

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Brendon and Jessica Weaver	:	
	:	
v.	:	C-2019-3011315
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants a motion to dismiss for failure to prosecute because the complainants failed to appear for the hearing at the designated date and time despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On July 2, 2019, Brendon and Jessica Weaver filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or the company), docket number C-2019-3011315. In their complaint, the Weavers averred that PPL is threatening to terminate their service or has already terminated their service. In the requested relief section of the formal complaint, the Weavers indicated that they do not want their meter to be replaced with a smart meter but would like to keep their current meter.

On July 23, 2019, PPL filed an answer to the Weaver's formal complaint. In its answer, PPL admitted that it has attempted to install a new automated metering infrastructure (AMI) meter at the Weaver's residence and that it sent termination notices to the Weavers because they have refused PPL representatives access to the premises to replace the meter. PPL denied, however, that the termination notice is in any way impermissible under the applicable laws and regulations. PPL provided additional discussion regarding why it believes that it is legally required to install the new AMI meter and that it is permitted to terminate service if it is prevented from replacing the meter. PPL requested that the complaint filed by the Weavers be denied in its entirety with prejudice.

On July 25, 2019, a hearing notice was issued setting an initial telephonic hearing for this matter for Thursday, October 10, 2019 at 10:00 a.m. and assigning me as the presiding officer. A prehearing order dated July 25, 2019 was also issued setting forth various procedural rules that would govern the hearing. Of note, the hearing notice stated that the parties must call in to the hearing on the date and time scheduled or the case will be dismissed. Similarly, the prehearing order stated, among other things, that: "If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party." Both the hearing notice and the prehearing order were sent to the Weavers at the address provided on their complaint via first-class mail. Neither was returned as undeliverable.

On September 17, 2019, PPL filed a motion to compel responses to discovery propounded on the Weavers. The Weavers did not file an answer to PPL's motion to compel. PPL's motion to compel was denied via order dated September 26, 2019.

The hearing convened on October 10, 2019, as scheduled. Devin Ryan, Esquire and Curtis Renner, Esquire appeared on behalf of PPL with four witnesses. No one appeared on behalf of the Weavers. Four pieces of written, direct testimony that PPL pre-served were admitted into the record during the hearing.

The record in this case consists of the hearing transcript of 12 pages. The record closed in this proceeding when the transcript was filed with the Commission on October 29,

2019. This Initial Decision grants the motion of PPL made at the conclusion of the hearing to dismiss the complaint for failure to prosecute.

FINDINGS OF FACT

1. The Complainants in this case are Brendon and Jessica Weaver.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address is 180 Kline Road, Denver, PA.
4. No one called in to the hearing as instructed on the hearing notice and in the prehearing order on behalf of the Weavers. Tr. 4
5. The hearing was delayed 14 minutes to accommodate any delay in anyone appearing at the hearing on behalf of the Weavers. Tr. 1.
6. The Weavers received notice of the hearing when they were sent a hearing notice via first-class mail to the address they provided on their formal complaint on July 25, 2019. Tr. 5.
7. The Weavers received notice of the hearing when they were sent a prehearing order via first-class mail to the address they provided on their formal complaint on July 25, 2019. Tr. 5.
8. Neither the hearing notice nor the prehearing order were returned to the Commission as undeliverable.
9. Both the hearing notice and the prehearing order indicated that a party may lose the case if they do not appear and take part in the hearing. Tr. 5.

10. Counsel for PPL indicated during the hearing that he spoke with Ms. Weaver in the past about the case regarding settlement and overdue discovery responses. Tr. 6.

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). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “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. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, based on a reading of their complaint, the Weavers complained that PPL is threatening to terminate their service because they do not want a smart meter installed at their home but would like to keep their current meter. The Weavers, therefore, have 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 the Weavers at the date and time set for the hearing in their 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 prehearing order and hearing notice were sent to the Weavers by regular first-class mail and neither were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to the Weavers in the ordinary course of business were received by the Weavers. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 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). Of note, the hearing notice and the prehearing order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

No one appeared on behalf of the Weavers at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, the Weavers had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, the Weaver'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. Tr. 9. By failing to appear and present any evidence in support of their complaint, the Weavers have failed to carry their burden. Thus, it is appropriate to dismiss the complaint. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995). 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. 54, 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 thereafter 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. The Weaver'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. The Weavers have failed to carry their burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PPL Electric Utilities Corporation to dismiss the formal complaint of Brendon and Jessica Weaver at docket number C-2019-3011315 for failure to prosecute is granted.
2. That the formal complaint filed by Brendon and Jessica Weaver against PPL Electric Utilities Corporation at docket number C-2019-3011315 is hereby dismissed.
3. That this matter be marked closed.

Date: November 1, 2019

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge