

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lori Bae and Myung Bae	:	
	:	
v.	:	C-2018-3003332
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey Watson
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Lori Bae and Myung Bae for their failure to attend and participate in the evidentiary hearing on July 16, 2020, after receiving notice on June 16, 2020.

HISTORY OF THE PROCEEDING

Lori Bae and Myung Bae (Complainants) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or the Company) on July 5, 2018, objecting to the installation of a smart meter at their residence at 186 Hummingbird Trail, Bushkill, Pennsylvania (service location), due to their alleged sensitivity to electromagnetic frequency (EMF). As relief, Complainants requested that they be allowed to keep their existing analog meter.

On July 31, 2018, Respondent filed an Answer and New Matter to the Complaint, admitting that it provides residential electric service to Complainant at the service location, and

averring that Complainant has refused the installation of a smart meter at the service location; Respondent is required by Act 129 of 2008¹ (Act 129) and its Commission-approved Smart Meter Deployment Plan (SMP) to install a smart meter at the service location; and Complainant's refusal to allow the installation of a smart meter constitutes legal grounds to terminate service to the service location. Respondent denied the remaining material allegations set forth in the Complaint.

On July 31, 2018, Respondent also filed a Preliminary Objection to the Complaint. Respondent averred that the request for relief for an exemption from the installation of a smart meter is not legally recoverable in the cause of action and that Complainants have failed to allege that Respondent violated any Commission statute, regulation, order or tariff provision with regard to the installation of the smart meter at the residential account. Respondent further averred it is required by Act 129 to install a smart meter at the service location and that, as a matter of law, the Company is required to install a smart meter at the service location. Finally, Respondent argued that the Formal Complaint is legally insufficient because it failed to state a claim upon which the Commission can grant relief, that a hearing is not in the public interest, and that the Complaint does not meet the standards set forth in recent Commission decisions in order to survive preliminary objections.

On August 23, 2018, Complainants filed a letter with the Commission dated August 20, 2018, requesting an extension of time to file a response to the Answer and New Matter filed by Respondent.

A motion judge assignment was issued on August 30, 2018, assigning this proceeding to the undersigned presiding officer to rule on issues arising during the preliminary phase of this proceeding.

¹ 66 Pa.C.S. § 2806.1 *et seq.*

On September 19, 2018, an Interim Order was entered granting Complainants' request for an extension of time to file a response to the Answer and New Matter, not later than October 1, 2018.

On October 3, 2018, Complainants filed a letter dated September 28, 2018, explaining the basis for their request to opt-out of the proposed smart meter installation.

On November 6, 2018, an Interim Order was entered denying the preliminary objection filed by Respondent.

On July 23, 2019, an Interim Order was entered establishing a litigation schedule in this proceeding. The evidentiary hearing was scheduled for February 12, 2020.

On February 7, 2020, Complainants provided the undersigned presiding officer with a letter advising that they did not receive the hearing notice scheduling the hearing; Complainants requested that the evidentiary hearing be continued.

On February 7, 2020, an Interim Order was entered granting Complainants' request for a continuance.

On February 10, 2020, an Interim Order was entered revising the litigation schedule. The parties were directed to identify fact and expert witnesses and provide the other party in writing, the name and business address of that person and a written summary of the expected testimony of that person. If no fact witnesses will be called to testify, the parties were directed to provide a writing indicating this fact, on or before March 13, 2020. The parties were also directed to conclude discovery in this proceeding on or before April 3, 2020. Finally, the parties were directed to promptly contact all of their respective witnesses and identify all dates in which the witnesses will be able to provide testimony from April 27, 2020 through May 22, 2020. The parties were directed to promptly confer after contacting their witnesses and attempt to agree upon at least two alternative dates for the hearing. If the parties could agree on hearing dates, the parties were directed to identify the agreed upon proposed dates for the scheduled

hearing in a joint letter or status report. Otherwise each party was directed to submit a separate letter or status report on or before April 10, 2020.

On April 10, 2020, Respondent filed a status report. Respondent stated that Complainants indicated they may have additional expert and fact witnesses but failed to timely complete witness notification as was ordered. Respondent further advised that counsel conferred with Ms. Bae who agreed upon a telephone hearing and hearing dates including July 16, 2020.

On June 16, 2020, a hearing notice was issued to the parties scheduling a hearing for July 16, 2020 at 10:00 a.m. The notice provided instructions to the parties regarding how to participate in the hearing and advised the parties in bold underlined print that the failure to participate in the hearing may result in the dismissal of their case. The parties were further notified that they would not be called by the undersigned presiding officer and that it was their obligation to call into the hearing. The notice was eServed on the parties at the email addresses provided by the parties.

The evidentiary hearing was convened as scheduled on July 16, 2020 at 10:00 a.m. Tori L. Giesler, Esquire and Lauren Lepkoski, Esquire, appeared on behalf of Respondent. Witness John Ahr also appeared for Respondent. Complainants did not appear and participate at the hearing. The undersigned kept the conference line open until approximately 10:22 a.m.; however, Complainants failed to appear. Subsequently, counsel for Respondent moved to dismiss the Formal Complaint with prejudice for failure of Complainants to participate at the hearing and to meet their burden of proof. I stated that the motion to dismiss the Complaint would be granted under the circumstances.

Complainants did not provide the undersigned presiding officer with any explanation for their failure to appear at the hearing and did not request a continuance. The Complaint is being dismissed via this Initial Decision.

The record closed upon conclusion of the proceeding on July 16, 2020.

FINDINGS OF FACT

1. Complainants are Lori Bae and Myung Bae who reside at residence at 186 Hummingbird Trail, Bushkill, Pennsylvania. (service location).
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. On July 5, 2018, Complainants filed a Formal Complaint against Respondent, objecting to the installation of a smart meter at their residence due to their alleged sensitivity to electromagnetic frequency (EMF). As relief, Complainants requested that they be allowed to keep their existing analog meter.
4. On July 31, 2018, Respondent filed an Answer and New Matter to the Complaint, averring that Respondent was required to install a smart meter at the service location, and that Complainant failed to allege a violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission.
5. On July 23, 2019, an Interim Order was entered establishing a litigation schedule in this proceeding.
6. The evidentiary hearing was scheduled in this proceeding for February 12, 2020.
7. On February 7, 2020, Complainants provided the undersigned presiding officer with a letter advising that Complainants did not receive the hearing notice scheduling the hearing in this case and requesting that the evidentiary hearing be continued.
8. On February 7, 2020, an Interim Order was entered granting Complainants' request for a continuance.

9. On February 10, 2020, an Interim Order was entered revising the litigation schedule entered in this proceeding. The parties were directed to identify fact and expert witnesses and provide the other party in writing, the name and business address of that person and a written summary of the expected testimony of that person. If no fact witnesses will be called to testify, the parties were directed to provide a writing indicating this fact, on or before March 13, 2020. The parties were also directed to conclude discovery in this proceeding on or before April 3, 2020.

10. The parties were also directed in the February 10, 2020, Interim Order to promptly contact all of their respective witnesses and identify all dates in which the witnesses will be able to provide testimony in this proceeding. The parties were directed to promptly confer after contacting their witnesses and attempt to agree upon at least two alternative dates for the hearing in this proceeding. If the parties could agree on hearing dates, the parties were directed to identify the agreed upon proposed dates for the scheduled hearing in a joint letter or status report. Otherwise each party was directed to submit a separate letter or status report on or before April 10, 2020.

11. On April 10, 2020, Respondent filed a status report. Respondent stated that Complainants indicated they may have additional expert and fact witnesses but failed to timely complete witness notification as was ordered in this proceeding. Respondent further advised that counsel conferred with Ms. Bae who agreed upon a telephone hearing and hearing dates including July 16, 2020.

12. On June 16, 2020, a hearing notice was issued scheduling a hearing for July 16, 2020 at 10:00 a.m. The notice provided instructions to the parties regarding how to participate in the hearing and advised the parties in bold underlined print that the failure to participate in the hearing may result in the dismissal of their case. The parties were further notified that they would not be called by the undersigned presiding officer and that it was their obligation to call into the hearing. The notice was eServed on the parties at the email addresses provided by the parties.

13. The evidentiary hearing was convened as scheduled on July 16, 2020 at 10:00 a.m. Tori L. Giesler, Esquire and Lauren Lepkoski, Esquire, appeared on behalf of Respondent. Witness John Ahr also appeared for Respondent. Complainants did not appear and participate at the hearing. The undersigned kept the conference line open until approximately 10:22 a.m.; however, Complainants failed to appear.

14. Counsel for Respondent moved to dismiss the Formal Complaint with prejudice for failure of Complainants to participate at the hearing conference and to meet their burden of proof.

DISCUSSION

In its Motion to Dismiss, Respondent argued that the Complaint should be dismissed due to Complainants' failure to appear at the evidentiary hearing 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, however, when the administrative agency provides the parties notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to Complainants prior to the hearing scheduled for July 16, 2020, by eService at the email address provided by Complainants. In addition, Respondent provided Complainants with a letter dated July 8, 2020, at that email address confirming the date of the scheduled hearing and providing the proposed evidence from Respondent.

The hearing notice, which was eServed to Complainants at the email address provided by Complainant, was electronically served as requested by Complainants. There was no indication presented that the notice was not delivered to Complainants. Accordingly, I must presume that this notice, which was sent in the ordinary course of business, in electronic form as requested by Complainants, was received by Complainants. *Morella v.*

PECO Energy Company, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

Complainants did not appear for the scheduled hearing because they did not call the conference number shown on the June 16, 2020 hearing notice. Under these circumstances, it appears Complainants 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).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this complaint, Complainants bear the burden of proving by a preponderance of the evidence that they are entitled to relief. By failing to appear and proffer any evidence to support their Complaint, Complainants have failed to meet this burden. Under these circumstances, the Complaint should be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and 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.

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 hearing and proffer any evidence to support the Complaint, Complainants have failed to meet their burden of proving that they are entitled to the relief that they seek from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Metropolitan Edison Company to dismiss the Formal Complaint filed by Lori Bae and Myung Bae at Docket No. C-2018-3003332 is granted.

2. That the Formal Complaint of Lori Bae and Myung Bae v. Metropolitan Edison Company at Docket No. C-2018-3003332 is dismissed with prejudice for failure of Complainants to appear for the hearing and prosecute the Complaint.

3. That the docket at Docket No. C-2018-3003332 is marked closed.

Date: July 28, 2020

/s/
Jeffrey A. Watson
Administrative Law Judge