



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: March 10, 2006

C-20055451; et al

BRIAN P DEGROOT
13 ROSEMARY DRIVE
TUNKHANNOCK PA 18657

DOCUMENT
FOLDER

Brian P. Degroot; et al & PA PUC Law Bureau, Office of Consumer Advocate Intervenors

v.

Washington Park Water Company; et al & PA Public Law Bureau, Office of Consumer Advocate Intervenors

v

Washington Park Sanitary Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Ember S. Jandebour. This decision is being issued and mailed to all parties on the above specified date.

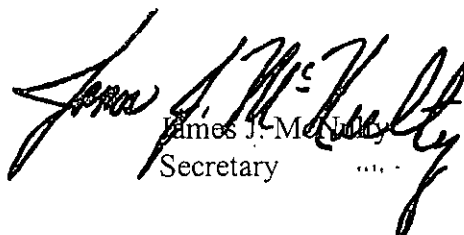
If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,


James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
MMB
See attached list for additional parties

C-20055451 - BRIAN P DEGROOT V. W P WATER COMPANY
C-20055453 - KALTHEEN SYLV. ESTER V. W P WATER COMPANY
C-20055454 - KANDI JO MADILL V. W P WATER COMPANY
C-20055460 - JOSEPH YAKOSKI V. W P WATER COMPANY
C-20055468 - LEIGH POWELL V. W P WATER COMPANY
C-20055472 - LISA HIGGINS V. W P WATER COMPANY
C-20055473 - WILLIAM J FINKLER V. W P WATER COMPANY
C-20055556 - FRED T RIEBELING V. W P WATER COMPANY

C-20055455 - KATHLEEN SYLVESTER V. W P SANITARY COMPANY
C-20055456 - KANDI J MADILL V. W P SANITARY COMPANY
C-20055457- FRED T RIEBELING V. W P SANITARY COMPANY

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OFFICE OF CONSUMER ADVOCATE
555 WALNUT STREET
HARRISBURG PA 17101

Rusk

TD 20/10

Labels attached.

MAR 10 2006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Brian P. Degroot : C-20055451
Kathleen Sylvester : C-20055453
Kandi Jo Madill : C-20055454
Joseph Yakowski : C-20056460
James Holly & Sandy Phillips : C-20055461
Leigh Powell : C-20055468
Lisa Higgins : C-20055472
William J. Finkler : C-20055473
Fred T. Riebeling : C-20055556

Formal Complainants

And

PA PUC Law Bureau,
Office of Consumer Advocate
Intervenors

v.

Washington Park Water Company

Kathleen Sylvester : C-20055455
Kandi Jo Madill : C-20055456
Fred T. Riebeling : C-20055557
William J. Finkler : C-20055473

Formal Complainants

And

PA PUC Law Bureau,
Office of Consumer Advocate
Intervenors

v.

Washington Park Sanitary Company

DOCUMENT
FOLDER

INITIAL DECISION

DOCKETED
MAR 14 2006

Before
Ember S. Jandebour
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

Between October 19, 2005, and November 10, 2005, numerous individuals (Complainants) receiving water and sewer service from Washington Park Water Company and Washington Park Sanitary Company (Respondent) filed Formal Complaints with the Public Utility Commission (PUC).

The Respondent provided Answers to Complaints.

On November 30, 2005, the PUC Law Bureau filed a Notice of Intervention.

On December 20, 2005, a Telephonic Prehearing Conference call was held with numerous Complainants, the Respondent, PUC Law Bureau, and the Office of the Consumer Advocate (OCA) participating.

On January 4, 2006, OCA filed a Notice of Intervention.

On January 4, 2006, a Hearing Notice was mailed to all of the Parties setting forth, among other things, the date, time and location for an in person hearing on their Complaints.

On February 27, 2006, a hearing in the matter was held in person at the PUC's Scranton office. Complainant Kathleen Sylvester and William Finkler appeared, as did the Respondent and Intervenors. Complainants Degroot, Madill, Yakowski, Holly & Phillips, Powell, Higgins, and Reibelung did not appear.

FINDINGS OF FACT

1. On January 4, 2006, a Hearing Notice was mailed to all of the Parties setting forth, among other things, the date, time and location for an in person hearing on their Complaints.

2. The Hearing Notice was mailed to all Complainants at the addresses they listed on their Complaint.

3. None of the hearing Notices were returned to the PUC as undeliverable.

4. Complainants Brian P. Degroot C-20055451, Kandi Jo Madill C-20055454 and C-20055456, Joseph Yakowski C-20056460, James Holly & Sandy Phillips C-20055461, Leigh Powell C-20055468, Lisa Higgins C-20055472, Fred T. Riebeling, C-20055556 and C-20055557 failed to appear for the initial hearing scheduled on February 27, 2006.

5. Complainants Brian P. Degroot C-20055451, Kandi Jo Madill C-20055454 and C-20055456, Joseph Yakowski C-20056460, James Holly & Sandy Phillips C-20055461, Leigh Powell C-20055468, Lisa Higgins C-20055472, Fred T. Riebeling, C-20055556 and C-20055557 neither requested nor received a continuance in this matter.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. Schneider v. Pa. P.U.C., 479 A.2d 10 (Pa. Cmwlth. 1984). This due process requirement is satisfied when the parties are accorded notice and the opportunity to appear and be heard. *Id.*

Notice of the February 27, 2006, hearing in these Complaints was sent to all of the Complainants on January 4, 2006, by regular first-class prepaid mail to the address stated on their Complaint. None of the Notices was returned to the undersigned Administrative Law Judge (ALJ) or the sender, the scheduling staff for the Office of Administrative Law Judge in Harrisburg. Accordingly, they are deemed received. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Superior Ct. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Superior Ct. 221, 444 A.2d 658 (1982).

The Complainants Brian P. Degroot C-20055451, Kandi Jo Madill C-20055454 and C-20055456, Joseph Yakowski C-20056460, James Holly & Sandy Phillips C-20055461, Leigh Powell C-20055468, Lisa Higgins C-20055472, Fred T. Riebeling, C-20055556 and C-20055557 did not appear for the scheduled hearing. These Complainants never notified the undersigned ALJ of the need for any accommodations necessary to include them in the hearing (such as participation by telephone) or the need for a change of date. The listed Complainants had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the listed Complainants have been fully protected.

A participant, who fails to appear at a scheduled hearing after receiving notice, is deemed to have waived the opportunity to participate in that hearing. That person cannot reopen any matter accomplished at that hearing. Failure to appear and participate in a properly noticed and scheduled hearing is against the public interest, warranting dismissal of the complaint. *See*, 52 Pa. Code §5.245.

Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this Complaint, the listed Complainants bear the burden of proving by a preponderance of the evidence that he/she is entitled to relief. By failing to appear and present any evidence in support of their Complaint, the Complainants have failed to meet this burden. Under these circumstances, the Complaints must be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995).

Complainants Kathleen Sylvester and William J. Finkler appeared for the hearing and testified on their own behalf and their Complaints are not dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties in this matter. 66 Pa. C.S. §701.

2. Notices mailed to a Complainants provided address not returned as undeliverable are deemed received. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584.(1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Superior Ct. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Superior Ct. 221, 444 A.2d 658 (1982).

3. As the party seeking affirmative relief from the Commission, the Complainants bear the burden of proof. 66 Pa. C.S. §332(a).

4. Brian P. Degroot C-20055451, Kandi Jo Madill C-20055454 and C-20055456, Joseph Yakowski C-20056460, James Holly & Sandy Phillips C-20055461, Leigh Powell C-20055468, Lisa Higgins C-20055472, Fred T. Riebeling, C-20055556 and C-20055557 each failed to meet their burden of proof and have waived their right to further participate. 52 Pa. Code §5.245.

ORDER

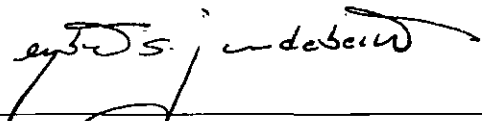
THEREFORE,

IT IS ORDERED:

1. The motion of Washington Park Water Company and Washington Park Sanitary Company to dismiss the Complaints of Brian P. Degroot C-20055451, Kandi Jo Madill C-20055454 and C-20055456, Joseph Yakowski C-20056460, James Holly and Sandy Phillips C-20055461, Leigh Powell C-20055468, Lisa Higgins C-20055472, Fred T. Riebeling, C-20055556 and C-20055557 for failure to prosecute is granted; and

2. The following Complaints are dismissed with prejudice: Brian P. Degroot C-20055451, Kandi Jo Madill C-20055454 and C-20055456, Joseph Yakowski C-20056460, James Holly & Sandy Phillips C-20055461, Leigh Powell C-20055468, Lisa Higgins C-20055472, Fred T. Riebeling, C-20055556 and C-20055557.

Date: March 2, 2006


Ember S. Jandebaur
Administrative Law Judge