

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kathrine E. Hubel	:	
	:	
v.	:	C-2018-3002620
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This Decision grants a Motion to Dismiss Formal Complaint for Failure to attend prehearing conference and to Prosecute, because the Complainant failed to attend the April 24, 2019 prehearing conference as required by the Prehearing Conference Order entered on March 27, 2019.

HISTORY OF THE PROCEEDING

Kathrine E. Hubel (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) dated June 10, 2018, against Duquesne Light Company (Respondent or Company) alleging that Respondent was threatening to shut off electric service to her property because she does not consent to the installation of a smart meter. Complainant averred that she did not consent to the installation of a smart meter on her home because of safety issues and negative health consequences.

As relief, Complainant stated that she would like Respondent to be informed it has no authority to force customers against their will to accept a smart meter and averred it would “be inappropriate for someone whose physician has deemed it as harmful to the client’s health.”¹

On July 2, 2018, Respondent filed an Answer and New Matter to the Complaint, averring that it advised Complainant that for Respondent to continue to provide electric service to Complainant’s property, it must install a smart meter at the property. Respondent further averred that it advised Complainant that it would terminate service if Complainant refused to permit Respondent to install a smart meter at her home.

Respondent essentially denied the remaining material allegations set forth in the Complaint. Respondent further averred it is required by Act 129 of 2008,² to install a smart meter.

On July 2, 2018, Respondent also filed Preliminary Objections to the Complaint. Respondent essentially averred that the request to opt-out from the installation of a smart meter is not legally recoverable in the cause of action and that the Complaint is legally insufficient because it failed to state a claim upon which the Commission can grant relief.

On July 10, 2018, Respondent filed a motion for a prehearing conference in this proceeding.

On August 1, 2018, Complainant filed a written request for an extension of time to reply to Respondent’s Answer, New Matter and Preliminary Objections. On August 10, 2018, an Interim Order was entered granting Complainant an extension of time to file responsive pleadings to Respondent’s Answer, New Matter and Preliminary Objections no later than September 5, 2018. On August 7, 2018, Complainant filed a response to the Preliminary

¹ Formal Complaint at p. 3.

² 66 Pa.C.S. § 2806.1 *et seq.*

Objections and a response to the Answer and New Matter filed by Respondent. On August 29, 2018, Complainant filed a response to the request for a prehearing conference filed by Respondent.

A Motion Judge Assignment Notice was issued on August 7, 2018, and the undersigned Presiding Officer was assigned to this proceeding.

Respondent's Preliminary Objections were denied by Interim Order entered on October 1, 2018.

On October 1, 2018, an Interim Order was entered setting an initial litigation schedule in this proceeding.

On October 2, 2018, an Interim Order was entered scheduling a prehearing conference for Wednesday, October 24, 2018, at 10:00 a.m. The Parties were directed to be prepared to fully address the litigation schedule previously established in this matter and to address the presently identified issues and any outstanding issues in this case.

On March 7, 2019, Complainant filed a four-page letter with the Commission Secretary advising that she was discontinuing her Formal Complaint "against the PUC and Duquesne Light." Complainant stated in part that she does not believe that she will be "truly heard." A copy of the letter was provided to counsel for Respondent but not to the undersigned Presiding Officer.

On March 27, 2019, a Prehearing Conference Order was entered scheduling a prehearing conference in this case for Wednesday, April 24, 2019 at 11:00 a.m. The Parties were advised that to participate in the prehearing conference, they must dial the toll-free number listed on the Order. The Parties were further instructed that they must call into the prehearing conference on the scheduled day and time, and the failure to do so would result in the dismissal of their case. The Parties were further notified that all issues raised in Respondent's Status Report and Complainant's letter filed on March 7, 2019, would be addressed at the prehearing

conference. The Parties were also advised that all Parties would be provided with a full and fair opportunity to be heard in this matter. Finally, the Parties were advised that the failure to attend or participate at the prehearing conference would result in a dismissal of the Formal Complaint of Complainant or the defenses raised by Respondent, with prejudice.

The prehearing conference was convened as scheduled on Wednesday, April 24, 2019 at 11:00 a.m. Counsel for Respondent appeared and participated. Complainant did not appear at the prehearing conference, despite receiving notice at the address listed on her Formal Complaint. Respondent made a Motion to Dismiss the Complaint for failure of Complainant to attend the prehearing conference and to prosecute her Complaint. Counsel was asked to submit Respondent's request in writing and to provide notice to Complainant.

On October 24, 2019, Respondent filed a Motion To Dismiss Formal Complaint For Failure To Prosecute. Notice of the Motion was provided to Complainant at the address provided on her Complaint. Respondent stated in its Motion that it received correspondence from Complainant on March 2, 2019, stating that Complainant was discontinuing her Formal Complaint and that she expected to be contacted for an appointment for the meter exchange. Respondent further averred that it performed the meter exchange on or about March 25, 2019. Complainant did not file a response to the Motion to Dismiss.

The record closed by Interim Order entered on December 27, 2019.

FINDINGS OF FACT

1. Complainant in this case is Kathrine E. Hubel.
2. Respondent in this case is Duquesne Light Company.
3. On June 10, 2018, Kathrine E. Hubel filed a Formal Complaint against Duquesne Light Company alleging that Respondent was threatening to shut off electric service to her property because she does not consent to the installation of a smart meter.

4. On July 2, 2018, Respondent filed an Answer, denying the material averments set forth in the Complaint.

5. On March 2, 2019, Complainant sent a letter to Respondent stating that she was discontinuing her Formal Complaint.

6. On March 27, 2019, an Interim Order was entered scheduling a prehearing conference in this case for April 24, 2019 at 11:00 a.m. The Parties were advised that all issues raised in Complainant's letter dated March 2, 2019, and filed on March 7, 2019, would be addressed at the prehearing conference. The Parties were also advised that all Parties would be provided with a full and fair opportunity to be heard in this matter.

7. The Parties were also advised that the failure to attend or participate at the prehearing conference would result in a dismissal of the Formal Complaint of Complainant or the defenses raised by Respondent, with prejudice.

8. The Order was sent to Complainant at the address listed on her Formal Complaint and was not returned as undelivered to the Commission.

9. By notice dated April 3, 2019, the Commission scheduled this matter for a telephonic prehearing conference on April 24, 2019 at 11:00 a.m. The notice was sent to Complainant at the address listed on her Formal Complaint and was not returned as undelivered to the Commission.

10. Counsel for Respondent appeared and participated at the prehearing conference. Complainant did not attend the prehearing conference, did not request a continuance and did not provide an explanation for her absence.

11. On October 24, 2019, Respondent filed a Motion To Dismiss Formal Complaint For Failure To Prosecute. Notice of the Motion was provided to Complainant at the address provided on her Complaint.

12. Respondent stated in its Motion that it received correspondence from Complainant on March 2, 2019, stating that Complainant was discontinuing her Formal Complaint and that she expected to be contacted for an appointment for the meter exchange. Respondent further averred that it performed the meter exchange on or about March 25, 2019.

13. Complainant did not file a response to the Motion to Dismiss.

DISCUSSION

The withdrawal of pleadings in a contested proceeding is governed by Section 5.94 of the Commission's regulations. This Section provides:

§ 5.94. Withdrawal of pleadings in a contested proceeding.

(a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 20 days of service. After considering the petition, any objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

52 Pa.Code § 5.94(a).

In her request to withdraw her Complaint, Ms. Hubel stated that she was discontinuing her Formal Complaint. Complainant did not request any additional time to process her case or another extension of the litigation schedule in this proceeding. Respondent did not object to Ms. Hubel's request to withdraw her Complaint.

To the extent that Ms. Hubel no longer wishes to pursue the issues she raised in her Complaint, that is her prerogative as Complainant. It is not in the public interest to require a Complainant to continue to pursue a Complaint if he or she no longer wishes to do so. Various issues were properly raised against Respondent at a prior prehearing conference that was

scheduled in order to provide Complainant the opportunity to be heard on those issues and to participate in an evidentiary hearing.

On March 27, 2019, an Interim Order was entered scheduling a prehearing conference in this case for Wednesday, April 24, 2019 at 11:00 a.m. The purpose of the prehearing conference was to explain the significance of withdrawing a Formal Complaint filed with the Commission and to answer any questions Complainant might have had concerning the proceeding.

The Parties were instructed that they must call into the prehearing conference on the scheduled day and time, and the failure to do so would result in the dismissal of their case. The Parties were further notified that all issues raised in Complainant's letter dated March 2, 2019, and filed on March 7, 2019, would be addressed at the prehearing conference. The Parties were also advised that all Parties would be provided with a full and fair opportunity to be heard in this matter. Finally, the Parties were advised that the failure to attend or participate at the prehearing conference would result in a dismissal of the Formal Complaint of Complainant or the defenses raised by Respondent, with prejudice.

The prehearing conference was convened as scheduled on April 24, 2019 at 11:00 a.m. Counsel for Respondent appeared and participated. Complainant did not appear at the prehearing conference, despite receiving notice at the address listed on her Formal Complaint. Respondent made a Motion to Dismiss the Complaint for failure of Complainant to attend the prehearing conference and to prosecute her Complaint. Counsel was asked to submit Respondent's request in writing and to provide notice to Complainant.

On October 24, 2019, Respondent filed a Motion To Dismiss Formal Complaint For Failure To Prosecute. Notice of the Motion was provided to Complainant at the address provided on her Complaint. Complainant did not file a response to the Motion to Dismiss.

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, however, when the administrative agency provides the parties with notice and the opportunity to be heard.

The Commission sent notice of the prehearing conference in this case to Complainant prior to the conference scheduled for April 24, 2019, by regular first-class mail to the address stated on the Formal Complaint. The notice was not returned to the sender.

In addition, a prehearing order dated March 27, 2019 was issued which, *inter alia*, directed the Parties to appear and participate at the prehearing conference and that the failure to appear would result in the dismissal of the case. The prehearing order, which was mailed to Complainant at the address shown on the Formal Complaint, was never returned as undelivered. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by Complainant. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa.Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 449 A.2d 658 (Pa.Super. 1982).

Complainant did not appear for the scheduled conference because she did not call the conference number shown on the order dated March 27, 2019. Under these circumstances, it appears Complainant had ample opportunity to appear and be heard in this proceeding but did not do so. Therefore, the due process rights of Complainant have been fully protected. *Sentner v. Bell Telephone Co. of Pa.* Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear for the prehearing conference, Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Duquesne Light Company to dismiss the Formal Complaint filed by Kathrine E. Hubel at Docket No. C-2018-3002620 is granted.

2. That the Formal Complaint of Kathrine E. Hubel filed against Duquesne Light Company at Docket No. C-2018-3002620 is dismissed with prejudice for failure of Complainant to appear for the prehearing conference and prosecute the Complaint.

3. That the docket at Docket No. C-2018-3002620 is marked closed.

Date: January 17, 2020

/s/
Jeffrey A. Watson
Administrative Law Judge