

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Temple of Bethel	:	
	:	
v.	:	C-2019-3013389
	:	
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene D. Heep
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint for Complainant's failure to comply with the order requiring representation by counsel and other orders issued in this matter.

HISTORY OF THE PROCEEDINGS

On October 4, 2019, Temple of Bethel (Complainant) filed a Complaint alleging that Respondent PECO Energy Company (PECO, Respondent or Company) was threatening to shut off its service and that the Company did not honor the terms of a payment arrangement between the Company and the Complainant.

PECO filed an Answer on October 28, 2019. The Company denied all material allegations of fact and averred that the Company may terminate the service for failure to pay an outstanding balance.

On October 30, 2019, a Hearing Notice was mailed to all parties setting the hearing for December 11, 2019.

A Prehearing Order was issued on November 1, 2019 setting forth procedural guidelines for the hearing. Included in the Prehearing Order was notice that nonindividual parties must be represented by an attorney.

On November 21, 2019, a second Prehearing Order was issued that instructed the Complainant to have an attorney enter an Appearance on behalf of the Complainant no later than December 2, 2019 or the matter would be dismissed.

No attorney entered an appearance of behalf of the Complainant on or before December 2, 2019.

On December 2, 2019, PECO filed a Motion for Judgment on the Pleadings asserting that the matter should be dismissed because the Complainant is a business and is not represented by counsel. Attached to the Motion was a Notice to Plead informing the Complainant that any response had to be filed within 20 days of service of the motion.

On December 3, 2019, a Hearing Cancellation of the hearing scheduled for December 11, 2019 was issued to the parties.

On or about December 18, 2019, the Complainant sent a letter to the Commission stating that the Complaint should have named the Minister rather than the Temple of Bethel as the Complainant.

On December 19, 2019, an Order was issued setting a telephonic prehearing conference with the parties to discuss the appropriate parties to this matter.

On January 3, 2020, PECO refiled its Motion for Judgment on the Pleadings¹ stating that the matter should be dismissed because the Complainant failed to have an attorney enter an appearance.

The telephonic conference began on January 8, 2020, at 2:30 p.m., as scheduled. Counsel for PECO was present. Neither the Complainant nor a representative for Complainant called in to the telephonic conference.

The record closed on January 10, 2020, to allow the Complainant or a representative for Complainant time to contact the Commission. Neither Complainant nor a representative on its behalf has contacted the Commission. This matter is ready for a decision.

FINDINGS OF FACT

1. On October 4, 2019, Temple of Bethel filed a Complaint alleging that Respondent was threatening to shut off service and that the Respondent did not honor the terms of a payment arrangement.

2. PECO filed an Answer on October 28, 2019 denying all material allegations of fact.

3. On October 30, 2019, a Hearing Notice was mailed to all parties setting the hearing for December 11, 2019.

4. On November 1, 2019, a Prehearing Order was issued to all parties.

5. The Prehearing Order informed all parties that nonindividual parties must be represented by an attorney, pursuant to 52 Pa. Code §§ 1.21 and 1.22.

¹ The cover letter which accompanied this Motion for Judgment on the Pleadings explained that its original Motion contained an error.

6. On November 21, 2019, a second Prehearing Order was issued that instructed the Complainant to have an attorney enter an Appearance on behalf of the Complainant no later than December 2, 2019, or the matter would be dismissed.

7. No attorney entered an appearance on behalf of the Complainant on or before December 2, 2019.

8. On December 2, 2019, PECO filed a Motion for Judgment on the Pleadings, asserting that the matter should be dismissed because the Complainant is a business and is not represented by counsel.

9. Attached to the Motion for Judgment on the Pleadings was a Notice to Plead that informed the Complainant that any response had to be filed within 20 days of service of the motion.

10. On December 3, 2019, a Hearing Cancellation of the hearing scheduled for December 11, 2019 was issued to the parties.

11. On or about December 18, 2019, the Complainant sent a letter to the Commission stating that the Complaint should have named the minister rather than the Temple of Bethel as the Complainant.

12. On December 19, 2019, an Order was issued setting a telephonic conference for January 8, 2020, at 2:30 p.m. to identify the appropriate parties to this matter.

13. On January 3, 2020, PECO refiled a Motion for Judgment on the Pleadings stating that the matter should be dismissed because the Complainant failed to have an attorney enter an appearance.

14. The telephonic conference began on January 8, 2020, at 2:30 p.m., as scheduled.

15. The Order for the telephonic prehearing conference was mailed to all parties and included a toll-free dial-in telephone number for the conference.

16. The Order for the telephonic prehearing conference which was mailed to the Complainant was not returned as undeliverable.

17. Counsel for PECO called into the scheduled telephone conference.

18. Neither the Complainant nor a representative for the Complainant called in to the telephonic conference.

19. The Complainant nor a representative for the Complainant has contacted the Commission since the scheduled hearing date.

20. The Complainant has not filed a response to the Motion for Judgment on the Pleadings.

DISCUSSION

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).

Additionally, administrative agencies such as the Commission are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa.Cmwlt. 1984). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d

173 (Pa.Cmwlth. 2016). 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).

A Prehearing Order was issued on November 1, 2019. The Prehearing Order included a notice that nonindividual parties must be represented by an attorney in accordance with 52 Pa.Code §§ 1.21 and 1.22.

On November 21, 2019, a second Prehearing Order was issued. This Order instructed the Complainant to have an attorney enter an appearance on behalf of the Complainant no later than December 2, 2019, or the matter would be dismissed.

No attorney entered an appearance of behalf of the Complainant on or before December 2, 2019 or to date.

On or about December 18, 2019, the Complainant sent a letter to the Commission stating that the Complaint should have named the Minister rather than the Temple of Bethel as the Complainant. On December 19, 2020, an Order was issued setting a January 8, 2020, telephonic conference with the parties to discuss the appropriate parties to this matter. The Order stated the date and time of the conference as well as a dial-in conference number and was mailed to the Complainant. The Order was not returned as undeliverable. The Complainant did not participate in the telephonic conference, forfeiting the opportunity to be heard. See *J.P. v. Dep't of Human Servs*, *supra*.

The Complainant has failed to comply with the Commission rules that require a nonindividual be represented by counsel. The Complainant also failed to comply with the Order issued requiring that counsel enter an appearance on behalf of the Complainant no later than December 2, 2019. Additionally, the Complainant failed to call into the January 8, 2020 telephone conference in accordance with the Order of December 19, 2019. Given the Complainant's failure to

comply with the Orders and procedural rules, as well as not taking the opportunity to be heard at the telephonic conference, dismissal is appropriate.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. §§ 1101, 1103.

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. Orders sent to the Complainant were not returned as undeliverable and therefore are presumed to have been received by the Complainant. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

4. The Complainant was afforded due process with notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa.Cmwlth. 2016).

5. The Complainant has 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.

6. The Complainant has failed to comply with the December 19, 2019 Order directing it to be represented by an attorney in this matter and failed to participate in the telephone conference on January 8, 2020; therefore, there is 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed at Docket Number C-2019-3013389 by Temple of Bethel against PECO Energy Company is dismissed, with prejudice.
2. That the Motions for Judgment on the Pleadings filed by PECO Energy Company on December 2, 2019 and January 3, 2020 are moot.
3. That this matter be marked closed.

Date: February 12, 2020

_____/s/
Darlene D. Heep
Administrative Law Judge