

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Treasure Hoffman	:	
	:	
v.	:	C-2019-3010414
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION ON REMAND**

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 on remand despite being given notice of the hearing.

**HISTORY OF THE PROCEEDING**

On June 5, 2019, Treasure Hoffman (Complainant) filed with the Pennsylvania Public Utility Commission (Commission) the instant complaint at Docket No. C-2019-3010414, challenging the installation of a new AMI or smart meter at 4 North Street, Port Clinton, Pennsylvania, due to alleged adverse health effects experienced by Complainant's mother, Evangeline Hoffman-Lorah. Treasure Hoffman averred that her mother was co-owner of the residence.

PPL Electric Utilities Corporation (PPL) filed an answer and new matter as well as preliminary objections on July 1, 2019, arguing the Commission should dismiss the complaint

because the issues were already the subject of an ongoing litigation on appeal before the Commonwealth Court, citing as support 52 Pa. Code § 5.101(a)(6) (pendency of a prior proceeding or agreement for alternative dispute resolution). PPL argued the doctrine of *lis pendens* applied to block PPL from having to defend itself in several identical suits at the same time.

On July 30, 2019, the instant complaint was assigned to me as Motion Judge for a disposition regarding the preliminary objections. I granted the preliminary objections and issued an Initial Decision on August 16, 2019, denying and dismissing the complaint. The Commission entered an Opinion and Order on December 19, 2019, reversing my Initial Decision and remanding this matter for a hearing regarding the following issues: 1) whether PPL's notice prior to an AMI meter installation at the service property was adequate; and 2) whether Ms. Hoffman should be able to opt-out of an AMI meter installation due to her own health and safety issues, separate and apart from her mother's issues in *Evangeline Hoffman-Lorah v. PPL Electric Utilities Corp.*, Docket No. C-2018-2644957 (Opinion and Order entered May 23, 2019), appeal filed May 28, 2019 at No. 712 CD 2019 before the Commonwealth Court of Pennsylvania. *Treasure Hoffman v. PPL Electric Util. Corp.*, Docket No. C-2019-3010414, p. 16 (Opinion and Order entered December 19, 2019).

By Notice dated December 20, 2019, an Initial Telephonic Call-In Hearing was scheduled for February 13, 2020 at 10:00 a.m. A Prehearing Order was issued on December 26, 2019. On January 30, 2020, PPL requested an unopposed continuance to March 27, 2020. A Notice was issued on January 31, 2020, rescheduling the hearing to March 27, 2020 and a Second Prehearing Order on Remand was issued the same date. On March 6, 2020, PPL filed a Motion in Limine to preclude Complainant from introducing into evidence health records and testimony regarding Complainant's mother. On March 17, 2020, a Notice was issued cancelling the March 27, 2020 hearing due to the closure of the Commission's offices in response to the COVID-19 pandemic.<sup>1</sup>

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<sup>1</sup> The Commission's offices were closed beginning on March 16, 2020, pursuant to an Executive Order issued by the Pennsylvania Deputy Secretary for Human Resources and Management due to the COVID-19 pandemic. However, the Commission has continued working remotely.

On May 19, 2020, a Notice was issued rescheduling the hearing to July 7, 2020. On July 2, 2020, PPL filed a letter requesting that the time of the hearing on July 7, 2020 be changed from 10:00 a.m. to 1:00 p.m. As this request could not be accommodated by the ALJ's schedule, the hearing was rescheduled via Notice dated July 8, 2020 to August 20, 2020 at 10:00 a.m. Before July 7, 2020, staff from the Office of Administrative Law Judge (OALJ) attempted to contact Complainant to notify her that the July 7, 2020 hearing was cancelled and would be rescheduled. Voice mail messages were left at the phone number provided by Complainant on her complaint.

The Hearing Notices 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 Presiding Officer.”** (emphasis in original). All Hearing Notices and Prehearing Orders were sent to Ms. Hoffman at the address provided on her complaint via first-class mail. The postal authorities did not return any Hearing Notices or Prehearing Orders to the Commission as being undeliverable to Ms. Hoffman.

The hearing convened at 10:00 a.m. on August 20, 2020 as scheduled. Devin Ryan, Esquire, and Curtis Renner, Esquire, appeared as counsel of record for PPL. Also present were PPL's witnesses. Complainant did not appear. After waiting fifteen minutes for Complainant to appear, the presiding officer went on the record of the hearing at 10:15 a.m. 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. Hoffman and that the cover letter attached to the company's exhibits reminded her of the date and time of the hearing. Counsel indicated Ms. Hoffman never returned e-mail messages to settle the matter prior to the hearing. The record closed on August 25, 2020, the date a seven-page transcript was filed. The oral motion to dismiss is ripe for a decision.

#### FINDINGS OF FACT

1. The Complainant in this case is Treasure Hoffman.

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 August 20, 2020.
4. Complainant received notice of the hearing on July 8, 2020, when a Hearing Cancellation/Reschedule Notice was issued rescheduling the hearing from July 7, 2020 to August 20, 2020.
5. All Hearing Notices and Prehearing Orders on Remand were mailed to the address Complainant provided on her complaint.
6. No Hearing Notices or Prehearing Orders on Remand were returned to the Commission by the postal authorities as being undeliverable to Ms. Hoffman.
7. During the hearing, counsel for PPL indicated that he had sent a copy of the company's exhibits to Ms. Hoffman via e-mail and regular mail with a cover letter reminding Ms. Hoffman 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. Hoffman filed a complaint against PPL seeking to opt out of smart meter installation at her property. Ms. Hoffman, 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 afforded notice and the opportunity to be heard. Id.

No one appeared on behalf of Ms. Hoffman at the date and time set for the hearing in her case despite being given 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 July 8, 2020 Hearing Notice rescheduling the telephonic hearing on remand for August 20, 2020 was sent to Complainant by regular first-class mail and was not returned to the Commission as being undeliverable. Accordingly, it must be presumed that the Hearing Notice sent to Ms. Hoffman in the ordinary course of business was received by Ms. Hoffman. 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 Ms. Hoffman the company's exhibits prior to the hearing and that they were confirmed as delivered.

No one appeared on behalf of Ms. Hoffman at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, Ms. Hoffman 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 Co. of Pa., 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. Hoffman 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 Co., 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. PPL's Motion in Limine to exclude evidence regarding Evangeline Hoffman-Lorah's health will be denied as moot.

#### 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 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. Ms. Hoffman's due process rights have been fully protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

7. Ms. Hoffman 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 Motion of PPL Electric Utilities Corporation to dismiss the formal complaint of Treasure Hoffman at Docket Number C-2019-3010414 for failure to prosecute is granted.

2. That the formal complaint filed by Treasure Hoffman at Docket Number C-2019-3010414 is hereby dismissed with prejudice.

3. That PPL Electric Utilities Corporation's Motion in Limine is denied as moot.

4. That Docket Number C-2019-3010414 shall be marked closed by the Secretary's Bureau.

Date: September 22, 2020

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/s/  
Elizabeth H. Barnes  
Administrative Law Judge