

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Disappearing Ink, LLC	:	
Wes South	:	
	:	
v.	:	C-2020-3018171
	:	
Engie Resources LLC f/k/a GDF Suez	:	
Energy Retail Solutions, LLC	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision dismisses the Complaint filed in this matter due to Complainant’s failure to appear for the hearing and prosecute the Complaint or to have an attorney appear on its behalf.

HISTORY OF THE PROCEEDING

On February 11, 2020, Wes South (Complainant) filed a Formal Complaint against Engie Resources LLC f/k/a GDF Suez Energy Retail Solutions, LLC (Engie Resources or Respondent).¹ With respect to the type of utility service that is the subject of the Complaint, Complainant checked the “Electric” box on the Formal Complaint form and alleged, among other things, that a representative of GDF Suez “mislead an employee at our front desk” and switched the electric supplier on the account without proper authorization to a higher rate than

¹ Mr. South signed the Formal Complaint as a sole proprietor (owner).

the rate charged by Duquesne Light Company. As relief, Complainant requested a refund of the amount allegedly overcharged over the last year and an investigation of GDF Suez.

On February 24, 2020, Respondent filed a letter Answer wherein it referred to Complainant as Wes South/Disappearing Ink, LLC, a commercial customer.

On March 9, 2020, an Interim Order Setting Resolution Conference was issued where Disappearing Ink, LLC was listed as the sole Complainant in this case.²

By hearing notice dated July 9, 2020, the Complaint was assigned to me and scheduled for a telephonic hearing on Thursday, September 3, 2020, at 10:00 a.m. I issued a prehearing order on July 10, 2020, which also provided the date and time of the hearing as well as other procedural requirements related to hearings, including instructions for requesting a continuance if the hearing date and time were not convenient.

The hearing notice and the prehearing order, stating the date and time of the hearing, were electronically served on Complainants and Respondent due to the closure of the Commission's physical offices in response to the Governor's Proclamation of Disaster Emergency regarding the Covid-19 pandemic and pursuant to the Commission's *Emergency Order re Suspension of Regulatory and Statutory deadlines, Modification to Filing and Service Requirements* at Docket No. M-2020-3019262 (Order entered March 20, 2020) (*Emergency Order*), which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency.

The hearing convened as scheduled. Complainant, Wes South, did not appear and no representative appeared on behalf of Disappearing Ink, LLC, but an employee called into the hearing. The employee, Ian South, was not an attorney. No one called into the hearing to represent Respondent. The record closed by Interim Order entered September 29, 2020.

² The caption of this case is changed to include Disappearing Ink, LLC/Wes South as Complainants.

FINDINGS OF FACT

1. Complainants in this case are Wes South and Disappearing Ink, LLC. Formal Complaint and Answer.
2. Respondent in this case is Engie Resources LLC f/k/a GDF Suez Energy Retail Solutions, an electric supplier.
3. Neither Wes South nor an attorney representative for Disappearing Ink, LLC called the conference number at 10:00 a.m. on September 3, 2020 to participate in the scheduled hearing.
4. Complainants did not contact the Commission to explain their failure to appear for the hearing.
5. The hearing notice and prehearing order stating the date and time of the scheduled telephone hearing were electronically served on Complainants and Respondent pursuant to the Emergency Order.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.³ However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.⁴ Complainants had adequate notice of the time and date of the hearing, yet they failed to appear or explain why they could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

³ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

⁴ *Id.*

By hearing notice dated July 9, 2020, the Commission scheduled this matter for a hearing to be held on September 3, 2020, at 10:00 a.m. A prehearing order issued July 10, 2020, also advised the parties of the date and time of the hearing.

Due to the closure of the Commission's physical offices in response to the Governor's emergency declaration regarding the Covid-19 pandemic, the Commission electronically served the hearing notice and prehearing order on Complainants pursuant to the Commission's Emergency Order, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency.⁵

Paragraph 10 of the prehearing order informed Complainants that if they failed to participate in the hearing and present evidence in support of the Complaint, the Complaint may be dismissed.⁶ The prehearing order also provided instructions for contacting the Commission to request a change of the scheduled hearing date.

Section 332(a) of the Public Utility Code⁷ places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainants have the burden of demonstrating that the facts alleged in the Complaint are true and that they are entitled to the relief requested. By not appearing for the scheduled hearing to present evidence, Complainants failed to meet this burden of proof. Consequently, the Complaint must be dismissed.

In conclusion, Complainants were notified of the scheduled hearing call-in procedure, date and time, as well as how to contact the Office of Administrative Law Judge but failed to appear without explanation. Under these circumstances, Complainants had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. The due process rights of Complainants have been fully protected. However, due to the unusual

⁵ *Emergency Order re Suspension of Regulatory and Statutory deadlines, Modification to Filing and Service Requirements* at Docket No. M-2020-3019262 (Order entered March 20, 2020).

⁶ *See also*, 52 Pa.Code § 5.245.

⁷ 66 Pa.C.S. § 332(a).

circumstances caused by the Covid-19 state of emergency and modified Commission procedures, the Complaint is dismissed without prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The due process rights of Complainants have been fully protected in this proceeding. 52 Pa.Code § 5.245(a).
3. By failing to appear for the hearing and proffer any evidence to support the Complaint, Complainants have failed to meet the burden of proving entitlement to the relief sought from the Commission. 66 Pa.C.S. § 332(a); 52 Pa.Code § 5.245(a).
4. Corporations must be represented in accordance with 52 Pa.Code § 1.22 in adversarial proceedings before the Commission. 52 Pa.Code § 1.21.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Disappearing Ink, LLC/ Wes South against Engie Resources LLC f/k/a GDF Suez Energy Retail Solutions, LLC at Docket No. C-2020-3018171, is dismissed without prejudice.

