassed by PPL’s employees concerning his refusal to accept a smart meter installation. Complainant requests permission to keep his current meter and maintain electric service at his residence, 68 Spokane Road, Albrightsville, Carbon County, Pennsylvania 18210. Complainant avers smart meters are a health and safety hazard as well as a breach of data privacy rights.

On January 22, 2019, PPL was served with the formal complaint. PPL filed an Answer on February 11, 2019, denying the material averments in the Complaint. PPL admitted to attempting installation of a smart meter on Complainant's residence. PPL admitted to sending Complainant a termination notice on January 10, 2019 because of denied access to Complainant's meter. PPL denied that the proposed smart meter poses any health, safety or data privacy issues.

On February 19, 2019, a Call-In Telephone Hearing Notice was issued scheduling a hearing for September 4, 2019 and assigning the case to me. On March 26, 2019, a Prehearing Order was issued. On August 28, 2019, PPL requested a continuance of the hearing from September 4, 2019 to September 10, 2019. As this request was unopposed, on August 29, 2019, a Call-In Telephone Cancellation/Reschedule Hearing Notice was issued rescheduling the September 4, 2019 hearing to 11:00 a.m. on September 10, 2019. The Hearing Notice stated that the Complainant must dial the toll-free bridge number in order to participate in the hearing. The Prehearing Order stated all parties and witnesses must call into the telephonic hearing at the toll free number and enter a PIN number. The Prehearing Order notified Complainant that his failure to participate by phone using this method would result in the case being dismissed for failure to appear. The Hearing Notices and Prehearing Order were sent to Complainant via regular mail.

On August 2, 2019, PPL submitted pre-marked exhibits and direct testimony. On August 13, 2019, PPL filed a Motion to Compel Responses to Set I Discovery Propounded on Samuel J. Scamacca. On August 26, 2019, an Order Granting Motion to Compel was issued. On September 3, 2019, PPL filed a Motion to Dismiss as a sanction for noncompliance with the Order Granting Motion to Compel. To date, no answer to the Motion to Dismiss has been filed.

The hearing convened at 11:00 a.m. on September 10, 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 11:00 a.m. resulted in the Presiding Officer

leaving a voice mail to call into the conference bridge with the phone number and password provided by 11:15 a.m. The presiding officer went on the record of the hearing at 11:16 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 Complainant via e-mail and regular mail on August 2, 2019, and that the cover letter attached to the company's exhibits reminded Mr. Scamacca of the hearing. Counsel indicated Mr. Scamacca was aware of the 11:00 a.m. scheduled hearing as indicated by his e-mailed correspondence with Attorney Ryan. Mr. Scamacca never requested a continuance of the hearing. The record closed on September 10, 2019. The oral Motion to Dismiss is ripe for a decision.

#### FINDINGS OF FACT

1. The Complainant in this case is Samuel Scamacca.
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 September 10, 2019.
4. Complainant received notice of the hearing on or about August 29, 2019.
5. Complainant received a Prehearing Order on or about March 26, 2019 notifying him that failure to call into the hearing, then scheduled for September 4, 2019, could result in a dismissal of his case for failure to appear.
6. The Hearing Notices and Prehearing Order were mailed to the address Complainant provided.
7. Neither the hearing notices nor the prehearing order were returned to the Commission as undeliverable.

8. During the hearing, counsel for PPL indicated that he had sent a copy of the company's exhibits to Mr. Scamacca on August 2, 2019, with a cover letter reminding Complainant 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. Scamacca filed a complaint against PPL seeking to stay termination proceedings of his service and a Commission directive that PPL not install an AMI RF Mesh meter at the service property. Mr. Scamacca, 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. Scamacca 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 Notices and Prehearing Order were sent to Mr. Scamacca through regular mail and were not returned to the Commission as being undeliverable. Accordingly, it must be presumed that the Hearing Notices sent to Mr. Scamacca in the ordinary course of business were received by Mr. Scamacca. *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, 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. Therefore, the Complainant is deemed to have received the documents and to have had sufficient notice of the day, date and time of the scheduled hearing. *Morella v. PECO Energy Company*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017). No motion for continuance had been made on Mr. Scamacca's behalf.

No one appeared on behalf of Mr. Scamacca at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, Mr. Scamacca 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. Scamacca 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).

