

{PRIVATE }

(Decision No. C93-410)

BEFORE THE PUBLIC UTILITIES COMMISSION{PRIVATE }
OF THE STATE OF COLORADO

* * *

JAMES BAILEY)	
YVETTE BAILEY,)	
and Children,)	DOCKET NO. 92F-420EG
)	
Complainants,)	
)	
v.)	
)	
PUBLIC SERVICE COMPANY OF COLORADO)	
)	
Respondent.)	

**COMMISSION ORDER DENYING MOTION TO STRIKE
AND GRANTING EXCEPTIONS**

Mailing Date: April 16, 1993
Adopted Date: April 14, 1993

BY THE COMMISSION:

This matter comes before the Public Utilities Commission ("Commission") on Exceptions filed by Complainants, James Bailey and Yvette Bailey and children, and on the Motion To Strike filed by respondent, Public Service Company of Colorado ("Company"). The Commission will deny the Company's motion to strike and will grant the exceptions request of Complainants that the hearing on their complaint be rescheduled.

Findings of Fact and Conclusions of Law

1. Findings of Fact

Based on a review of the record on appeal, the Commission finds and concludes as follows.

On July 21, 1992, Complainants filed a complaint with this Commission against the Company. Although the complaint is difficult to understand in some places, the Complainants appear to allege that the Company improperly denied them an extension to pay their utility bill, that problems with their meters caused them to be over-billed, and that they had entered into a billing arrangement that may have been breached by the Company. Complainants represented at all times relevant hereto and until its exceptions were filed on March 3, 1993, that they resided at 856 Memphis, Aurora, Colorado.

On August 17, 1992, the Company filed its answer admitting and denying various allegations of the complaint.

On August 18, 1992, Michelle Gronewold, an employee of the Commission, issued a letter to the Complainants advising them of the need to certify in writing to the Commission their intent to proceed to hearing. This letter was addressed to Complainants at 856 Memphis, Aurora, Colorado.

On November 23, 1992, Administrative Law Judge Ken Kirkpatrick issued an order to Complainants advising them that they had fourteen days to certify to the Commission their intent to proceed to hearing. The certificate of mailing for this order listed Complainants' address as 856 Memphis, Aurora, Colorado.

On December 3, 1992, the Commission received written notification from Complainants indicating that they wished to proceed to hearing.

On December 23, 1992, the Commission issued a Notice of Hearing to both Complainants and the Company setting the hearing for February 1, 1993 at 1580 Logan Street, Denver, Colorado. The certificate of mailing for this Notice listed Complainants' address as 856 Memphis, Aurora, Colorado.

On the day of hearing, Complainants did not appear. On February 11, 1993, Judge Kirkpatrick issued Decision No. R93-137, dismissing the complaint without prejudice because Complainants had failed to appear for the hearing.

On March 3, 1993, Complainants filed exceptions to the dismissal of their complaint. In their exceptions, Complainants advise the Commission for the first time that they had moved from 856 Memphis, Aurora, Colorado to 2671 Dahlia, Denver, Colorado. They appear to allege, among other things, that they fully intended to pursue their complaint to hearing but, because of their move, they did not receive notice of the hearing. The Commission notes, however, that at paragraph 2 of their exceptions, Complainants appear to also admit that they received the Commission's Notice of Hearing on December 28, 1992. However, in paragraph 4 of their exceptions, Complainants allege that they did not receive notice of the hearing in a "timely" manner. In paragraph 6 of their exceptions, they allege that they received no notice of the hearing.

On March 24, 1993, the Company filed a Motion To Strike Complainants' exceptions on the grounds that they also failed to serve the Company a copy of the exceptions. In the alternative, the Company requests that the Commission order Complainants to file an affidavit that they did not receive the Notice Of Hearing. The motion also states that the Company eventually received a copy of the exceptions from the Commission on March 23, 1993. The record discloses that the exceptions were filed without a certificate of service.

2. Conclusions of Law

A. Motion to Strike

The Commission shall deny the Company's motion to strike the exceptions. The Company is quite correct in asserting that Complainants have failed to comply with Rule 22 of the Commission's Rules of Practice and Procedure, 4 Colorado Code of Regulations -723-1 ("Rules"). Rule 22 requires parties to file a certificate of service with each pleading. Pleadings filed without such certificates are presumed not to have been served on other parties. See, Rule 22(d)(5). Rule 7(b)(2) requires that all pleadings, including exceptions, be served on all other parties. Failure to file a certificate of service or failure to serve a party with a pleading "may" subject the offending party's pleading to a motion to strike or other "appropriate relief." See Commission Rule 22(g). However, the Commission is not bound to grant the motion to strike and "may," within its discretion, enter other appropriate relief.

This Commission has a well founded policy of leniency in procedural matters involving pro se litigants so long as the substantial rights of other parties are not offended. The Commission is committed to making its forum as accessible as possible to the public, including to pro se litigants. While the Complainants failed to comply with Rules 7 and 22, we find and conclude that striking the

exceptions is not necessary in light of the fact that the Company received on March 23, 1993, a copy of the exceptions. We also note that, within its Motion to Strike, the Company responded to the substantive allegations of the exceptions, all of which are addressed below. For this reason we conclude that the Company is not unfairly prejudiced by the lack of service.

However, we admonish Complainants that all pleadings must be served on the Company, either by first class mail or by hand delivery. Any pleading that has heretofore not been so served shall be served on the Company within ten days of the mailing of this order. Any future pleadings that either are not properly served on the Company or lack certificates of service shall be stricken from the record.

Finally, the Company requests in the alternative that the Commission enter an order requiring Complainants to file an affidavit stating that they did not receive the Notice of Hearing. We find that this request is unnecessary in light of Colorado Rules of Civil Procedure ("C. R. C. P.") Rule 11. Rule 11 states that a signature of a party constitutes a certification that the factual and legal claims are made in good faith and not interposed for delay or harassment. See Commission Rule 22(g) which incorporates Rule 11. The parties are reminded that a breach of this rule subjects the party to sanctions, including costs and attorney fees.

B. Complainants' Exceptions

As an initial matter, we note that Rule 22(b) gives parties the opportunity to file responses to exceptions. Although it is not entitled as a response to the exceptions, the Company's motion to strike is devoted in good part to responding to the substance of Complainants' exceptions. We therefore construe the Company's motion as also a response to the exceptions.

Rule 4 incorporates the Colorado Administrative Procedures Act ("APA"). The APA provides that notice sent to the last known address of a party shall constitute proper notice. C.R.S. § 24-4-105(2), (1988). The record discloses that the Notice of Hearing was sent to 856 Memphis, Aurora, Colorado and that this was the last known address of Complainants at the time the notice was issued. We find that Complainants were properly given notice of the hearing. The fact that Complainants may not have received actual notice is a consequence of their own failure to timely notify the Commission of the change of their address. Therefore, we find and conclude that the Administrative Law Judge lawfully dismissed the complaint without prejudice for failure of Complainants to appear.

However, notwithstanding that proper notice was given in this case, we again note that this Commission's policy of leniency for violations of procedural rules if the substantial rights of other parties are not violated is a sound one. Unless contrary to law or otherwise inappropriate, this Commission favors results that give litigants at least one opportunity to have their complaint heard by this Commission. Rule 61(e)(1)(A) does not require that the Commission dismiss a complaint should the complainant fail to appear. This rule states that if a complainant fails to appear for a hearing after receiving notice thereof, the complaint "may" be dismissed. We find that no unfair prejudice will result to the Company in rescheduling the hearing.

Finally, we recently received two additional documents from Complainants: (1) a Motion for Injunction, and (2) a letter addressed to the Commission. We also have received a response by the Company to these two new documents. In light of our decision to reschedule the hearing, we direct the Administrative Law Judge to dispose of these pleadings as part of the remand.

THEREFORE THE COMMISSION ORDERS THAT:

1. The Company's motion to strike is denied. Complainants are admonished to comply with the Commission's rules regarding service of pleadings. Complainants are further ordered to serve on the Company within ten days of the mailing of this order all pleadings, if any, that have been filed with the Commission but have not been served on the Company.

2. Decision No. R93-137 is hereby reversed and the case is remanded to the Administrative Law Judge for further proceedings consistent with this Decision.

This order is effective upon its Mailed Date.

ADOPTED IN OPEN MEETING April 14, 1993.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners