

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Green Hill Condominium Association	:	
	:	
v.	:	C-2019-3011010
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Darlene D. Heep  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complaint for failure of Green Hill Condominium to obtain representation by counsel.

**HISTORY OF THE PROCEEDINGS**

On June 19, 2019, Green Hill Condominium Association (Green Hill or Complainant) filed a Complaint against PECO Energy Company (PECO) stating that Green Hill was having a reliability, safety or quality problem with PECO utility service, due to multiple power outages that caused damage to Green Hill’s equipment. Green Hill further alleged that a high gas bill of \$70,000 was the result of its inability to use alternative #2 oil during the winter of 2018 and 2019. As relief, Green Hill wants its gas bill reduced, and to be reimbursed for the damage caused by electric power outages.

On July 11, 2019, PECO filed an Answer and New Matter. In the Answer, PECO stated that as Green Hill is a Rate TS-1 customer, Green Hill and PECO entered into a contract

that limits daily quantity of gas. The company further stated that on February 5, 2019, PECO issued a bill to the Complainant for \$85,439.52 which included a \$74,4000 charge for "unauthorized use burn through penalty" and that the penalty is consistent with the contract and PECO's Gas Tariff.

PECO also stated that Green Hill has had seven sustained power outages in the past two years. The company also averred that outages were not due to unreasonable behavior or maintenance by PECO and that under its tariff, the company does not guarantee continuous, regular and uninterrupted supply of service.

In the New Matter, PECO stated that Green Hill is a commercial customer operating a business at the service address and that as a commercial customer, Green Hill is required to be represented by counsel in accordance with 52 Pa. Code §§ 1.21 and 1.22.

A Notice to Plead included with the Answer and New Matter advised the Complainant that any response to the New Matter should be filed within 20 days of receipt. The Complainant did not file a response to the New Matter.

On August 20, 2019, a Hearing Notice was mailed to all parties notifying them that an Initial In-Person hearing would be held on October 9, 2019.

A Pre-hearing Order was issued on August 21, 2019, and again advised the parties of the date of the hearing. The Pre-hearing Order also stated in paragraph 8 as follows:

Pursuant to 52 Pa.Code §§ 1.21 & 1.22, you may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you. However, if you are a partnership, limited liability company, corporation, trust, association, or governmental agency or subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. Unless you are an attorney, you may not represent someone else. Attorneys shall insure that their appearance is entered in accordance with the provisions of 52 Pa.Code § 1.24(b).

August 21, 2019 Pre-hearing Order.

On August 27, 2019, PECO Energy Company filed a Motion for Judgment on the Pleadings. In that Motion, PECO reiterated that the Pre-hearing Order issued on August 21, 2019, stated that, "if you are a partnership, corporation, trust, association, joint venture, other business organization, trust, trustee, legal representative, receiver, agency, governmental entity, municipality or other political subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted *Pro Hac Vice* represent you in this proceeding." PECO further noted that Complainant Green Hill Condominiums is a non-profit corporation in the Commonwealth of Pennsylvania. Attached to the Motion was a copy of the corporate registration, showing that Green Hill registered as a non-profit corporation in the Commonwealth of Pennsylvania on January 26, 1981. (Motion for Judgment on the Pleadings Exhibit 3). PECO moved that the Complaint be dismissed because Green Hill is not represented by counsel. The Complainant has not filed a response to the Motion.

On September 11, 2019, a notice was issued rescheduling the hearing to October 30, 2019.

On September 24, 2019, an Order was issued stating that Green Hill had until October 10, 2019, to have an attorney enter an appearance or the matter would be dismissed.

To date, an attorney has not entered appearance on behalf of Green Hill Condominium and Green Hill has not responded to the Motion for Judgment on the Pleadings or the September 24, 2019 Order.

This matter is ready for a decision. The record closed on October 10, 2019, the date Green Hill had until to have an attorney enter an appearance in this matter.

#### FINDINGS OF FACT

1. On June 19, 2019, Green Hill Condominium Association, a PECO Energy Company electric and gas customer, filed a complaint against PECO stating that Green Hill was

having a reliability, safety or quality problem with PECO utility service and multiple power outages and contesting a high bill.

2. On July 11, 2019, PECO filed an Answer and New Matter, denying all material allegations and, as a New Matter, stating that Green Hill is a commercial entity and must be represented by an attorney.

3. On August 20, 2019, a Hearing Notice was mailed to all parties notifying them that an Initial In-Person hearing would be held on October 9, 2019.

4. A Pre-hearing Order mailed to the parties on August 21, 2019, advised the parties that, pursuant to 52 Pa.Code §§ 1.21 & 1.22, if they are a partnership, limited liability company, corporation, trust, association, or governmental agency or subdivision, they must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*.

5. On August 27, 2019, PECO Energy Company filed a Motion for Judgment on the Pleadings stating that Complainant Green Hill is a non-profit corporation in the Commonwealth of Pennsylvania and the matter should be dismissed because Green Hill is not represented by an attorney.

6. Green Hill Condominium Owners Association is registered as a non-profit corporation in the Commonwealth of Pennsylvania as of January 26, 1981. (Motion for Judgment on the Pleadings Exhibit 3).

7. On September 11, 2019, a notice was issued rescheduling the hearing to October 30, 2019.

8. On September 24, 2019, an Order was issued stating that Green Hill had until October 10, 2019 to have an attorney enter an appearance or the matter would be dismissed.

9. An attorney has not entered an appearance on behalf of the Complainant, Green Hill Condominium Association.

10. Green Hill Condominium Association has not filed a response to the Motion for Judgment on the Pleadings, or the Order dated September 24, 2019.

### DISCUSSION

PECO Energy Company has filed a Motion for Judgment on the pleadings seeking dismissal of this matter because the Complainant is a nonprofit corporation and is not represented by an attorney.

The Commission's regulations at 52 Pa.Code § 5.102 provides as follows:

#### **§ 5.102. Motions for summary judgment and judgment on the pleadings.**

(a) *Generally.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

(b) *Answers.* An answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion. The answer to a motion for summary judgment may be supplemented by depositions, answers to interrogatories or further affidavits and admissions.

(c) *Motion for summary judgment.* A motion for summary judgment must be based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits. Documents not already filed with the Commission shall be filed with the motion.

(d) *Decisions on motions.*

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

52 Pa.Code § 5.102.

The Commission's regulation at 52 Pa.Code § 1.2(a) states:

**§ 1.2. Liberal construction.**

This subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.

52 Pa.Code § 1.2(a).

PECO is correct in that the regulations require that Green Hill, as an incorporated entity, must be represented by an attorney. Green Hill has not secured an attorney. A Motion for Judgment on the Pleadings was the vehicle that brought this to the attention of the undersigned. As PECO is seeking dismissal of the Complaint, a more appropriate means would be a motion for sanctions under 52 Pa.Code §§ 5.371. In accordance with liberal construction allowed under 52 Pa.Code § 1.2(a), the PECO Motion for Judgment on the Pleadings will be construed as a Motion for Sanctions.

A presiding officer may impose appropriate sanctions upon a party found to be in violation of the obligations set forth in the Commission's regulations. 52 Pa.Code §§ 5.371 and 5.372. The types of sanctions allowed include "entering a judgment against the disobedient party." 52 Pa. Code § 5.372 (a)(3). The Commission has held that parties must comply with the orders of an administrative law judge, and a failure to do so is a sufficient basis to support

dismissal of the matter. *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

In accordance with 52 Pa. Code §§ 1.21 and 1.22, Green Hill, a non-profit corporation in the Commonwealth of Pennsylvania, must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent it in proceedings before the Commission. The Complainant has not heeded the Pre-hearing order that notified the Complainant that a corporation must be represented by an attorney in these proceedings. Green Hill also failed to comply with the September 24, 2019 Order requiring it to have an attorney enter an appearance on its behalf by October 10, 2019. In *Famille S. Trust v. Duquesne Light Company*, Docket Number C-2014-2440650 (Order entered March 16, 2017), the Commission affirmed the dismissal of an action where a non-individual party fails to obtain representation by an attorney. *See also St. Philip the Apostle Church v. City of Lancaster -- Bureau of Water*, Docket No. C-2010-2206276 (Final Order entered March 25, 2011), *Cars R Us c/o Holman Copeland v. Philadelphia Gas Works*, Docket No. C-2008-2033437 (Opinion and Order entered February 4, 2010).

To date, the Complainant is not represented by an attorney. Given that Green Hill has not had an attorney enter an appearance in accordance with the Pre-hearing Order and the September 24, 2019 Order, dismissal of the Complaint is appropriate. Accordingly, the Complaint is dismissed.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The presiding officer may impose appropriate sanctions upon a party found to be found in violation of the obligations set forth in the Commission's regulations. 52 Pa.Code § 5.372.

3. Green Hill Condominium Association, a non-profit corporation in the Commonwealth of Pennsylvania, failed to comply with the requirement that an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent it in proceedings before the Commission. 52 Pa. Code §§ 1.21 and 1.22.

4. That Green Hill did not comply with the September 24, 2019 Order directing it to be represented by an attorney in this matter by October 10, 2019 is a sufficient basis to support dismissal of the matter. *Famille S. Trust v. Duquesne Light Company*, Docket Number C-2014-2440650 (Order entered March 16, 2017); *St. Philip the Apostle Church v. City of Lancaster -- Bureau of Water*, Docket No. C-2010-2206276 (Final Order entered March 25, 2011), *Cars R Us c/o Holman Copeland v. Philadelphia Gas Works*, Docket No. C-2008-2033437 (Opinion and Order entered February 4, 2010); *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion for judgment on the pleadings, being treated as a motion for sanctions, filed by PECO Energy Company in the above referenced case is hereby granted.

2. That the Complaint filed by Green Hill Condominium Association at Docket No. C-2019-3011010 is dismissed.

