

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dean and Mary Marra

v.

Duquesne Light Company

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C-2009-2120718

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

This Initial Decision confirms the oral ruling made at the March 25, 2010 hearing in this case granting the motion of Duquesne Light Company (Duquesne or Respondent) to dismiss the formal complaint filed by Dean and Mary Marra (Marra or Complainants) at Docket No. C-2009-2120718, for failure to appear at the hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

In the complaint, filed July 23, 2009, Complainants alleged an electrical spike on July 11, 2009 through Respondent's facilities resulted in damage to two power surge suppression devices and one television. Complainants requested the Public Utility Commission (Commission) order Duquesne to reimburse Complainants for the cost of the damaged items. Respondent filed an answer on August 13, 2009.

By letter dated January 27, 2010, the Commission informed the parties a hearing on the complaint would be held in-person at 10:00 a.m. on Thursday, March 25, 2010. In addition, on January 28, 2010, I issued a Prehearing Order in this case, which reminded the parties of the date, time, location and manner of the hearing.

On March 25, 2010 at 10:00 a.m., the presiding officer attempted to hold the initial in-person hearing as scheduled but Complainants were not present in the hearing. The presiding officer delayed proceedings for twenty minutes to allow for potential delays Complainants might have encountered in travelling to the hearing. During the delay, a Commission staff walked around the floor in an attempt to locate Complainants. At 10:20 a.m., the presiding officer re-convened the hearing on the record and Duquesne moved for dismissal of the complaint, for the failure of Complainants to appear and prosecute the complaint. The presiding officer granted that motion on the record and this Initial Decision memorializes that decision.

DISCUSSION

The Commission satisfied the requirement of affording Complainant with administrative due process, by providing timely notice of the hearing on the complaint, and the opportunity to be heard. Schneider v. Penna. Public Utility Commission, 479 A.2d 10 (Commw. Ct. 1984). The Commission's Hearing Notice of January 27, 2010, and the Prehearing Order of January 28, 2010, both of which informed the parties of the day, date, location and time of the initial in-person hearing in this case, were mailed in the ordinary course of the Commission's business to Complainants at the address Complainants provided on the formal complaint form. The Hearing Notice and Prehearing Order mailed to Complainants were not returned by the United States Postal Service as undeliverable.

Accordingly, it is presumed Complainants received both the Commission's Hearing Notice and the Prehearing Order. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Judge v. Celina Mutual Ins. Co., 449 A.2d 658 (Pa. Super. Ct. 1982); Samaras v. Hartwick, 698 A.2d 71 (Super. Ct. 1997).

The Prehearing Order in this case informed the parties how to contact the Administrative Law Judge if a continuance was necessary. The Order also specified in large, bold print that Complainants must be available in the hearing room and that if they are not present the case would be dismissed. The Prehearing Order also informed the parties of the

procedure to follow if either wished to request a change in the scheduled hearing date. The Prehearing Order also indicated on the first page the address and telephone/fax numbers to use if a party needed to communicate with the Administrative Law Judge. No communication was received from Complainants in either an oral or written form. In addition, no communication is included in the Commission's file in this case indicating Complainants wished to appear by telephone or requesting a continuance of the scheduled hearing.

Once timely notice of a hearing and the opportunity to be heard has been provided, then each party is responsible to be present and participate in the hearing. Craig Sentner v. Bell Telephone Co. of Pennsylvania, Docket No. F-00161106, entered October 25, 1993. When a complainant fails to be present at a scheduled hearing, the Commission has held, the complaint is to be dismissed, with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892, entered December 26, 1995, and Darling v. Philadelphia Electric Company, Docket No. F-00161139, entered November 16, 1993.

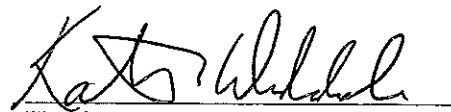
ORDER

THEREFORE,

IT IS ORDERED:

That the complaint of Dean and Mary Marra against Duquesne Light Company, at Docket No. C-2009-2120718, is dismissed, with prejudice, for the failure of Complainants to prosecute the complaint.

Date: March 31, 2010


Katrina L. Dunderdale
Administrative Law Judge