



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

ISSUED: MAY 14, 2001

IN REPLY PLEASE
REFER TO OUR FILE

C-00004240

TINA WHITLEY
560 VILLAGE ROAD
PITTSBURGH PA 15205

Tina Whitley
V.
Duquest Light Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Robert P. Meehan. 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
FG

BTI

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Tina Whitley	:	Docket No.
	:	C-00004240
v.	:	
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Robert P. Meehan
Administrative Law Judge

This Initial Decision dismisses the complaint of Tina Whitley (Ms. Whitley) against Duquesne Light Company (Duquesne), with prejudice, for her failure to prosecute the complaint.

The complaint was filed by Ms. Whitley against Duquesne on September 25, 2000, alleging a financial inability to pay utility bills, and requesting an affordable payment arrangement. The complaint is an untimely appeal from a determination by the Commission's Bureau of Consumer Services (BCS) on her informal complaint. The answer was filed on October 19, 2000. The telephonic hearings were held on February 9 and May 1, 2001 pursuant to Section 56.174 of the Commission's regulations, 52 Pa. Code §56.174. The effort to contact Ms. Whitley at the time of the May 1, 2001 hearing was unsuccessful. Duquesne updated the status of the account and moved to dismiss the complaint for lack of prosecution.

At the time of the February 9, 2001 hearing, there was an off-the-record discussion between the parties concerning the possibility of reaching a settlement in this case. As a result of the discussion, Duquesne referred Ms. Whitley to its Customer Assistance Program (CAP). The hearing was continued to provide Ms. Whitley with the opportunity to apply to the CAP and learn if she would be accepted into the CAP. If she had been accepted into the CAP, Duquesne would have submitted a certificate of satisfaction to close this case.

The Commission satisfied the requirement of affording Ms. Whitley with administrative due process, by providing timely notice of the hearing on her complaint, and the opportunity to be heard. *Schneider v. PA PUC*, 479 A.2d 10 (Pa. Cmwlth. Ct. 1984). On March 19, 2001, the Commission sent a notice to the parties that this case had been scheduled for a further telephonic hearing. The notice, which was mailed to Ms. Whitley, indicated that I would call her at the telephone number she had previously provided as her home telephone number (412) 922-3461. I had previously sent her a Prehearing Order which requested that, if she was going to be at a different telephone number for the hearing, she was to provide that telephone number to me prior to the hearing. To the best of my knowledge, these documents have not been returned by the United States Postal Service. Accordingly, it is presumed that Ms. Whitley received both the Commission's notice of the hearing and my 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). Once timely notice of a hearing and the opportunity to be heard have been provided, it is then the responsibility of the parties to be present and participate in the hearing. *Craig Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106, entered October 25, 1993. The attempt to contact the Complainant for the telephonic hearing was unsuccessful.

In her complaint, Ms. Whitley indicated that her home telephone number was (412) 922-3461, and this was the number indicated on the Commission's letter of March 19, 2001 that would be used to contact her for the telephonic hearing. My call to that number on May 1, 2001, was met with a recorded announcement that the number had been disconnected and no further information was available. Counsel for Duquesne stated on the record that they had attempted to contact Ms. Whitley and had received a similar announcement. Further, when Duquesne sent her copies of its exhibits, it included a reminder that she should contact me with the telephone number where she could be called for the hearing. A similar statement was contained in my Prehearing Order. I did not receive any communication from Ms. Whitley providing a telephone number at which to contact her for the May 1, 2001 telephonic hearing.

The Commission has held that when a Complainant fails to be present at a scheduled hearing, then the complaint is to be dismissed, with prejudice. Further, the underlying

BCS determination on the Complainant's informal complaint is to become the operative decision of the Commission. Lastly, if the Complainant has not complied with the BCS determination, then a lump sum payment, equal to the amount of the missed BCS payments, is to be required. *Darling v. Philadelphia Electric Company*, Docket No. F-00161139, entered November 16, 1993; *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892, entered December 26, 1995; and *Claypool v. T.W. Phillips Gas & Oil Co.*, Docket No. Z-00248730, entered December 22, 1995.

On August 31, 2000, the BCS issued its determination on Ms. Whitley's informal complaint, at BCS Case No. 0805599. That determination directed her to pay \$169.00 by September of 2000, and commencing in October of 2000, to pay her regular monthly budget amount, plus an additional \$15.00 toward the arrearage on her account. After the issuance of the BCS determination, Ms. Whitley made a single payment of \$88.00. As of May 1, 2001, there was a balance due of \$500.00 for her to become current with the BCS determination. The total arrearage on her account, as of May 1, 2001, was \$920.24.

I am granting the motion of Duquesne and dismissing the complaint of Tina Whitley, with prejudice, for the failure to be present at the telephonic hearing of May 1, 2001, and prosecute the complaint. I am also accepting the BCS decision. However, I am adding a lump sum payment requirement and requiring Tina Whitley to make up the payments she failed to make in accordance with the BCS schedule.

In consideration of the foregoing, IT IS ORDERED THAT:

1. The complaint of Tina Whitley against Duquesne Light Company, at Docket No. C-00004240, is dismissed, with prejudice, for the failure to prosecute the complaint.
2. Within 15 days of the date the Commission's Order in this case is entered, Duquesne Light Company shall tender a bill to Tina Whitley in the net total amount due in order for her to become current with the payment arrangement established by the Bureau of Consumer Services, at BCS Case No. 0805599, as of the date of the entry of the Commission's Order.
3. Within 30 days of the date the Commission's Order in this case is entered, Tina Whitley shall pay to Duquesne Light Company a sum or sums of money equal to the bill tendered to her (in accordance with Paragraph 2, above,) to become current with the determination

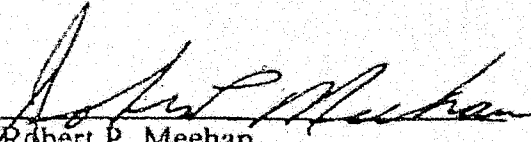
of the Commission's Bureau of Consumer Services, as of the entry date of the Commission's Order.

4. In addition, and beginning with the first electric bill received after the date on which the Commission's Order in this case is entered, Tina Whitley shall pay the regular monthly budget or optional payment amount on her electric bills, plus an additional \$15.00 per month toward the arrearage on the account, by the due date of each month's bills, and to continue to pay the electric bills in this manner until the arrearage on the account is paid in full.

5. As long as Tina Whitley complies with all of the terms of this Order, Duquesne Light Company shall not assess any late payment charges or penalties, and shall not interrupt her electric service, except for valid emergency or safety reasons.

6. If Tina Whitley does not comply with all of the terms of this Order, Duquesne Light Company is authorized to terminate her electric service, upon compliance with the applicable provisions of the Public Utility Code, 66 Pa. C. S. §§101, et seq., and the regulations of the Commission, 52 Pa. Code §§56.1, et seq.

Dated: May 1, 2001


Robert P. Meehan
Administrative Law Judge