

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anthony Venini	:	
	:	
v.	:	C-2018-3006469
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION ON REMAND

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

This Initial Decision on Remand dismisses the Formal Complaint filed by a customer against an electric distribution company (EDC) for failure to appear at a scheduled hearing on March 11, 2020 and prosecute issues regarding alleged incorrect and high charges on the customer's account.

HISTORY OF THE PROCEEDING

On December 7, 2018, Anthony Venini (Complainant) filed a Formal Complaint against PPL Electric Utilities Corporation (PPL or Respondent) with the Pennsylvania Public Utility Commission (Commission) seeking to prevent installation of a smart meter at his residence, 1094 Graber Road, Red Hill, Montgomery County, Pennsylvania. Complainant alleged that PPL is threatening to shut off his electric service because he won't allow it to install a smart meter. Complainant averred that he has electromagnetic hypersensitivity and wanted to keep an analog meter because of the radio frequency (RF) radiation emitted by a smart meter. In addition, Complainant averred that his bills were increasing monthly and that there were incorrect charges on his account.

On December 11, 2018, PPL was served with the Complaint. On December 28, 2018, PPL filed a timely Answer admitting it had attempted to install a new automated metering infrastructure (AMI) meter at Complainant's property and had sent Complainant a termination notice for failure to provide access to the premises to install the meter. However, PPL denied the termination notice was unlawful and denied the AMI meter is a health hazard or an invasion of privacy. PPL responded that it is legally required to install AMI meters.

On January 10, 2019, a Notice was issued scheduling a telephonic evidentiary hearing for July 1, 2019. On January 17, 2019, a Prehearing Order was issued establishing procedural rules as well as a deadline for Complainant to serve PPL his expert witness' written testimony and exhibits by April 1, 2019. Complainant did not serve any list of witnesses, written testimony or exhibits by April 1, 2019. On June 24, 2019, PPL filed a request for a continuance of the hearing, which was granted. The hearing was rescheduled to November 19, 2019 and a Second Prehearing Order was issued on August 5, 2019, directing Complainant to serve copies of statements, reports and any direct written testimony of any expert witnesses he intended to call at the hearing upon Respondent by September 16, 2019.

PPL served its Set I Interrogatories and Requests for Production of Documents (Set I) upon Complainant on April 2, 2019. Objections, if any, were due by April 12, 2019, and responses were due on or before April 25, 2019. Complainant never served objections or responses to PPL. On September 12, 2019, PPL filed a Motion to Compel. An Order Granting Motion to Compel was issued on September 30, 2019, compelling Complainant to answer Set I Interrogatories Questions 1-7 by October 20, 2019. Complainant did not serve any statements, reports or direct testimony of any expert witness to PPL. Complainant did not comply with the Order compelling discovery responses pursuant to 52 Pa. Code § 5.321.

In the event no response was filed on or before October 20, 2019, Respondent was entitled to file a motion for sanctions pursuant to 52 Pa. Code § 5.371. On October 21, 2019, Respondent filed a Motion to Dismiss the Formal Complaint with a notice to plead instructing Complainant to reply within five days from the date of service of the motion pursuant to 52 Pa.

Code § 5.371(b) (relating to sanctions – general). Complainant did not file a response to the Motion.

On November 15, 2019, an Initial Decision was issued granting PPL’s Motion to Dismiss, cancelling the evidentiary hearing scheduled for November 19, 2019, and dismissing the Complaint with prejudice. No exceptions were filed to the Initial Decision; however, on January 29, 2020, the Commission entered an Opinion and Order modifying the Initial Decision. The Commission affirmed the denial and dismissal of the “smart meter allegations” but reversed and remanded Docket No. C-2018-3006469 to the Office of Administrative Law Judge for proceedings to address the incorrect charges and high billing allegations of the Formal Complaint of Anthony Venini filed on December 7, 2018

On January 30, 2020, a Call-In Telephone Hearing Notice was issued scheduling a hearing for 10:00 a.m. on March 11, 2020. Also on January 30, 2020, a Third Prehearing Order was issued which, *inter alia*, again notified Complainant of the date and time for the hearing and the call in phone number to attend the hearing on March 11, 2020.

The hearing was held as scheduled on March 11, 2020. The Complainant failed to appear at this hearing. Complainant did not request a continuance prior to the hearing date. To date, Complainant has not offered an excuse for missing the hearing or requested a further hearing. Counsel for PPL moved to dismiss the Complaint with prejudice for failure to appear and prosecute.

The record closed on March 11, 2020 at the conclusion of the hearing. PPL’s oral Motion to Dismiss made at the hearing is ripe for a decision.

FINDINGS OF FACT

1. Complainant is Anthony Venini.
2. Respondent is PPL Electric Utilities Corporation, a jurisdictional electric distribution company.

3. The service location is 1094 Graber Road, Red Hill, Montgomery County, Pennsylvania.

4. On December 7, 2018, Complainant filed a Complaint against Respondent, challenging the planned installation of PPL's new automated metering infrastructure (AMI) meter at the service location and alleging incorrect charges on his bill.

5. On December 11, 2018, the Complaint was served upon Respondent.

6. On December 28, 2018, PPL timely filed its Answer and New Matter to the Complaint responding that Respondent was required to install an AMI meter.

7. The Commission's Opinion and Order entered on January 29, 2020, affirmed in part and reversed in part an Initial Decision issued on November 15, 2019.

8. The Commission affirmed the denial and dismissal of the "smart meter allegations" but remanded Docket No. C-2018-3006469 to the Office of Administrative Law Judge for proceedings to address the incorrect charges and high billing allegations of the Formal Complaint of Anthony Venini filed on December 7, 2018.

9. By Hearing Notice issued on January 30, 2020, an Initial Telephonic Hearing on Remand was scheduled for Wednesday, March 11, 2020 at 10:00 a.m. to address Complainant's incorrect billing claim.

10. A Third Prehearing Order was issued on January 30, 2020, which, *inter alia*, directed Complainant to serve copies of pre-marked exhibits/documents by March 6, 2020 and warned Complainant that the failure to call in and participate would in the hearing would result in dismissal of the Complaint.

11. Complainant did not pre-serve any exhibits/documents by March 11, 2020.

12. Complainant failed to appear and prosecute his Complaint at the hearing on March 11, 2020.

13. Complainant received notice of the hearing on or about January 30, 2020, when a Hearing Notice and a Third Prehearing Order were issued scheduling a telephonic call-in hearing at 10:00 a.m. on March 11, 2020.

14. The Hearing Notice and Prehearing Order were mailed to the address Complainant provided on his complaint.

15. Neither the Hearing Notice nor Prehearing Order was returned to the Commission by the postal authorities as being undeliverable to Mr. Venini.

16. During the hearing, counsel for PPL indicated that she had sent a copy of the company's exhibits to Mr. Venini via e-mail and regular mail on March 4, 2020, with a cover letter reminding Mr. Venini of the hearing, and that the documents were confirmed as delivered.

17. On March 11, 2020, Counsel for PPL moved to dismiss the Complaint with prejudice for failure to appear and prosecute.

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. Venini filed a complaint against PPL seeking to opt out of smart meter installation at his property and a removal of incorrect charges on his account. Mr. Venini, 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 accorded notice and the opportunity to be heard. Id.

No one appeared on behalf of Mr. Venini 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 Notice and Prehearing Hearing Order were sent to Mr. Venini by regular first-class mail and were not returned to the Commission as being undeliverable. Accordingly, it must be presumed that these documents sent to Mr. Venini 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, Lindsay A. Berkstresser, Esquire, indicated that she had sent the company's exhibits prior to the hearing and that they were confirmed as delivered.

No one appeared on behalf of Mr. Venini at the time of the hearing. Nor did anyone request a postponement or continuance of the hearing. As such, Mr. Venini 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. Venini has failed to carry his burden of proving there are incorrect charges on his account. 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 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. Mr. Venini'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. Mr. Venini failed to carry his burden of proof in this proceeding because he failed to appear and prosecute his complaint at the hearing.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral Motion of PPL Electric Utilities Corporation on March 11, 2020, to dismiss the formal complaint of Anthony Venini at Docket Number C-2018-3006469 for failure to prosecute is granted.

2. That the formal complaint filed by Anthony Venini at Docket Number C-2018-3006469 is hereby dismissed with prejudice on remand.

3. That Docket Number C-2018-3006469 shall be marked closed by the Secretary's Bureau.

Date: March 25, 2020

/s/
Elizabeth H. Barnes
Administrative Law Judge