

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Liberty Towers Philly LP	:	
	:	
v.	:	C-2017-2582869
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

This Initial Decision dismisses the Complaint of Liberty Towers Philly LP at Docket No. C-2017-2582869 due to the Complainant’s failure to comply with the presiding officer’s Order to have an attorney, licensed to practice within the Commonwealth of Pennsylvania, enter an appearance on its behalf.

HISTORY OF THE PROCEEDING

On December 30, 2016, Liberty Towers Philly LP (Complainant or Liberty) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) alleging that there were incorrect charges on its bills and requesting that PGW readjust its bill.

On January 25, 2017, PGW filed its Answer, denying the material allegations of the Complaint.

By Hearing Notice dated March 6, 2017, the matter was scheduled for an initial hearing on Tuesday, April 11, 2017 at 10:00 a.m. and was assigned to me.

On March 17, 2017, I issued a Prehearing Order outlining the procedures for the parties. I also indicated that the Complainant needed to have an attorney licensed to practice law in Pennsylvania enter an appearance on its behalf on or before April 5, 2017.

To date, there is no record of an attorney filing a notice of appearance on behalf of Liberty Towers Philly LP. As the Complainant did not comply with my March 17, 2017 Prehearing Order, the Complaint will be dismissed as discussed below.

A Hearing Cancellation Notice was issued on April 10, 2017. The record closed on April 10, 2017.

The record in this case consists of the pleadings and my Prehearing Order.

FINDINGS OF FACT

1. The Complainant is Liberty Towers Philly LP.
2. The Respondent in this matter is Philadelphia Gas Works.
3. The Complainant is a Limited Partnership.
4. By Hearing Notice dated March 6, 2017, the matter was scheduled for an initial hearing on Tuesday, April 11, 2017 at 10:00 a.m. and was assigned to me.
5. A Prehearing Order dated March 17, 2017, indicated that the Complainant needed to have an attorney licensed in Pennsylvania enter an appearance on its behalf on or before April 5, 2017.
6. As of the date of this initial decision, the Complainant has not had an attorney enter an appearance on its behalf.

DISCUSSION

By Prehearing Order dated March 17, 2017, I instructed the Complainant, a limited partnership, to have counsel enter an appearance on its behalf on or before April 5, 2017. To date, no notice of appearance has been filed.

The Complainant in this case is a limited partnership that is not represented by counsel. The Commission's regulations concerning representation and notice of appearance are set forth in 52 Pa.Code §§ 1.21-1.24. The Commission's regulations require partnerships, corporations, other business organizations including limited liability companies, trusts, associations, agencies, political subdivisions and government entities to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa.Code §§ 1.21-1.23.

In 52 Pa.Code § 1.8, the term "adversarial proceeding" is defined as "[a] proceeding initiated by a person to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission which is contested by one or more other persons and which will be decided on the basis of a formal record." Additionally, the term "person" is defined as "individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities or other political subdivisions." *Id.*

This matter is an adversarial proceeding. Accordingly, the Complainant, a limited partnership, is required to be represented by counsel. No attorney is listed on the Complaint, nor has one entered an appearance to represent the Complainant.

Additionally, the Complainant failed to comply with my March 17, 2017 Prehearing Order directing it to be represented by counsel since it is a limited partnership. Failure to comply with an order issued by a presiding officer warrants dismissal of the application or complaint. See, e.g., *Application of And Ex Cor*, A-2012-2337848 (Final Order entered June 19, 2013); *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket Nos. C-2008-2065498 and C-2008-2079076 (Opinion and Order entered June 24, 2009); *Snyderville Community Development Corp. v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion

and Order entered July 31, 2006) (citing, *Treffinger v. PPL Electric Utilities Corp.*, Docket No. C-20027978, 2003 Pa. PUC LEXIS 3 (Opinion and Order entered March 3, 2003)); *Franconia Mennonite Conference v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2193709 (Final Order entered June 6, 2003).

The Complainant was informed of the requirement that it must have counsel by the Hearing Notice dated March 6, 2017 and my Prehearing Order dated March 17, 2017. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission by the U.S. Postal Service as undeliverable, and therefore are deemed to have been received. *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A. 2d 584 (1974), *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa. Cmwlth. 1994).

I instructed the Complainant to have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance to represent it prior to April 5, 2017. The Complainant has not contacted me regarding such representation, nor has an attorney filed a notice of appearance on behalf of the Complainant. Therefore, the Complainant failed to comply with my Order. Consequently, the Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S. § 1101.

2. Mail sent to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A. 2d 584 (1974), *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa. Cmwlth. 1994).

3. The Commission's regulations require partnerships, corporations, other business organizations, trusts, associations, agencies, political subdivisions and government

