

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Adelaide Sumita	:	
	:	
v.	:	C-2019-3007855
	:	
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 February 13, 2019, Adelaide Sumita (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket Number C-2019-3007855. In the complaint, Ms. Sumita averred that she wished to opt out of smart meter installation at her service property.

PPL filed an Answer on March 1, 2019 denying the material averments in the Complaint.

On March 8, 2019, a Call In Telephone Hearing Notice was issued scheduling a hearing for September 16, 2019 and assigning the case to me. A Prehearing Order was issued on March 26, 2019. On August 14, 2019, PPL filed a Motion to Compel Responses to Set I

Discovery. An Order Granting Motion to Compel was issued on September 4, 2019. On September 10, 2019, PPL filed a Motion to Continue the September 16, 2019 Hearing to September 20, 2019. This request was granted and on September 10, 2019, the hearing was rescheduled to begin at 11:00 a.m. on September 20, 2019. On September 17, 2019 a Motion to Dismiss the Complaint as sanctions for failing to comply with the Order compelling discovery responses was filed by PPL.

Both Telephone Hearing Notices and the Prehearing Order indicated that a party may lose this case if they do not appear at the hearing. All Hearing Notices and the Prehearing Order were sent to Ms. Sumita at the address provided on her 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 Ms. Sumita.

The hearing convened at 11:00 a.m. on September 20, 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. An 11:00 a.m. call from the Presiding Officer to the telephone number Complainant provided on her complaint resulted in the Presiding Officer leaving a voice mail asking the complainant to call into the conference bridge number by 11:15 a.m. Complainant did not call into the conference number.

After waiting until 11:15 a.m. for Complainant to call in to the hearing, the presiding officer went on the record of the hearing. 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 Ms. Sumita via e-mail and regular mail on August 9, 2019, and that the cover letter attached to the company's exhibits reminded Ms. Sumita of the date and time of the hearing. The record closed on September 20, 2019. The oral motion to dismiss is ripe for a decision.

FINDINGS OF FACT

1. The Complainant in this case is Adelaide Sumita.
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 September 20, 2019.
4. A Hearing Cancellation/Reschedule Notice was issued on September 10, 2019, rescheduling the hearing to begin at 11:00 a.m. on September 20, 2019.
5. All Hearing Notices and a Prehearing Order were mailed to the address Complainant provided on her complaint.
6. No Hearing Notices or the Prehearing Order were returned to the Commission by the postal authorities as being undeliverable to Complainant.
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 Ms. Sumita via e-mail and regular mail on August 9, 2019, with a cover letter reminding Ms. Sumita 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, Ms. Sumita filed a complaint against PPL seeking to opt out of smart meter installation at her property. Ms. Sumita, 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 Ms. Sumita at the date and time set for the hearing in her 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 Ms. Sumita by regular first class mail and were not returned to the Commission as being undeliverable. Accordingly, it must be presumed that the Hearing Notices sent to Ms. Sumita in the ordinary course of business were received by Ms. Sumita. 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. Thus, it is evident Complainant received the notice of hearing and chose not to appear. Even though a message and opportunity to call into the conference bridge by 11:15 a.m. on September 20, 2019 was afforded Complainant by the presiding officer, Ms. Sumita did not dial into the conference call number provided by the Hearing Notice and provided by the presiding officer in her voicemail message.

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

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. Sumita'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. Sumita 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 oral Motion of PPL Electric Utilities Corporation to dismiss the formal complaint of Adelaide Sumita at Docket Number C-2019-3007855 for failure to prosecute is granted.

2. That the formal complaint filed by Adelaide Sumita against PPL Electric Utilities Corporation at Docket Number C-2019-3007855 is hereby dismissed with prejudice.

