**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joy Nola and Michael Nola II :

:

v. : F-2015-2466947

:

Duquesne Light Company and :

FirstEnergy Solutions Corporation :

# **INITIAL DECISION**

Before

Conrad A. Johnson

Administrative Law Judge

This decision dismisses the Complaint filed in this matter for lack of prosecution.

HISTORY OF THE PROCEEDING

On January 28, 2015, Complainants Joy Nola and Michael Nola II (Complainants) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Respondents Duquesne Light (DLC) and FirstEnergy Solutions Corporation (FES) seeking review of the December 22, 2014 decision of the Commission’s Bureau of Consumer Services (BCS) closing their informal complaint at BCS No. 3235100. The BCS determined that Complainants’ bills were based upon actual meter readings, and the meter tested within the Commission’s regulatory requirements. In their informal complaint, Complainants had alleged their meter was defective and there were incorrect charges on their bill. As relief, Complainants indicated the Commission should order Respondents “to take responsibility and make things right.”

On March 2, 2015, DLC filed an Answer to the Complaint, denying the material allegations and alleging that Complainants’ meter tested within the Commission’s guidelines. As relief, DLC requested dismissal of the Complaint with prejudice.

On March 4, 2015, FES filed an Answer and New Matter. FES denied the material allegations of the Complaint. FES alleged it is a licensed electric generation supplier, as such it calculated Complainants’ electric generation service charges based on meter readings by Complainants’ electric distribution utility (EDU). However, if the Commission determined that Complainants’ meter recorded usage incorrectly or was misread, FEC would rebill Complainants based on the appropriate level of usage. In New Matter, FES asserted that the complaint failed to state a claim against FES upon which relief could be granted because FES did not provide or read Complainants’ meter. As relief, FES requested that the complaint be dismissed as to FES.

By Call-In Telephone Hearing Notice (Hearing Notice) dated April 3, 2015, the parties were informed that the case was assigned to me pursuant to 52 Pa.Code § 56.173 for a telephonic hearing on Thursday, May 14, 2015, at 10:00 a.m. The Hearing Notice advised the parties to dial the toll-free bridge number, and enter the PIN on the morning of the hearing in order to participate in the telephonic hearing. The Hearing Notice further stated, “*Attention: you may lose the case if you do not take part in this hearing and present facts on the issues raised.”* (Emphasis in original).

On April 13, 2015, I issued a Prehearing Order reminding the parties to call, on the date and at the time of the scheduled hearing, the toll-free bridge number and enter the PIN in order to participate in the telephonic hearing. The Prehearing Order stated as follows: **“You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.”** (Emphasis in original). The Prehearing Order informed the parties about the applicable procedural rules, including the procedure to follow to request a hearing continuance.

The Hearing Notice and Prehearing Order informing the parties of the manner, day, date and time of the telephonic hearing, were mailed in the ordinary course of the Commission’s business to Complainants at the address provided in their Complaint. The Hearing Notice and Prehearing Order were not returned by the U.S. Postal Service as undeliverable to Complainants.

On May 14, 2015, by 10:00 a.m., counsel for DLC, Jeremy V. Farrell, Esquire, counsel for FES, David P. Zambito, Esquire, and I had dialed into the telephonic proceeding. The court reporter was also present. Neither Complainant had dialed into the telephonic proceeding. Accordingly, I recessed the hearing to permit additional time for Complainants to appear or to contact the Office of Administrative Law Judge (OALJ) in order to explain their absence. The telephonic proceeding remained open with counsel for DLC and FES and the court reporter in the telephonic hearing. I then left the hearing room to determine whether Complainants had called into the OALJ. Complainants had not called into the OALJ.

When I returned to the hearing room at approximately 10:22 a.m., Complainants had not called into the telephonic hearing. Accordingly, the hearing proceeded in their absence. Thereupon, respective counsel for DLC and FES moved for dismissal of the complaint for lack of prosecution. I informed counsel that the motion would be taken under advisement and an initial decision would be issued. The record was closed, and the hearing was adjourned at

10:28 a.m. on May 14, 2015.

This decision grants DLC’s and FES’s respective motions to dismiss the complaint.

FINDINGS OF FACT

1. Complainants Joy Nola and Michael Nola II reside at 104 Beck Drive, Midland, Pennsylvania 15059.

2. On January 28, 2015, Complainants Joy Nola and Michael Nola II filed a

Complaint with the Commission against Respondents Duquesne Light Company and FirstEnergy Solutions.

3. Respondent DLC and Respondent FES filed responses to the Complaint on March 2 and 4, 2015, respectively.

4. By notice dated April 3, 2015, the Commission scheduled this matter for a call-in telephonic hearing on May 14, 2015, at 10:00 a.m.

5. The Commission sent notice of the telephonic hearing in this case to the Complainants by regular first-class mail to the address stated on the Complaint.

6. The Commission’s hearing notice was not returned to the Commission by the U.S. Postal Service as undeliverable to Complainants.

7. Joy Nola and Michael Nola II failed to call into the hearing on May 14, 2015.

# DISCUSSION

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, however, when the administrative agency provides the parties notice and the opportunity to be heard.

The Commission sent a Call-In Telephone Hearing Notice in this case to the Complainants on April 3, 2015, by regular first-class mail to the address stated on the complaint. In addition, I issued a Prehearing Order dated April 13, 2015. Both the Hearing Notice and the Prehearing Order informed the parties of the date, time and manner of the telephonic hearing. This prehearing order also informed the parties about the procedure to request a hearing continuance. The Hearing Notice and Prehearing Order were not returned to the Commission by the U.S. Postal Service as undeliverable. Accordingly, there is a presumption in the law that the Hearing Notice and Prehearing Order, which were sent in the ordinary course of business, were received by Complainants. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick,* 698 A.2d 71 (Pa.Super. 1997); *Judge v. Celina Mutual Insurance Co.,* 444 A.2d 658 (Pa.Super. 1982).

Complainants did not appear for the scheduled telephonic hearing. Complainants did not request a hearing continuance, nor call the OALJ to explain their absence. Under these circumstances, Complainants had ample opportunity to appear and be heard in this proceeding, but apparently elected not to participate in the telephonic hearing. Therefore, the due process rights of Complainants have been fully protected. *Sentner v. Bell Telephone Co. of Pa.,* Docket No. F‑00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, 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 parties bringing this Complaint, Complainants bear the burden of proving by a preponderance of the evidence that they are entitled to relief. By failing to appear and proffer any evidence to support their Complaint, Complainants have failed to meet this burden of proof. Under these circumstances, the Complaint must be dismissed. *Martin Jefferson v. UGI Utilities, Inc.*, Docket No. Z‑00269892 (Order entered December 26, 1995); 52 Pa.Code § 5.245.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this proceeding. 66 Pa.C.S. § 701.

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

3. When a complainant fails to appear for a scheduled conference or hearing, the complaint is to be dismissed. *Martin* *Jefferson v. UGI Utilities, Inc.*, Docket No.

Z-00269892 (Order entered December 26, 1995); 52 Pa.Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Respondent Duquesne Light Company to dismiss, for lack of prosecution, the Complaint filed against it by Complainants Joy Nola and Michael Nola II, at Docket No. F-2015-2466947 is granted.

2. That the motion of Respondent FirstEnergy Solutions Corporation to dismiss, for lack of prosecution, the Complaint filed against it by Complainants Joy Nola and Michael Nola II, at Docket No. F-2015-2466947 is granted.

3. That the Complaint of Joy Nola and Michael Nola II against Duquesne Light Company and FirstEnergy Solutions at Docket No. F-2015-2466947 is dismissed for lack of prosecution.

4. That the Commission’s Secretary’s Bureau shall mark Docket No.

F-2015-2466947 closed.

Date: May 18, 2015 /s/

Conrad A. Johnson

Administrative Law Judge