

Control Number: 46271



Item Number: 40

Addendum StartPage: 0

SOAH DOCKET NO. 473-17-1314
PUC DOCKET NO. 46271

RECEIVED
2017 MAY -1 PM 4:07

COMPLAINT OF EVERETTH §
HOLLEY AGAINST AEP TEXAS §
CENTRAL COMPANY, JUST §
ENERGY, AND CPL RETAIL §
ENERGY §

BEFORE THE STATE UTILITY COMMISSION
STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 3
SUMMARIZING TELEPHONIC PREHEARING CONFERENCE

The State Office of Administrative Hearings (SOAH) has reassigned this case from Administrative Law Judge (ALJ) Craig R. Bennett to ALJ Elizabeth Drews.¹

On April 28, 2017, the ALJ’s administrative assistant, Erin Hurley, notified the parties by email, using their email addresses on the service list, that the ALJ would conduct a telephonic prehearing conference on May 1, 2017. Ms. Hurley’s email instructed the parties to notify her by 8:30 a.m. on May 1, 2017, if they had a schedule conflict or wanted the ALJ, when convening the prehearing conference, to call them at a different telephone number than their telephone number on the service list. All parties except Everetth Holley responded.

SOAH Order No. 2, issued December 6, 2016, states: “All parties shall provide their current telephone and facsimile number, if available, to all other parties and the Commission by filing and serving all parties with such numbers. Each party is responsible for providing the Commission and all parties with current address, telephone, and facsimile information if such information changes.” Because Mr. Holley has not provided his telephone number, the service list does not contain a telephone number for him. On May 1, 2017, Ms. Hurley emailed all parties, asking if any of them had a telephone number for Mr. Holley. In response, CPL Retail Energy (CPL Retail) provided a telephone number, which Ms. Hurley called. No one answered and a recording indicated that the user had not yet set up the voicemail box for that telephone number. Ms. Hurley then notified all

¹ Unless stated otherwise, in this order “the ALJ” means Judge Drews.

40

parties by email that the ALJ would conduct the prehearing conference by telephone at 11 a.m. using the phone numbers provided in response to Ms. Hurley's emails or, if no such number was provided, those appearing on the service list. Ms. Hurley also notified the parties by email that if a party did not answer when called, the prehearing conference would proceed without that party's participation.

At 11:00 a.m. on May 1, 2017, the ALJ convened the prehearing conference by calling all parties at those numbers. All parties answered except Mr. Holley. The ALJ called him twice, and both times he did not answer and a recording indicated that the user had not yet set up the voicemail box. The other parties appeared through their attorneys: Melissa Gage for AEP; Bobby Debalak for CPL Retail; Cori Novi for JustEnergy Texas, LP (Just Energy);² and Michael Crnich for the Public Utility Commission of Texas (Commission) staff. Mr. Debalak indicated that he and Michael Matthews (who is with the same law firm and was already on the service list) are now representing CPL Retail in this case and that Nicholas Lawson has left that firm and is no longer representing CPL Retail in this case.

In response to the ALJ's questions, AEP stated that a court reporter would be present to transcribe the hearing. At least one party indicated that it wants to submit a written post-hearing brief rather than make an oral closing statement at the hearing. That will be further discussed at the hearing. The ALJ asked the parties to consider whether any information appears in their public filings in this case for which a legal protection exists that the holder of the protection has not waived, such as by the holder filing such information publicly in this case. The ALJ will discuss further at the hearing that question and related matters involving whether to close the hearing at any point to address such information. The ALJ also stated that parties offering documents in evidence should bring to the hearing four copies if the document was pre-filed, and four copies plus a copy for each other party if the document was not pre-filed. Finally, three documents were discussed that Ms. Hurley had emailed to all parties earlier on May 1, 2017. They were a document that Mr. Holley

² The files contain different names for some of the companies that are parties to this case. The ALJ will clarify at the hearing which name should be used in future in the case style and filings in this case.

sent to SOAH on April 10, 2017, and apparently intended as his rebuttal testimony and motions by Just Energy and CPL Retail to have their attorneys and witnesses appear by telephone filed.

SOAH Order No. 1 states:

The procedures regarding filing are specified in Subchapter E of the Commission's procedural rules and apply in this proceeding. Parties are expected to know those procedures and comply with them fully. Pleadings and other filings are deemed filed when the proper number of legible copies is presented to the Commission filing clerk for filing. . . . Filings at the Commission shall occur by 3:00 p.m. on the date in question unless otherwise specified.

Those requirements are also stated in the Commission's rules. Mr. Holley's rebuttal testimony sent to SOAH does not contain a file-stamp by the Commission filing clerk and the Commission interchange indicates that it was not filed at the Commission as required.

SOAH Order 1 and the Commission's rules also require that a copy of any document that is filed at the Commission or sent to SOAH must be served on all parties. Mr. Holley's rebuttal testimony does not contain a certificate of service. At the prehearing conference, the other parties stated that they had not received a copy until Ms. Hurley emailed them a copy on May 1, 2017.

The ALJ will address at the hearing objections, if any, to all prefiled testimony and to Mr. Holley's rebuttal testimony.


SOAH Order No. 1 also states: "Unless otherwise specified, responses to any motion or other pleading shall be filed within five working days from receipt of the pleading to which the response is made." That requirement is also stated in the Commission's rules.

Review of the Commission interchange and the movants' responses to the ALJ's questions at the prehearing conference indicate the following:

- Just Energy’s motion did not state Mr. Holley’s position on it but states that the other parties did not object to it. The ALJ thus cannot rule on it until after the deadline for Mr. Holley’s written response. The motion was filed at the Commission at 4:38 p.m. on April 21, 2017; served on the parties by registered mail return receipt requested; and according to the return receipt received by Mr. Holley on April 24, 2017. The service list contains an email address for him, but it was not emailed to him. The deadline for Mr. Holley to file his written response, if any, to Just Energy’s motion is therefore 3:00 p.m. on May 1, 2017.
- CPL Retail’s motion states that Mr. Holley opposes it but that the other parties agree to it. That motion appeared on the PUC interchange for the first time after the prehearing conference and does not contain a Commission file stamp. Mr. Debalak stated that he had a copy with a Commission file stamp indicating that it was filed on April 28, 2017. Its certificate of service states that it was served on May 1, 2017. Mr. Debalak stated that it was served by certified mail return receipt requested and also emailed to the parties. The ALJ thus assumes that Mr. Holley received it by email on May 1, 2017.

For reasons discussed above, the ALJ stated at the prehearing conference that both motions were filed and served sufficiently late that she could not rule on them yet because Mr. Holley has not agreed to them and the deadline for his response, if any, has not passed.

SIGNED May 1, 2017.



ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS