

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anthony Giamoni	:	
	:	
v.	:	C-2019-3007637
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Jeffrey A. Watson  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the Formal Complaint filed in this matter, with prejudice, for Complainant’s failure to appear for the hearing to prosecute the Complaint.

**HISTORY OF THE PROCEEDING**

Anthony Giamoni (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent) on January 31, 2019, questioning a security deposit<sup>1</sup> assessed on his account and objecting to the installation of a smart meter at his residence at 1647 Alpine Drive, Pen Argyl, Pennsylvania 18072 (service location), due to health

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<sup>1</sup> Complainant averred that he always pays his bills, that he may be late a few times, but always pays and Respondent puts an extra amount on his bill that he cannot pay, like a security deposit.

concerns. As relief, Complainant requested he be permitted to opt-out of the smart meter installation.

On February 25, 2019, Respondent filed an Answer and New Matter to the Complaint. Respondent admitted that it provides residential retail electric service to Complainant at the service location. Respondent also admitted it assessed a security deposit in the amount of \$270 on Complainant's account. Respondent further stated that Complainant refused to allow the Company access to the Company's meter in order to install a smart meter, which constitutes legal grounds to terminate service to the service location. Respondent averred it is required by Act 129 of 2008 (Act 129) to install a smart meter. Additionally, Respondent stated that neither its tariff, Act 129 or its Smart Meter Plan (SMP) permits the Company to forbear from the smart meter installation requirement or enable the Commission or Company to permit the opt-out of smart meter installation or delay installation in contradiction to the SMP. Respondent essentially denied the remaining material averments set forth in the Complaint. Respondent requested that a prehearing conference be scheduled in this proceeding.

On February 25, 2019, Respondent also filed Preliminary Objections to the Complaint. Respondent averred that the request to opt-out of smart meter installation is not legally recoverable and Complainant 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 service location. Respondent further averred it is required by Act 129 and its SMP to install a smart meter at the service location, and the Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief. Respondent argued a hearing is not in the public interest and the Complaint does not meet the standards set forth in recent Commission decisions in order to survive preliminary objections.

On April 1, 2019, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to the undersigned.

On April 3, 2019, Complainant and his spouse, Kelly K. Giamoni, filed a response to Respondent's Answer and New Matter. The response did not address the averment regarding the security deposit and solely addressed Complainant's objection to the installation of a smart meter.

On April 30, 2019, an Interim Order was entered denying Respondent's Preliminary Objections.

On May 16, 2019, Respondent filed a certificate of service regarding its service of Interrogatories and Requests for Production of Documents (Discovery Requests) upon Complainant. Objections were due by May 27, 2019, and responses were due by June 5, 2019.

On July 22, 2019, Respondent filed a Motion to Compel Responses to Interrogatories and Document Requests (Motion to Compel), averring that it had not received any response to its Discovery Requests. The Motion to Compel contained a Notice to Plead, requiring Complainant to file a response within five days of service. Complainant did not file a response to the Motion to Compel.

On July 23, 2019, concurrent Interim Orders were entered; granting Respondent's Motion to Compel, directing Complainant to serve upon counsel for Respondent full and complete responses to all Discovery Requests no later than August 16, 2019 and establishing an initial litigation schedule which set forth the schedule for discovery, the identification of witnesses, and filing of motions in this proceeding. Parties were ordered to, *inter alia*, provide the names, addresses, and written

summaries of the expected testimony for each witness (witness information) to the other party by October 1, 2019; and to conclude discovery by November 15, 2019.

On August 28, 2019, Respondent filed a Motion to Dismiss Complaint of Anthony Giamoni for Failure to Comply with Orders (Motion to Dismiss), averring Complainant failed to comply with the Interim Order dated July 23, 2019, requiring Complainant to provide responses to Respondent's discovery requests by August 16, 2019. Respondent averred Complainant did not contact Respondent to discuss the Discovery Requests or to seek an extension of time to respond to the Discovery Requests. Respondent argued the Complaint should be dismissed in its entirety, because Complainant's failure to respond to the Discovery Requests demonstrates Complainant's lack of cooperation and willingness to participate in the proceeding as required by the Commission's regulations.

On September 4, 2019, an Interim Order was entered rescinding the July 23, 2019 Interim Order, to provide Complainant with an opportunity to file a response to the Motion to Compel not later than September 12, 2019.

Complainant did not file a response to the Motion to Compel by the September 12, 2019 deadline.

On October 1, 2019, in accordance with the Interim Order establishing initial litigation schedule, Respondent provided notice and summaries of testimony for its factual and expert witnesses.

On October 11, 2019, a Second Interim Order was entered granting Respondent's Motion to Compel, ordering Complainant to serve full and complete responses to all of the Discovery Requests not later than October 30, 2019.

On October 25, 2019, an Interim Order was entered requiring the Parties to file a status report, including potential dates for an evidentiary hearing on or before December 6, 2019. Respondent filed a status report dated December 6, 2019. Complainant did not file a status report.

On November 20, 2019, Respondent filed an Amended Motion to Dismiss averring Complainant repeatedly failed to comply with numerous Interim Orders, to respond to Discovery Requests and to exchange witness information. The Amended Motion to Dismiss included a Notice to Plead. No responsive pleading was filed by Complainant.

In its Motion to Dismiss and Amended Motion to Dismiss, Respondent argued that the Complaint should be dismissed due to Complainant's failure to provide witness information and respond to Discovery Requests, in violation of Interim Orders dated July 23, 2019, and October 11, 2019, respectively. Respondent argued Complainant's actions demonstrated a consistent lack of cooperation and willingness to prosecute his Complaint as required under the Commission's regulations.

As directed by the October 11, 2019 Interim Order, Complainant's objections, if any, to the Discovery Requests and his full and complete responses were due by October 30, 2019.

In its Motion to Dismiss and Amended Motion to Dismiss, Respondent averred it did not receive Complainant's witness information or discovery responses in violation of the July 23, 2019 Interim Order and the October 11, 2019 Interim Order, respectively.

Complainant did not file a certificate of service showing his service of full and complete responses to the Discovery Requests or his witness information upon

Respondent, in violation of the Interim Orders entered July 23, 2019 and October 11, 2019. Further, Complainant did not file a status report in violation of the Interim Order entered October 25, 2019.

On March 16, 2020, the Public Utility Commission closed the office of the undersigned presiding officer as a result of the COVID-19 pandemic. The office remained closed at the time of the scheduled hearing in this proceeding; however, hearings were conducted telephonically.

On March 20, 2020, the Commission issued the Emergency Order at Docket No. M-2020-3019262, concerning the Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements (Emergency Order). The Emergency Order ordered all Commission offices across the state to be closed, and notified the public that the Commission was unable to send or receive mail or documents from or to any of its principal places of business. Accordingly, the Commission waived the requirement for paper filings and ordered it would only accept e-filings of all documents, pursuant to 52 Pa. Code § 1.4, in order to continue operations during the pandemic emergency. Further, the Commission ordered that service of all documents by the Commission on parties would be by electronic means only and service by the parties on Commission staff, as a party or as presiding officers, would be by electronic means only.

On April 30, 2020, an Interim Order was entered granting the Amended Motion of Metropolitan Edison Company to Dismiss the Complaint, as it relates to all smart meter claims identified by Complainant. The Amended Motion of Metropolitan Edison Company, to dismiss Complainant's claims regarding the assessment of a security deposit on Complainant's bill, was denied.

On August 5, 2020, an Initial Call-In Telephone Hearing Notice (Hearing Notice) was issued scheduling the evidentiary hearing for October 7, 2020. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing to participate in the telephonic hearing. The Hearing Notice further advised the Parties that they could lose their case if they did not take part in the hearing and present evidence on the issue(s) raised and that the case could be dismissed with prejudice.

The hearing convened as scheduled. Complainant did not appear. Attorney Tori Giesler and Attorney Lauren Lepkosky appeared along with their witness on behalf of Respondent and made a motion to dismiss the Complaint. No request for a continuance was made by any party and no explanation was provided by Complainant regarding his failure to attend the hearing.

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz v. Pennsylvania Public Utility Commission*, 241 A.3d 481 (Pa. Cmwlth. 2020) (*Povacz I*), the first of several appeals involving PECO Energy Company's (PECO) deployment of smart meter technology pursuant to Act 129 of 2008 (Act 129), codified at 66 Pa. C.S. § 2807(f). Specifically, the Commonwealth Court, in *Povacz I*, held that Act 129 does not mandate the installation of smart meters, and that the Commission had the authority to grant customers accommodations based on their health concerns.<sup>2</sup> However, the Commonwealth Court affirmed: (1) the Commission's application of the preponderance of evidence standard; (2) the Commission's finding that the customers in Maria Povacz, Laura Sunstein Murphy, and Cynthia Randall failed to sustain their burden of proof; and (3) that the Commission's findings of fact were supported by substantial evidence.<sup>3</sup> The

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<sup>2</sup> *Povacz I* at 490.

<sup>3</sup> *Id.* at 490, 491, 493-495.

Commonwealth Court also declined to find that the deployment of smart meters violated the customers' Fourteenth Amendment liberty interests in bodily integrity.<sup>4</sup>

The record closed on October 19, 2020, upon receipt of the hearing transcript.

In light of the Commonwealth Court's decision in *Povacz I*, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, on November 4, 2020, pursuant to 66 Pa.C.S. § 501, instituting a stay of certain formal complaint proceedings then-pending before the Commission involving challenges to EDC deployment of smart meter technology as being in violation of Section 1501 of the Code (*November 4, 2020, Stay Order*). *The November 4, 2020, Stay Order* also directed that the stay would apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. *The November 4, 2020, Stay Order* applied to and was docketed at the instant case.

The Commission, as well as all other parties in *Povacz I* subsequently sought and were granted review of the Commonwealth Court's *Povacz I* decision by the Supreme Court of Pennsylvania.

On July 15, 2021, the Commission issued the Order at Docket No. M-2020-3019262 which revised its March 2020 Order to reflect the emergency provisions for service and filing of documents would expire on September 30, 2021. The Commission noted the Pennsylvania Legislature passed a Concurrent Resolution (HR106) on June 10, 2021, which terminated the Governor's earlier Proclamation about the COVID19

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<sup>4</sup> *Id.* at 487-488.

pandemic on March 6, 2020. The Commission also noted a related action by then-Governor Wolf on June 11, 2021, which provided that the “temporary regulatory flexibility authority” to “Commonwealth agencies” (which during the earlier stages of the pandemic had issued an Order suspending a regulatory statute prescribing the procedures for conduct of Commonwealth business, or an Order, rule or regulation of a Commonwealth agency) would have those orders extended until September 30, 2021.

On August 16, 2022, the Pennsylvania Supreme Court issued *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (*Povacz II*) concluding that Act 129<sup>5</sup> mandated smart meter deployment and required EDCs to install smart meter technology system-wide.

On November 9, 2023, the Commission entered the Order at Docket No. M-2009-2092655 (November 9, 2023 Order) lifting the stay that the Commission implemented by the November 4, 2020 Order. The November 9, 2023 Order lifted the stay on this Complaint proceeding, and directed the parties to proceeding to a resolution pursuant to the Commission’s regulations governing formal proceedings at 52 Pa. Code §§ 5.1 – 5.631. The Commission explained that cases pending before the Office of Administrative Law Judge, such as the instant case, would proceed as directed by the assigned presiding officer.

On November 13, 2024, an Interim Order was entered reopening the record. The Interim Order further provided that Complainant shall file any appropriate requests for relief, if any, on or before December 13, 2024 and permitted Respondent to file any responsive pleading or reply to any timely request for relief filed by Complainant, on or before January 17, 2025. No request for relief was filed by Complainant.

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<sup>5</sup> 66 Pa.C.S. § 2807(f).

The evidentiary record closed by interim order entered on February 28, 2025.

### FINDINGS OF FACT

1. Complainant in this proceeding is Anthony Giamoni.
2. Respondent, Metropolitan Edison Company, is a jurisdictional public utility providing electric service to Pennsylvania customers.
3. On January 31, 2019, Complainant filed a Formal Complaint against Respondent questioning a security deposit assessed on his account and objecting to the installation of a smart meter at his residence. As relief, Complainant requested he be permitted to opt-out of the smart meter installation.
4. On November 20, 2019, Respondent filed an Amended Motion to Dismiss averring, Complainant repeatedly failed to comply with numerous Interim Orders, to respond to Discovery Requests and to exchange witness information. The Amended Motion to Dismiss included a Notice to Plead. No responsive pleading was filed by Complainant. Respondent argued Complainant's actions demonstrated a consistent lack of cooperation and willingness to prosecute his Complaint as required under the Commission's regulations.
5. On April 30, 2020, an Interim Order was entered granting the Amended Motion of Metropolitan Edison Company to Dismiss the Complaint, as it relates to all smart meter claims identified by Complainant. The Amended Motion of Metropolitan Edison Company to Dismiss the Complaint, solely limited to the claim regarding the assessment of a security deposit on Complainant's bill, was denied.

6. On August 5, 2020, an Initial Call-In Telephone Hearing Notice (Hearing Notice) was issued scheduling the evidentiary hearing for October 7, 2020. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing to participate in the telephonic hearing. The Hearing Notice further advised the Parties that they could lose their case if they did not take part in the hearing and present evidence on the issue(s) raised and that the case could be dismissed with prejudice.

7. The hearing convened as scheduled. Complainant did not appear. Attorney Tori Giesler and Attorney Lauren Lepkoskie appeared along with their witness on behalf of Respondent and made a motion to dismiss the Complaint.

8. No request for a continuance was made by any party and no explanation was provided by Complainant regarding his failure to attend the hearing.

9. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing to participate in the telephonic hearing.

10. The Hearing Notice informed the Parties that failure to participate in the hearing may result in dismissal of their case.

11. The Hearing Notice was served upon Complainant by electronic service provided by the Commission.

12. There is no indication in the record that there was a failure in the delivery of the Hearing Notice to Complainant.

13. Respondent's counsel and witness were present on October 7, 2020, when the telephonic hearing convened at 10:00 a.m.

14. Complainant did not appear for the telephonic hearing.

15. There is nothing in the record to indicate that Complainant's failure to appear for the telephonic hearing was unavoidable.

16. When Complainant did not appear for the telephonic hearing, Respondent's counsel moved for dismissal of the Complaint with prejudice for lack of prosecution.

## DISCUSSION

### Due Process

The Commission satisfies the requirement of affording a complainant with administrative due process, by providing timely notice of the hearing on the complaint and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

On August 5, 2020, the Call-In Telephone Hearing Notice was served upon Complainant by electronic service at the address he provided to the Commission. On November 13, 2024, an Interim Order was entered reopening the record and which permitted Complainant to file any appropriate requests for relief, on or before December 13, 2024. The service list attached to the Interim Order identifies the home mailing address and email address of Complainant for service. No request for relief was filed by Complainant. There is no indication that the Commission received any indication that delivery of the Hearing Notice or the Interim Order to Complainant had failed.

Accordingly, there is a presumption that Complainant received notice of the hearing and elected not to participate in the hearing. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016). Therefore, Complainant's due process rights have been fully protected.

### Burden of Proof

Pursuant to Section 332(a) of the Code, 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the proponent of a rule or order. Therefore, Complainant had the burden of proving he was entitled to the relief requested in his Complaint. Respondent was present for the hearing through its attorneys and witness. However, Complainant was not present for the hearing.

Section 332(f) of the Code provides in pertinent part:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat[.]

66 Pa.C.S. § 332(f).

Since Complainant failed to appear and participate in the scheduled hearing by telephone, his Complaint may be dismissed with prejudice. *See Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F2021-3027107 (Opinion and Order entered Feb. 7, 2022); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and

Order entered June 30, 2016); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 52 Pa. Code § 5.245. There is nothing in the record to indicate that Complainant's failure to appear for the telephonic hearing was unavoidable. Accordingly, in the ordering paragraphs below the Complaint will be dismissed. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022).

Under the circumstances, the Formal Complaint will be dismissed with prejudice. *See Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F2021-3027107 (Opinion and Order entered Feb. 7, 2022).

Complainant did not appear at the hearing scheduled in this proceeding and the proceeding was subsequently stayed. On November 9, 2023, the Commission entered an Order lifting the stay on this Complaint proceeding, and directed the parties to proceeding to a resolution pursuant to the Commission's regulations governing formal proceedings at 52 Pa. Code §§ 5.1 – 5.631. The Commission explained that cases pending before the Office of Administrative Law Judge, such as the instant case, would proceed as directed by the assigned presiding officer.

Accordingly, on November 13, 2024, an Interim Order was entered reopening the record. The Interim Order further provided the Complainant with an opportunity to file any appropriate requests for relief on or before December 13, 2024. No request for relief was filed by Complainant.

Under the circumstances, the Formal Complaint will be dismissed with prejudice. *See Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F2021-3027107 (Opinion and Order entered Feb. 7, 2022).

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The Commission is required to provide due process to the parties appearing before them; this due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa. Cmwlth. 1984).

3. Notice served, to a party with no notification that service failed, is presumed received. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. 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).

4. When a complainant fails to appear for a scheduled conference or hearing and there is no indication in the record to indicate that the complainant's failure to appear for the hearing was unavoidable, the complaint shall be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); 52 Pa. Code § 5.245.

5. Complainant as the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).

6. By failing to participate in the hearing and to proffer any evidence to support the complaint, the Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

