

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MOJI LLC	:	
	:	
v.	:	C-2018-3001059
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

The undersigned through this decision dismisses the formal complaint (Complaint) filed in this matter for failure of the Complainant to appear at the hearing and prosecute the Complaint. The Complaint is also dismissed for failure of the Complainant to comply with an Order issued by the undersigned.

HISTORY OF THE PROCEEDING

On April 9, 2018, the Complainant, MOJI LLC,¹ filed a Complaint with the Pennsylvania Public Utility Commission (Commission or PUC) against PECO Energy Company (PECO or Company or Respondent). The Complainant indicated that it receives both electric and gas service from the Respondent. The Complainant averred that the utility terminated the Complainant's service and that there were incorrect charges on its bill. The Complainant requested that the Commission address the incorrect charges for service.

¹ In signing the Complaint, Mr. Mohamed Saddick represented that he is the owner of MOJI LLC.

The Complaint was served on PECO electronically (eService) by the Commission's Secretary on April 10, 2018, according to the audit history of the docket. The eService is pursuant to the waiver of Section 702 program, under which the Respondent waives the service requirements in 66 Pa.C.S. § 702.

On May 2, 2018, Shawane Lee, Esquire, counsel for the Respondent, filed an Answer and New Matter to the Complaint. The Answer averred that the Complainant had a commercial account with the Respondent. The Answer also stated that the Complainant filed an informal complaint on August 23, 2017, with the Commission's Bureau of Consumer Services (BCS) at Case No. 003556117 for an accumulated service bill at its previous service address, 774 Garret Road, Upper Darby, Pennsylvania.

The Respondent further averred in its Answer that the Complainant contested the bill from its previous address in the BCS informal complaint at Case No. 003556117. The Complainant also contested the Respondent adding the service bill of its previous address to its current address, 1254 West Chester Pike, Office 203, Havertown, Pennsylvania. BCS dismissed the informal complaint finding no request for disconnection of service by the Complainant, and therefore, no wrong doing by the Respondent. The Respondent averred that it terminated the electric service of the Complainant at its current service address on April 4, 2018, for a past due balance of \$11,102.98.

The Respondent in New Matter averred that the Complainant is a commercial customer operating a business at the current service address. The Respondent averred that this proceeding is adversarial and by Commission regulation the Complainant is required to be represented by an attorney. 52 Pa.Code § 1.21(b). The Respondent requested that the Commission issue a date certain for the Complainant to be represented by an attorney.

Also, on May 2, 2018, the Respondent filed a Motion to File an Answer *Nunc Pro Tunc* (Motion). The Respondent acknowledged that its Answer was due on April 30, 2018, but due to administrative oversight it was filed late.

A Hearing Notice dated June 6, 2018, notified the parties that an initial in-person hearing was scheduled for Tuesday, August 7, 2018, at 10:00 a.m. This Notice indicated that the case was assigned to the undersigned Administrative Law Judge (ALJ) as the presiding officer.

On June 6, 2018, the Respondent filed an amended Motion to File an Answer *Nunc Pro Tunc* (Amended Motion). The Amended Motion corrected a typographical error in the Motion.

A Prehearing Order dated June 7, 2018, provided procedural rules and guidelines for the proceeding and emphasized the following:

- (1) a request to change the scheduled hearing should be sent at least five days prior to the hearing date;
- (2) the request for a hearing change is to be in writing and sent to all parties of record; and
- (3) a caution that Complainant may lose the case if it does not take part in the hearing and present evidence on the issues raised.

The June 7, 2018 Prehearing Order also granted the Motion by PECO, and therefore, accepted the late-filed Answer of the Respondent. The June 7, 2018 Prehearing Order directed the Complainant to file a notice of appearance of an attorney no later than August 1, 2018, as evidence of appropriate representation in this proceeding.

The evidentiary hearing convened as scheduled on August 7, 2018. The Complainant was not present and had not communicated any excuse why it was unable to appear. Attorney Lee as counsel for the Respondent was present along with one potential witness. Attorney Lee moved for the admission of the following two exhibits:

- 1) PECO Exhibit 1 – Business Document of MOJI, LLC
- 2) PECO Exhibit 2 – Ownership of service address.

Both exhibits were admitted without objection.

Attorney Lee moved to dismiss the Complaint with prejudice for two reasons:

- 1) lack of prosecution of the Complaint by the Complainant and
- 2) failure to comply with the June 7, 2018 Prehearing Order to be represented by counsel.

I stated that I would rule on the motion to dismiss in writing and adjourned.

The transcript of this Complaint consists of 11 pages of transcribed testimony. The record closed on September 11, 2018, when the undersigned received the transcript.

To date, there has been no further communication from the Complainant. This matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is MOJI, LLC which received electric and gas service from the Respondent at 1254 West Chester Pike, Office 203, Havertown, Pennsylvania (service address).

2. The Complainant is registered as a limited liability company with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations. PECO Exhibit 1.

3. The Respondent is PECO Energy Company, a jurisdictional public utility that provides electric and gas distribution service in the Commonwealth of Pennsylvania.

4. On April 9, 2018, the Complainant filed a Complaint with the Commission against the Respondent.

5. The Respondent filed its Answer and New Matter *Nunc Pro Tunc* on May 2, 2018, which denied any wrongdoing.

6. On June 6, 2018, the Respondent filed an amended Motion to File an Answer *Nunc Pro Tunc*.

7. A Hearing Notice dated June 6, 2018, was sent by regular first-class mail to the Complainant and scheduled an initial hearing for Tuesday, August 7, 2018, at 10:00 a.m.

8. A Prehearing Order, dated June 7, 2018, advised the Complainant of the proper procedure to participate in the initial hearing and the proper procedure to obtain a continuance to reschedule the hearing date if needed.

9. The June 7, 2018, Prehearing Order also directed the Complainant to obtain an attorney to represent it and to file a notice of appearance of the attorney by no later than August 1, 2018 as evidence of proper representation.

10. None of the documents mailed to the Complainant were returned to the Commission by the United States post office as undeliverable.

11. No attorney entered an appearance on behalf of the Complainant.

12. Neither the Complainant nor any counsel representing the Complainant timely appeared at the scheduled hearing on August 7, 2018.

13. The Complainant did not settle or withdraw the Complaint.

DISCUSSION

In this Complaint, the Complainant requested the Commission to examine the charges on its bill and also indicated that its electric service was terminated by the Respondent. The issue in this proceeding is determined by whether the Complainant sustained its burden of proof. By failing to participate in the hearing, the Complainant was unable to meet this burden.

A. Applicable Law

The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This responsibility or accountability to the named utility must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

B. Complainant's Failure to Appear

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

The Commission sent a Hearing Notice dated June 6, 2018, to the Complainant by regular first-class mail to the address listed on the Complaint. This document was never returned to the sender, the scheduling staff of the Office of Administrative Law Judge (OALJ) in Harrisburg.

The undersigned issued a Prehearing Order dated June 7, 2018, which *inter alia*, instructed the parties that any request to change the scheduled hearing date should state the agreement or opposition of the other party and be submitted in writing no later than five days prior to the hearing. The Prehearing Order also stated the day, date and time for the scheduled initial

hearing. The Prehearing Order also directed the Complainant to file a notice of appearance of an attorney no later than August 1, 2018, for proper representation because the Complainant is a limited liability company.

The Prehearing Order, which was mailed to the Complainant at the address shown in the Complaint, was never returned by the U.S. post office as undeliverable. Accordingly, it is presumed that this mailing, which was done through the ordinary course of business, was received by the Complainant. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meirerdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa.Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 444 A.2d 658 (Pa.Super. 1982).

The Complainant is deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. The Complainant was notified of the scheduled hearing date and time, as well as how to contact the OALJ. The Complainant made no attempt whatsoever to notify the presiding officer that it did not plan to participate in the scheduled August 7, 2018, hearing.

Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. Once notice of a hearing and the opportunity to be heard has been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. The due process rights of the Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that it is entitled to relief. The Complainant choose not to appear and proffer any evidence to support the Complaint.

As the Commission stated in *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 at 3 (Opinion and Order entered January 24, 2002), “It is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” See, *Schneider v. Pa. Pub. Util. Comm’n*, 479 A.2d 10 (Pa.Cmwlth. 1984); *Plummer v. Columbia Gas of Pa., Inc.*, Docket No. Z-00847836 (Opinion and Order entered September 27, 2001). The Pennsylvania Commonwealth Court has made it clear that in administrative hearings, “a party’s own negligence is not sufficient good cause as a matter of law for failing to appear at a ... hearing.” *Eat’N Park Hospitality Group, Inc. v. Unemployment Compensation Board of Review*, 970 A.2d 492, 494 (Pa.Cmwlth. 2008).

The Respondent’s counsel moved that the Complaint be dismissed with prejudice for failure to prosecute. The due process rights of the Complainant have been protected. The Complainant had notice of the scheduled hearing and failed to appear to prosecute its Complaint. The failure of the Complainant to appear at this scheduled hearing is unexcused.

Due to the waste of the Commission’s and Respondent’s time, money and energy occasioned by the Complainant’s failure to appear at a hearing of which it had notice, this Complaint will be dismissed with prejudice in accordance with well-established Commission precedent. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *Evans v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00957229 (Opinion and Order entered July 12, 1996); *King v. PECO Energy Co.*, Docket No. C-00967919 (Opinion and Order entered January 16, 1997); *Kenny v. PPL Electric Utilities Corp.*, Docket No. C-20042399 (Final Order entered October 13, 2004); *Jones v. The Peoples Natural Gas Co. d/b/a Dominion Peoples*, Docket No. C-20054885 (Opinion and Order entered February 14, 2006); *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

The Complainant waived the opportunity to participate in the hearing by failing to appear. This case will be dismissed. 52 Pa.Code § 5.245(a); *Martin W. Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

C. Complainant's Failure to be Represented by Counsel

The Complaint was filed by the owner of MOJI, LLC. While company officers are permitted to file formal complaints on behalf of a legal entity, the Commission Regulations at Sections 1.21-1.23 state that legal entities, including limited liability companies, must be represented by licensed attorneys in adversarial proceedings. 52 Pa.Code §§ 1.21-1.23. A proceeding becomes “adversarial” upon the filing of an Answer. *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket Nos. C-2008-2065498 and C-2008-2079076 (Order entered June 24, 2009). Moreover, Commission Regulations define “adversarial proceeding” 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.**” 52 Pa.Code § 1.8 (emphasis added).

The instant Complaint is adversarial because the Respondent filed its Answer and New Matter on May 2, 2018. FOF 5. The Complainant is a registered limited liability company afforded the protections of the Commonwealth of Pennsylvania. PECO Exhibit 1. The Complainant is required to be represented by counsel for proper adjudication of the Complaint. 52 Pa.Code § 1.21.

By Prehearing Order dated June 7, 2018, the undersigned directed the Complainant to provide evidence of proper representation through a filed notice of appearance by August 1, 2018. FOF 9. The Complainant failed to comply with the June 7, 2018 Prehearing Order. The Commission has ruled in *Snyderville Community Development Corp. v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006), that a complainant's failure to comply with an ALJ Order directing the entry of appearance of an attorney warrants the dismissal of the complaint. The Commission has determined that ALJ Orders must be complied with, and lack of compliance presents sufficient basis to dismiss a complaint without a hearing. See *Treffinger v. PPL Electric Utilities Corp.*, Docket No. C-20027978 (Order entered March 3, 2003).

The absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter. *Adventure Alley CLC, LLC v. PECO Energy Co. and Great American Power*,

Docket No. C-2014-2430850 (Final Order entered November 25, 2014) (citing *McCain v. Curione*, *Pa. Bd. of Probation and Parole*, 527 A.2d 591 (Pa.Cmwlt. 1987)).

Consequently, following Commission precedent, the failure of the Complainant to be properly represented by counsel in the instant proceeding is the primary basis to dismiss the Complaint. The failure of the Complainant to appear and prosecute the Complaint is an additional reason to dismiss the Complaint.

D. Conclusion

The Complainant chose not to comply with the ALJ Order directing it to file a notice of appearance by a date certain as evidence of proper representation in this adversarial proceeding. The Complainant chose not to appear at the scheduled day, date and time of the evidentiary proceeding to prosecute its Complaint. The actions of the Complainant warrant two bases for dismissal of the Complaint.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Notice properly mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meirerdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa.Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 444 A.2d 658 (Pa.Super. 1982).
3. By Hearing Notice dated June 6, 2018, the Complainant had notice of the day, date and time of the scheduled hearing. 52 Pa.Code § 5.201(a).

4. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).

5. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

6. The due process rights of the Complainant have been fully protected because the Complainant was afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

7. A formal complaint may be dismissed if, after notice and an opportunity to be heard, a Complainant fails to appear and prosecute the Complaint. *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002).

8. A proceeding becomes adversarial upon the filing of an Answer. *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket Nos. C-2008-2065498 and C-2008-2079076 (Order entered June 24, 2009); 52 Pa.Code § 1.8.

9. The Complainant failed to comply with an ALJ Order directing the entry of appearance of an attorney, which warrants the dismissal of the complaint. *Snyderville Community Development Corp. v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006); see also, *Treffinger v. PPL Electric Utilities Corp.*, Docket No. C-20027978 (Order entered March 3, 2003).

10. The Complainant, MOJI, LLC, failed to sustain its burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion by Shawane Lee, Esquire, on behalf of PECO Energy Company to dismiss the formal complaint of MOJI, LLC at Docket No. C-2018-3001059 for lack of prosecution and failure to comply with an ALJ Order is granted.

2. That the formal complaint filed by Mohamed Saddick on behalf of MOJI, LLC against PECO Energy Company at Docket No. C-2018-3001059, is dismissed in its entirety with prejudice.

3. That Docket No. C-2018-3001059 is to be marked closed.

Dated: September 19, 2018

_____/s/
Angela T. Jones
Administrative Law Judge