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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

R & M INDUSTRIES, INC,
v.
PP&L ELECTRIC UTILITIES
Telephonic Hearing

Docket No.: C-2004-3428

PP&L

Keystone Building
Hearing Room 3
400 North Street
Harrisburg, PA

December 14, 2004
Commencing at 1:34 p.m.

BEFORE:

ANCELA T. JONES, Administrative Law Judge

APPEARANCES:

JOHN F. GROSS, Esquire
Gross, McGinley, LaBarre & Eaton
33 S. 7th Street
Allentown, PA 18101
For PP&L Electric
(Via Telephone)

JUDITH PECK, PRO SE
R & M Industries
P. O. Box 98
Route 10
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Representing R & M Industries
(Via Telephone)

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REPORTER: Courtney M. Wilson

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P R O C E E D I N G S

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3 JUDGE ANGELA T. JONES:

4 This is the time and place scheduled for
5 the matter R & M Industries, Inc. versus PP&L Electric
6 Utility Corporations at Docket Number C-20043428. I
7 am Administrative Law Judge Angela Jones appointed by
8 the Commission to preside in this hearing.

9 Ms. Peck, I did elicit from you that you
10 did receive my Interim Order dated December 9th.

11 Mr. Gross, have you received that Order,
12 as well?

13 ATTORNEY GROSS:

14 I did, Your Honor.

15 JUDGE JONES:

16 Okay. Ms. Peck, I did ascertain from you
17 that you are not represented by Counsel; is that
18 correct?

19 MS. PECK:

20 That's correct, Your Honor.

21 JUDGE JONES:

22 Okay. In my Order I did point out that
23 our regulations do call for any corporation that has
24 an adversary proceeding before the Commission to be
25 represented by Counsel. Did you understand that, Ms.

1 Peck?

2 MS. PECK:

3 Yes, I did. But we could not afford one,
4 Your Honor.

5 JUDGE JONES:

6 Okay. Mr. Gross, I believe you may have
7 a motion for me?

8 ATTORNEY GROSS:

9 Your Honor, I would renew or make a
10 motion to dismiss based on Section 1.2(1)(b) ---

11 JUDGE JONES:

12 1.2(1)(b)?

13 ATTORNEY GROSS:

14 Yes, Your Honor, of Article 52 at
15 Pennsylvania Code. It says at adversarial proceedings
16 a corporation must or shall be represented by counsel.
17 And since the Complainant in this case is a
18 corporation and does not have counsel, I think the
19 complaint should be dismissed.

20 JUDGE JONES:

21 Very well, Mr. Gross. Ms. Peck, do you
22 understand the motion that Mr. Gross has just put
23 forward?

24 MS. PECK:

25 Yes, I do understand it, Your Honor.

1 JUDGE JONES:

2 And your response?

3 MS. PECK:

4 But again --- well, I again I say to you
5 this corporation has two employees and we cannot
6 afford a lawyer.

7 JUDGE JONES:

8 I understand that, Ms. Peck. I have ---
9 well, let me say this. In the Pre-hearing Order there
10 was a paragraph that did definitively provide that you
11 must be represented by counsel if you are not
12 representing yourself. I believe that was paragraph
13 number six in my Pre-hearing Order. I also believe
14 that Mr. Gross definitively pointed out to you in his
15 motion that he recognized that you were not
16 represented by counsel and that you are a corporation
17 and that our regulations do point out that in
18 adversary proceedings under 1.2(1) that corporations
19 in adversarial proceedings must be represented by
20 counsel.

21 I then again reviewed his motion and
22 prior to this hearing tried to make sure that all
23 parties had receipt of my Order denying his motion,
24 but I did very carefully word it that in --- you must
25 be represented by counsel in an adversarial

1 proceeding. And you did --- never elicited the fact
2 that you were a two-man corporation. And that your
3 funds were poor and that was the reason why you were
4 not represented by counsel until today.

5 MS. PECK:

6 No, on my complaint form that I submitted
7 under question six. It says, if you are represented
8 by a lawyer you must provide your lawyer's name and
9 address and telephone number. Right there is where I
10 said we can't afford one.

11 JUDGE JONES:

12 Yes, I understand that, Ms. Peck. But
13 there is no rationale as to why you can't afford one.
14 Today was the first day that you've provided to me any
15 rationale as to why you can't afford one. However,
16 this Commission as well as Mr. Gross have pointed out
17 to you several times that our regulations state that
18 you must be represented by counsel if you are a
19 corporation in an adversarial proceeding.

20 MS. PECK:

21 Well, you know, but item three on the
22 formal complaint itself, it say right there economic
23 conditions was due to business. I think I explained
24 it pretty --- pretty in depth as to why we were having
25 trouble paying our bills.

1 JUDGE JONES:

2 Yes, that went to why you were paying
3 your bill. Not why you could not afford counsel,
4 ma'am.

5 MS. PECK:

6 Well, it's one and the same, but ---.

7 JUDGE JONES:

8 Okay. I would say that I cannot assume
9 that it's one and the same and it's not definite in
10 the complaint form that you filled out that it is one
11 and the same.

12 MS. PECK:

13 So what you're saying to me is that I
14 should have explained in the complaint form.

15 JUDGE JONES:

16 You could have explained in the complaint
17 form. You could have provided information through a
18 correspondence in response to Mr. Gross' motions. You
19 could have responded to my Order. There were several
20 opportunities that you could have used to respond as
21 to the rationale why you would not be represented by
22 counsel. You chose to remain silent, ma'am.

23 MS. PECK:

24 Well, I thought it was pretty explicit in
25 the complaint form. I'm sorry, Your Honor.

1 JUDGE JONES:

2 Very well.

3 MS. PECK:

4 But that still doesn't --- what I ---
5 what bothers me the most is that it still doesn't
6 explain why we were given the security deposit amount
7 without any forewarning.

8 JUDGE JONES:

9 Ma'am, we cannot get into the contents of
10 your actual complaint because ---

11 MS. PECK:

12 Because I'm not represented.

13 JUDGE JONES:

14 --- procedurally you are --- you ---
15 our regulations --- our rules and regulations require
16 that you must be represented by counsel, and you are
17 not.

18 MS. PECK:

19 Okay. Is there an appeal to this
20 process?

21 JUDGE JONES:

22 Yes, there is. And I will explain that
23 to you. If --- if we should choose to go through the
24 details of your complaint I would write a detailed
25 initial decision that would go before the Commission.

1 You would get a copy of it and Mr. Gross, as Counsel
2 for PP&L would also receive a copy of it.

3 If you are dissatisfied with my initial
4 decision you would then have 20 days to provide a
5 written exception and that would be your appeal to the
6 now sitting four Commissioners before --- that are
7 appointed by the Governor. Those --- then there would
8 be a 10-day period for a person to reply to the
9 exception or appeal that would be written before the
10 Commission.

11 The Commission then would consider the
12 total record as well as my initial decision as well as
13 the exception and the reply exception written against
14 my decision and make a ruling. However, in this case,
15 it does not appear that we will get to the actual
16 substance of your complaint because of the defective
17 representation that you have in not providing yourself
18 with counsel.

19 MS. PECK:

20 Right. And that's the reason that I
21 asked that question, Your Honor.

22 JUDGE JONES:

23 Okay. I would say that I would still
24 write a decision based on that defect. If you were
25 dissatisfied with that you could provide the

1 Commission with a rationale as to why you're
2 dissatisfied with that decision. Again, Mr. Gross
3 would then respond to that. And again it would be
4 provided to the four Commissioners that are currently
5 sitting to decide. But it's all contingent upon me
6 issuing a decision. If I do not issue a decision that
7 process is stalemated until I do.

8 MS. PECK:

9 Uh-huh (yes).

10 JUDGE JONES:

11 At this time, I believe, Mr. Gross, I
12 have your motion in front of me.

13 ATTORNEY GROSS:

14 That's correct, Your Honor.

15 JUDGE JONES:

16 And according to the rules of this
17 Commission I would have to grant that motion pending
18 any special reasonable rationale that Ms. Peck can
19 elicit for her not proceeding with counsel as provided
20 several times to her in correspondence to her company.
21 Do you understand that, Ms. Peck?

22 MS. PECK:

23 Well, I understand we could not afford a
24 lawyer. And I understand that's why this proceeding
25 won't go any further.

1 JUDGE JONES:

2 Okay. Do you understand what I --- the
3 procedure that I have outlined to you as far as
4 pursuing an appeal process as you --- as you
5 understand an appeal?

6 MS. PECK:

7 I believe --- I mean it's very
8 complicated for me. But I think I understand what it
9 is.

10 JUDGE JONES:

11 Okay. Is there any question that you
12 have for me to better clarify the --- what you call, a
13 term an appeal process?

14 MS. PECK:

15 Well, I mean, I think it's pretty simple.
16 What you're saying to me is because I am not
17 represented by counsel and because I did not provide
18 you with a reason why we couldn't afford one that you
19 can't continue with this hearing. Nor can you hear
20 what I have to say about it. So based on the motion
21 to dismiss the hearing and, you know, then it leaves
22 me with you filing a decision and I'm not sure based
23 on what next.

24 JUDGE JONES:

25 Okay. I will file a decision basically

1 putting in writing the rationale of my determination
2 on the motion. At that point, that would be mailed to
3 both you and counsel for PP&L which, at this point,
4 is Mr. Gross. You would be given 20 days to respond
5 to that initial decision providing the Commission with
6 the reasons why you do not like that decision. If you
7 should chose to do that you must provide that
8 rationale in writing within 20 days of receiving my
9 initial decision.

10 MS. PECK:

11 Okay.

12 JUDGE JONES:

13 Once you do do that, Mr. Gross would have
14 10 days to respond to the reasons that you provide you
15 do not like the decision.

16 MS. PECK:

17 Right.

18 JUDGE JONES:

19 The Commission then would consider my
20 initial decision, the recrd, your exceptions, that's
21 what they're termed, to my initial decision as well as
22 Mr. Gross' reply exceptions and make a final decision
23 for the Agency.

24 MS. PECK:

25 Okay.

1 JUDGE JONES:

2 Does that better clarify to you, Ms.
3 Peck, the procedure for an appeal process?

4 MS. PECK:

5 Yes. I --- I mean what I'm hearing is
6 because I'm not represented you can't hear the case
7 and therefore, that is your reason for making your
8 decision. And, you know, it has nothing to do with
9 anything else.

10 JUDGE JONES:

11 Right. I have not gotten into the merits
12 of your case ---

13 MS. JONES:

14 Right.

15 JUDGE JONES:

16 --- I believe ---

17 MS. PECK:

18 Right.

19 JUDGE JONES:

20 --- which considers the security deposit.

21 MS. PECK:

22 Right.

23 JUDGE JONES:

24 Okay. Mr. Gross, do you have anything
25 for me further?

1 ATTORNEY GROSS:

2 I do not, Your Honor.

3 JUDGE JONES:

4 Okay. In case I'm --- have not been
5 clear I will be providing a decision that will be
6 granting your motion, Mr. Gross based on rule 1 ---
7 Section 1.2(1) of the Pennsylvania Code which are the
8 Commission's regulations. Having that, I think I have
9 explained to you, Ms. Peck, your recourse. And I
10 think you do understand it. Is there anything further
11 that the parties have for me today?

12 ATTORNEY GROSS:

13 Nothing further from me, Your Honor.

14 JUDGE JONES:

15 Okay. Ms. Peck?

16 MS. PECK:

17 I guess not.

18 JUDGE JONES:

19 Okay. We are adjourned. Thank you very
20 much.

21 ATTORNEY GROSS:

22 Thank you, Your Honor.

23 * * * * *

24 HEARING CONCLUDED AT 1:47 P.M.

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C E R T I F I C A T E

I hereby certify that the
foregoing proceeding 12/14 Jones
was reported by me, that I have read this
transcript on 1/7/05, and I attest
that this transcript is a true and
accurate record of the proceeding.

Courtney M. Wilson
Court Reporter