

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Susan Ruggles	:	
	:	
v.	:	C-2020-3021142
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Marta Guhl
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 July 16, 2020, Susan Ruggles (Complainant) filed with the Pennsylvania Public Utility Commission (Commission) the instant Formal Complaint (Complaint) at Docket No. C-2020-3021142, challenging the installation of a new AMI or smart meter at 98 Third Lane, Berwick, Pennsylvania, due to alleged adverse health effects.

The Complaint was served upon PPL Electric Utilities Corporation (PPL) on August 5, 2020. PPL filed an answer and new matter on August 18, 2020, denying the material averments in the Complaint.

By Hearing Notice dated August 19, 2020, an Initial Telephonic Call-In Hearing was scheduled for September 22, 2020 at 10:00 a.m and the matter was assigned to Administrative Law Judge Elizabeth Barnes. A Prehearing Order, also providing the date and time of the hearing, was issued on August 27, 2020. The 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 Presiding Officer.**” (emphasis in original). The Hearing Notice and Prehearing Order were e-mailed to Ms. Ruggles at the e-mail address provided by her on her Complaint.¹ The Commission did not receive any return e-mail that indicated that the Hearing Notice or Prehearing Order failed to be delivered electronically at the e-mail address provided by Ms. Ruggles.

The hearing convened at 10:00 a.m. on September 22, 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 10:16 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. Ruggles on September 15, 2020, and that the cover letter attached to the company’s exhibits reminded her of the date and time of the hearing. Counsel indicated Ms. Ruggles communicated via e-mail with counsel for PPL but did not settle the matter prior to the hearing. She was given additional notice of the hearing date and time by counsel for PPL.

On November 4, 2020, the Commission entered an Order which placed a stay on all smart meter proceedings until further action was taken by the Commission.

On June 13, 2022, a Judge Change Notice was issued which indicated that Administrative Law Judge Elizabeth Barnes would be replaced by Deputy Chief Administrative Law Judge Joel Cheskis.

¹ See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements, M-2020-3019262 at 4 (Order entered Mar. 20, 2020), which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency issued by Pennsylvania Governor Wolf in response to the COVID-19 pandemic.

On November 21, 2022, another Judge Change Notice was issued which indicated that Deputy Chief Administrative Law Judge Joel Cheskis was replaced by Administrative Law Judge Marta Guhl.

On November 14, 2023, the Commission, via Order, lifted the stay of proceedings on all pending smart meter cases.

Now that the stay has been lifted, this matter is now ripe for decision. The record closed in this case on November 14, 2023.

FINDINGS OF FACT

1. The Complainant in this case is Susan Ruggles.
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 September 22, 2020.
4. Complainant received notice of the hearing on August 19, 2020, when a Hearing Notice was issued scheduling the hearing for 10:00 a.m. on September 22, 2020.
5. Complainant received further notice of the hearing via a Prehearing Order issued on August 27, 2020.
6. The Hearing Notice and Prehearing Order were e-mailed to the e-mail address Complainant provided on her complaint.

7. The Commission did not receive any return e-mail that indicated that the Hearing Notice or Prehearing Order failed to be delivered electronically at the e-mail address provided by Ms. Ruggles.

8. During the hearing, counsel for PPL indicated that on September 15, 2020, he had sent a copy of the company's exhibits to Ms. Ruggles via e-mail and regular mail with a cover letter reminding Ms. Ruggles of the date and time of the hearing, and that the documents were confirmed as delivered.

9. Complainant has not contacted the Commission to explain why her failure to appear at the September 22, 2020 hearing was unavoidable.

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*, 70 A.2d 854 (Pa. 1950). In this proceeding, Ms. Ruggles filed a Complaint against PPL seeking to opt out of smart meter installation at her property. Ms. Ruggles, 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. Ruggles 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 August 19, 2020 Hearing Notice scheduling the telephonic hearing for September 22, 2020 was sent to Complainant by e-mail and was not returned to the Commission as being undeliverable. Accordingly, it must be presumed that the Hearing Notice sent to Ms. Ruggles was received by Ms. Ruggles. *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017). Moreover, counsel for PPL, Attorney Ryan, indicated that he had sent Ms. Ruggles the company's exhibits prior to the hearing and that they were confirmed as delivered. Tr. 5.

No one appeared on behalf of Ms. Ruggles at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing.² As such, Ms. Ruggles 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 Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 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

² The party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

Complaint, Ms. Ruggles has failed to carry her burden of proof. Thus, it is appropriate to dismiss the Complaint. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 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.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. 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*, 70 A.2d 854 (Pa. 1950).
4. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. This due process requirement is satisfied when the parties are afforded notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).
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).

