

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anthony Poroszlai	:	
	:	
v.	:	C-2018-3006190
	:	
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 November 26, 2018, Anthony Poroszlai (Mr. Poroszlai or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket Number C-2018-3006190. In the complaint, Mr. Poroszlai requested the removal of a smart meter that was recently installed on his property without his consent and he averred that he wished to opt-out of smart meter installation at an adjoining property. Complainant listed three separate account numbers on his complaint.

PPL filed an Answer on December 17, 2018, denying the material averments in the complaint. The Complainant's name, address and telephone numbers were admitted. PPL denied that the first and third utility account numbers listed in Paragraph 1 were PPL Electric

account numbers open in the Complainant's name. The second account number listed in Paragraph 1 was admitted, as PPL averred that it was a PPL Electric account number for an account open in the Complainant's name. PPL averred that Complainant has two PPL Electric service accounts in his name. The first number listed in Paragraph 1 is actually the meter number for one of the Complainant's accounts ("First Account"), and the second number listed in Paragraph 1 is the correct account number for the Complainant's other account ("Second Account"). The third number listed is a meter number for an account in a different person's name. PPL admitted that it installed a new automated metering infrastructure ("AMI") meter for the Complainant's First Account and that the Company has attempted to install new automated metering infrastructure ("AMI") meters for the Complainant's Second Account and for the Third Account referenced in the complaint, which is in a different person's name.

On December 21, 2018, a Telephone Hearing Notice was issued scheduling a hearing on July 23, 2019. On July 12, 2019, PPL requested a continuance of the hearing because one of its witnesses could no longer attend. PPL requested the hearing be continued to December 17, 2019. As this request was unopposed, on July 16, 2019, a Call-In Telephonic Hearing Change Notice was issued cancelling the July 23, 2019 hearing and rescheduling it to December 17, 2019. Due to administrative error, the hearing did not take place as scheduled on December 17, 2019. On December 20, 2019, the hearing was rescheduled to 10:00 a.m. on January 30, 2020. The January 30, 2020 Hearing Notice stated, "At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge." All Hearing Notices and Prehearing Orders were sent to Mr. Poroszlai 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.

The hearing convened at 10:00 a.m. on January 30, 2020 as scheduled. Garrett Lent, Esquire, and Curtis Renner, Esquire, appeared as counsel of record for PPL. N.T. 4. Also present were PPL witnesses Mike Asbury, Kevin Durkin, Dr. Mark Israel, and Dr. Christopher Davis. Complainant did not appear. N.T. 4. Complainant did not submit pre-marked exhibits for the hearing. A call from the Presiding Officer to the two telephone numbers Complainant

provided on his complaint resulted in the Presiding Officer leaving two voice mails to call into the conference bridge by 10:20 a.m. After waiting a reasonable amount of time for Complainant to appear, the Presiding Officer went on the record of the hearing at 10:22 a.m. N.T. 4-5. PPL's counsel made an oral motion to dismiss the complaint with prejudice for failure to appear and prosecute. N.T. 4. Counsel for PPL indicated that PPL's exhibits were sent to Mr. Poroszlai on December 6, 2019 (via first class mail) and January 23, 2020 (via overnight delivery), and that the cover letter attached to the company's exhibits reminded Mr. Poroszlai of the date and time of the hearing. The record closed on January 30, 2020. The oral motion to dismiss is ripe for a decision.

#### FINDINGS OF FACT

1. The Complainant in this case is Anthony Poroszlai.
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 January 30, 2020.
4. The service property is 1012 Delaware Avenue, Bethlehem, Pennsylvania in Lehigh County.
5. Complainant does not want smart meters installed at three metered accounts ending in the numbers: 9315, 8006 and 4535.
6. Complainant received notice of the hearing on or about December 20, 2019, when a Hearing Notice was issued scheduling the hearing at 10:00 a.m. on January 30, 2020.
7. All Hearing Notices and Prehearing Orders were mailed to the address Complainant provided on his complaint.

8. No Hearing Notices or the Prehearing Order were returned to the Commission by the postal authorities as being undeliverable to Complainant.
9. Counsel for PPL appeared at the hearing at 10:00 a.m. on January 30, 2020.
10. No one appeared for Complainant at the hearing as instructed on the hearing notice.
11. The Presiding Officer called the two telephone numbers appearing on the complaint in an attempt to reach Complainant and left voice mail messages with the conference number and PIN numbers to call into the hearing. N.T. 4.
12. The hearing was delayed until 10:22 a.m. to give Complainant an opportunity to call into the hearing. N.T. 4.
13. Complainant received a hearing notice on or about December 20, 2019 indicating that he may lose his case if he did not appear at the hearing at 10:00 a.m. on January 30, 2020.
14. During the hearing, counsel for PPL indicated that he had sent a copy of the company's exhibits to Complainant on December 6, 2019 and January 23, 2020, with cover letters reminding him of the date and time of the hearing, and that the documents were confirmed as delivered. N.T. 4-5.

#### 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. Poroszlai filed a complaint against PPL seeking to opt-out of smart meter installations at his properties. Therefore, Mr. Poroszlai 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 afforded notice and the opportunity to be heard. Id.

No one appeared on behalf of Complainant 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. Poroszlai 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 Mr. Poroszlai in the ordinary course of business were received by him. 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 Lent, indicated that he had sent the company's exhibits prior to the hearing and that they were confirmed as delivered.

No one appeared on behalf of Mr. Poroszlai at the time of the hearing, nor did anyone ever request a postponement or continuance of the hearing. As such, Complainant 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. Poroszlai 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 afforded 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. Poroszlai'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)(1).

7. Mr. Poroszlai failed to carry his burden of proof in this proceeding because he failed to appear and prosecute the complaint at the hearing.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to dismiss the formal complaint of Anthony Poroszlai at Docket Number C-2018-3006190 for failure to prosecute is granted.

2. That the formal complaint filed by Anthony Poroszlai at Docket Number C-2018-3006190 is hereby dismissed with prejudice.

