

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Liberty Towers Philly, LP
v.
Philadelphia Gas Works

Public Meeting held April 5, 2018
2582869-OSA
Docket No. C-2017-2582869

MOTION OF CHAIRMAN GLADYS M. BROWN

Before the Commission today is the Complaint by Liberty Towers Philly, LP (Liberty) filed against Philadelphia Gas Works (PGW) on December 30, 2016, which alleged that there were incorrect charges on its bills. As relief, it requested PGW readjust its bill. On January 25, 2017, PGW filed its Answer which denied the material allegations of the Complaint. On March 17, 2017, the ALJ assigned to this case issued a Prehearing Order outlining the procedures for the parties. In it, the ALJ notified Liberty that it needed to have an attorney licensed to practice law in Pennsylvania enter an appearance on its behalf on or before April 5, 2017. That date came and passed, and no attorney filed a notice of appearance on behalf of Liberty Towers Philly LP.

On July 11, 2017, the Initial Decision was issued and the ALJ dismissed the Complaint for failure to adhere to the Prehearing Order. Liberty did not file any Exceptions to the Initial Decision.

On August 11, 2017, the Commission entered a Final Order stating that the Initial Decision became final without further action of the Commission and dismissed the Complaint.

On August 24, 2017 an attorney for Liberty made an appearance on behalf of it and filed a Petition for Rehearing.

The Complainant/Petitioner in this case is a limited partnership that was 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 was an adversarial proceeding. Accordingly, Liberty, a limited partnership, was required to be represented by counsel. It was notified of the need for it to retain counsel in the March 17, 2017 Prehearing Order. Liberty failed to comply with the Prehearing Order. 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, 2016).

In its Petition for Rehearing, Liberty asserts that the reason for the case dismissal was its failure to retain counsel by April 5, 2017, and now that this failure has been cured, it should be granted a hearing on the case.

Liberty asserts in its Petition, that it had valid reasons for failing to retain counsel by the April 5, 2017 deadline. First, the Petitioner claimed that its manager was not in the Commonwealth at the time the March 17, 2017 Prehearing Order was issued, and never received it. Next, Liberty asserted it reasonably believed that it would be able to reach an amicable solution to this matter with PGW, making the hearing unnecessary. Finally, it further claimed that its manager was unfamiliar with the processes of the Commission.

Liberty Towers was informed of the requirement that it must have counsel by both the Hearing Notice dated March 6, 2017, and the Prehearing Order dated March 17, 2017. Specifically, the Prehearing Order directed Liberty Towers to have an attorney enter an appearance by April 5, 2017. The ALJ explained in her ID that neither the Hearing Notice nor the Prehearing Order was returned to the Commission by the U.S. Postal Service as undeliverable. Therefore, such documents 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).

The Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

Under 66 Pa. C.S. § 703(g), the Commission has the power to amend or rescind its own orders at any time subject only to the requirements of due process. See *Department of Highways v. Pa. P.U.C.*, 185 Pa.Super. 418, 138 A.2d 143 (1958). Because such relief may result in disturbance of final orders, a petition to amend or rescind a final order must be granted judiciously and only under appropriate circumstances. See *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980).

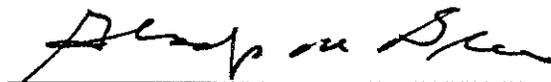
I do not agree with Liberty that it should be granted a rehearing. In my view the reasons for failure to adhere to the ALJ's Prehearing Order are without merit and do not show cause.

The reasons used by Liberty do not explain why it did not contact the ALJ for (a) a further explanation on why it needed an attorney; (b) its failure to retain legal counsel by the prescribed date; (c) why it failed to request to seek an extension of the deadline established by the ALJ for having an appearance and (d) it presented no new or novel argument for granting a rehearing in its Petition. Liberty's attorney filed a Notice of Appearance on August 24, 2017, approximately 8 months after it filed its formal complaint, and 5 months after the Prehearing order was issued. Liberty had ample time to obtain legal representation, yet it chose not to until the very end of this process. Due to its disregard of Commission regulations, in the present matter, I believe it is inappropriate to grant a rehearing.

THEREFORE, I MOVE THAT:

1. The Petition for Rehearing be denied; and
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

April 5, 2018
Date



Gladys. M. Brown, Chairman