

Decision No. R04-0202

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04F-013E

FRANK W. ROBERTS,

COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTION TO DISMISS
AND DISMISSING COMPLAINT
WITHOUT PREJUDICE**

Mailed Date: February 26, 2004

Appearances:

No appearance on behalf of Complainant Frank W. Roberts,
pro se; and

C. Chandler Lippitt, Esq., of the Law Firm Murray Franke
Greenhouse List & Lippitt LLP, on behalf of Respondent Public
Service Company of Colorado.

I. STATEMENT, FINDINGS, AND CONCLUSION

1. On January 5, 2004, Mr. Frank W. Roberts (Complainant) filed a Complaint against Respondent Public Service Company of Colorado (PSCo or Respondent).

2. On January 8, 2004, the Commission issued its Order to Satisfy or Answer, addressed to Respondent. On the same date the Commission sent a letter to Complainant. The

Order and the letter each advised its recipient of the filing requirements, and of the consequences of failure to meet the requirements, set out in Rule 4 *Code of Colorado Regulations* 723-1-72. Each also established the schedule for filing and serving the required documents.

3. On January 8, 2004, the Commission issued its Order Setting Hearing and Notice of Hearing establishing a hearing date of February 26, 2004, at 9:00 a.m., in this docket.

4. On January 28, 2004, Respondent filed its Answer to the Complaint.

5. Complainant's list of witnesses and copies of his exhibits were due on February 11, 2004. Complainant did not file a list of witnesses and copies of his exhibits at any time.

6. Complainant's certification of intent to proceed in this matter was due on February 12, 2004. Complainant did not file a certification of intent to proceed in this matter at any time.

7. At no time has counsel entered an appearance on behalf of Complainant.

8. At the assigned place and time the undersigned Administrative Law Judge (ALJ) called the matter for hearing.

9. C. Chandler Lippitt, Esq., entered his appearance on behalf of Respondent. With Mr. Lippitt were witnesses on behalf of Respondent.

10. As neither the Complainant nor a representative of the Complainant was present, the ALJ recessed the hearing until 9:30 a.m.

11. During the recess the ALJ contacted Ms. Leslie Handmaker of the Commission's External Affairs Section.¹ Ms. Handmaker has had no contact with Complainant since he filed his formal Complaint. In addition, the ALJ attempted to reach Mr. Roberts at the telephone number on the Complaint; there was no answer. Finally, the ALJ obtained the Commission file in this matter. The file contained nothing to indicate that Mr. Roberts had contacted the Commission concerning this matter since the filing of the Complaint.

12. Between the filing of the Complaint and the hearing in this matter, Complainant contacted neither the ALJ nor PSCo.

13. When the hearing was reconvened at 9:30 a.m., neither the Complainant nor a representative of the Complainant was present. Based on Complainant's failure to appear, counsel for Respondent moved to dismiss the Complaint. The motion was taken under advisement, and the hearing was adjourned.

14. The motion to dismiss will be granted based on Complainant's failure to prosecute the Complaint. The dismissal will be without prejudice. Complainant appears *pro se* and may not appreciate the consequences of his failure to meet the filing requirements and to appear at the hearing. In addition, it appears that this is the first formal complaint filed by Complainant with respect to the underlying controversy with PSCo. Further, the Commission's policy is to provide a certain leeway to persons appearing *pro se*. Finally, dismissal without prejudice in these circumstances is consistent with prior Commission decisions. *See, e.g.*, Decision No. C02-1266.

¹ Ms. Handmaker is the individual in External Affairs who handled Complainant's informal complaint concerning the same subject matter as the formal Complaint filed on January 5, 2004.

15. Pursuant to § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The motion of Public Service Company to dismiss the Complaint is granted.
2. Docket No. 04F-013E, the complaint of Frank W. Roberts, is dismissed without prejudice for failure to prosecute.
3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.
4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.
 - a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
 - b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge