

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Empanada City	:	
	:	
v.	:	C-2019-3011993
	:	
UGI Utilities, Inc.	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

This Initial Decision finds that the Complainant failed to be properly represented by counsel, and thus dismisses the Complaint.

HISTORY OF THE PROCEEDING

On August 2, 2019, Derly Rodriguez on behalf of Empanada City (Complainant) filed a Complaint against UGI Utilities, Inc. (Respondent or UGI or Company) with the Pennsylvania Public Utility Commission (Commission). The Complaint indicated that Empanada City was the business of Mr. Rodriguez.¹ The Complaint alleged that:

- (1) the utility is threatening to shut off gas service or has already shut of gas service;
- (2) there are reliability, safety or quality problems with the gas service;

¹ Mr. Rodriguez does not identify whether he is an officer or owner of the business.

- (3) the utility worked in front of the Complainant's property for approximately 10 days impeding business and causing the Complainant to close; and
- (4) the utility embarrassed and negatively impacted the reputation of the Complainant by calling the police for a potential burglary on the Complainant's employee.

The Complainant requested a fair, economic resolution to the Complaint.

On August 23, 2019, Jorge M. Pereira, Esquire electronically filed (efiled) a Notice of Appearance on behalf of the Respondent. Also included in the efiled on August 23, 2019, was the Answer of the Respondent denying the material allegations of the Complaint, a Notice to Plead and New Matter. The New Matter, which properly included a notice to plead, alleged that the Complainant is a commercial business, and therefore, must be represented by an attorney pursuant to 52 Pa.Code §§ 1.21-1.23 and *Pa. Pub. Util. Comm'n v. PPL Electric Corp.*, 2015 WL 1957812 Pa. P.U.C., April 22, 2015. Complainant did not respond to the New Matter.

By Interim Order dated September 23, 2019, Chief Administrative Law Judge (CALJ) Charles Rainey, assigned this matter to Mediator Cynthia Lehman for resolution conference. By memorandum dated November 25, 2019, Mediator Lehman submitted a report in compliance with CALJ Rainey's Interim Order.

By Hearing Notice dated November 25, 2019, the Complaint was scheduled for an Initial Telephonic Hearing on Thursday, January 23, 2020, at 10:00 a.m. and was assigned to Administrative Law Judge (ALJ) Angela T. Jones, the undersigned.

The undersigned issued a Prehearing Order dated November 25, 2019, which concluded that the Complainant should be represented by an attorney in compliance with Commission regulations at 52 Pa. Code § 1.22.² The undersigned, in the November 25, 2019 Prehearing Order, set close of business (4:30 p.m.) on January 3, 2020, as the deadline for the

² Since the Complainant referred to itself as a business in the Complaint and did not object or respond to the New Matter, there was no disagreement that the Complainant was not an individual. Thus, compliance with 52 Pa.Code § 1.22 was ordered.

Complainant to comply with attorney representation by having an attorney enter an appearance on behalf of Complainant.

Due to a conflict with another proceeding, the telephonic hearing was rescheduled. A cancellation and rescheduling Hearing Notice cancelled the January 23, 2020 telephonic hearing and rescheduled it as an Initial Call-In Telephonic Hearing on Thursday, March 19, 2020, at 10:00 a.m.

On February 3, 2020, Larry Crayne, Esquire, filed a Notice of Appearance for Respondent and requested the Withdrawal of the appearance of Attorney Pereira.

On March 6, 2020, Governor Tom Wolf issued an Emergency Order declaring the COVID-19 pandemic a disaster in Pennsylvania. On March 16, 2020, due to the COVID-19 pandemic, Governor Wolf directed all Commonwealth of Pennsylvania (Commonwealth) offices to be closed effective March 17, 2020 for 14 days.³ In compliance with Governor Wolf's directive, a Cancellation Notice was issued on March 17, 2020, to schedule a hearing at a later date.

On April 16, 2020, a Hearing Notice was served on the parties to reschedule a Call-In Telephonic Hearing for Thursday, May 14, 2020, at 10:00 a.m. The signatory of the Complaint, Derly Rodriguez, provided an email address on the Complaint form. This email address was used to email documents from the Commission to the Complaint.

A second Prehearing Order was emailed to the Complainant and eServed to the Respondent on April 21, 2020. This Prehearing Order modified the procedure for submitting documents and proposed exhibits because the Commonwealth offices were closed.⁴

³ By Executive Order, the closure of Commonwealth offices was extended through the date of this decision.

⁴ A corrected Hearing Notice was sent on April 21, 2020, to again inform the parties that proposed exhibits needed to be emailed to the Commission and provided the parties the correct email address.

The hearing convened as scheduled on May 14, 2020. Attorney Crayne appeared representing the Respondent. Neither the Complainant nor a counsel for the Complainant appeared at the hearing.

Counsel for the Respondent moved to dismiss the Complaint with prejudice for failure to comply with a Commission Order and for lack of prosecution. That Motion is granted on the grounds that the Complainant failed to comply with a Commission Order. The Motion to dismiss for lack of prosecution is rendered moot because the dismissal is granted on other grounds consistent with the ordering paragraphs below.

The record was closed upon receipt of the hearing transcript on May 20, 2020.

FINDINGS OF FACT

1. The Complainant is Empanada City.
2. The Respondent is UGI, a jurisdictional public utility that provides gas service in the Commonwealth of Pennsylvania.
3. On August 2, 2019, a Complaint was filed with the Commission against the Respondent.
4. The Respondent filed its Answer, Notice to Plead and New Matter on June 10, 2019, which denied any wrongdoing.
5. The Complainant did not respond to the New Matter.
6. On November 25, 2019, a Hearing Notice was served on the parties of record informing them of a scheduled Initial Telephonic Hearing on Thursday, January 23, 2020 at 10:00 a.m.

7. On November 25, 2019, both parties of record were served a Prehearing Order advising them of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the Complainant to obtain appropriate representation in compliance with Commission regulations by January 3, 2020.

8. On December 31, 2019, the Commission served a Cancel/Reschedule Hearing Notice and rescheduled the initial call-in telephonic hearing for Thursday, March 19, 2020.

9. On March 17, 2020, a Cancellation Notice was issued cancelling the initial call-in telephonic hearing scheduled for Thursday, March 19, 2020.

10. On April 14, 2020, a Cancel/Reschedule Hearing Notice was emailed by the scheduling staff of the Office of Administrative Law Judge (OALJ) in Harrisburg to the Complainant and eServed to the Respondent rescheduling the initial call-in telephonic hearing for Thursday, May 14, 2020 at 10:00 a.m.

11. On April 21, 2020, a Prehearing Order was emailed by OALJ staff in Philadelphia to the Complainant and eServed to the Respondent stating procedural rules applicable to the hearing and informing the Complainant that failure to comply with the November 25, 2019, Prehearing Order may be detrimental to the Complaint.

12. Neither the Complainant nor any counsel representing the Complainant appeared at the scheduled hearing on May 14, 2020.

13. The Complainant has not contacted the Commission about the hearing.

14. None of the documents served on the Complainant were returned as undeliverable.

15. The Complainant did not request a continuance or provide a statement of “good cause” for its failure to appear on the scheduled hearing date.

16. No attorney has entered his appearance for the Complainant in compliance with the November 25, 2019, Prehearing Order and Commission regulations.

DISCUSSION

In this Complaint, the Complainant alleged certain safety, reliability or quality of service issues and indicated that its gas service was either terminated or scheduled to be terminated by the Respondent. The Respondent moved to dismiss the Complaint for failure to comply with a Commission Order and for lack of prosecution.

A. Applicable Law

Sections 1.21 and 1.22 of the Commission’s regulations at Title 52 of the Pennsylvania Code, 52 Pa.Code §§ 1.21(a)-(b) and 1.22 state,

§ 1.21. Appearance.

(a) Individuals may represent themselves.

(b) Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorneys and legal intern). For purposes of this section, any request for a general rate increase under § 1307(f) or § 1308(d) of the act (relating to sliding scale of rates; adjustments; and voluntary changes in rates) shall be considered to be an adversarial proceeding.

§ 1.22. Appearance by attorney or certified legal intern.

(a) Subject to § 1.21(a) (relating to appearance), an attorney at law admitted to practice before the Supreme Court of Pennsylvania shall represent persons in Commission proceedings.

(b) An attorney not licensed in this Commonwealth may appear before the Commission in accordance with the Pennsylvania Bar Admission Rules.

(c) A law student meeting the requirements of Pa.B.A.R. No. 321 (relating to requirements for formal participation in legal matters by law students) may appear in a Commission proceeding consistent with Pa.B.A.R. No. 322 (relating to authorized activities of certified legal interns).

(d) Subsection (a) supersedes 1 Pa. Code § 31.22 (relating to appearance by attorney).

Pursuant to 52 Pa.Code §§ 1.21 and 1.22 an attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted *pro hac vice* must represent the Complainant in an adversarial proceeding.

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). Commission regulations define an “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). Additionally, the Commission regulations define a “person” as, “... the term includes individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities, municipal corporations or other political subdivisions. 52 Pa.Code § 1.8.

In the instant Complaint, an Answer and New Matter were filed by the Respondent on June 10, 2019. FOF 4. There is no dispute that the Complainant is a business entity. See Complaint at 1, ¶ 1, and at 3, ¶ 5. Consequently, this has been an adversarial proceeding since June 10, 2019. The Complainant is required to be represented by counsel for proper adjudication of the Complaint. 52 Pa.Code § 1.21(b).

By Prehearing Order dated November 25, 2019, the undersigned directed the Complainant to have an attorney enter a Notice of Appearance by January 3, 2020, as evidence that it had obtained appropriate representation. To date, the Complainant has not provided this evidence.

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).

Consequently, following Commission precedent, the failure of the Complainant to be properly represented by counsel in the instant proceeding requires dismissal of the Complaint.

B. Motion to Dismiss for Lack of Prosecution

Neither the Complainant nor any counsel representing the Complainant appeared at the scheduled evidentiary hearing. FOF 12. The Respondent moved to dismiss the Complaint for lack of prosecution. Tr. 10. The Complaint is dismissed on other grounds; therefore, the motion to dismiss for lack of prosecution is rendered moot.

C. Conclusion

The Complainant choose 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. This action or more accurately failure to act by the Complainant warrants the basis 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. 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.

3. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of UGI Utilities, Inc. to dismiss with prejudice the formal Complaint of Empanada City at Docket No. C-2019-3011993 for failure to comply with a Commission Order requiring that the Complainant be represented by an attorney is granted.

2. That the Motion of UGI Utilities, Inc. to dismiss the formal Complaint of Empanada City at Docket No. C-2019-3011993 for lack of prosecution is moot.

3. That the formal Complaint of Empanada City v. UGI Utilities, Inc. at Docket No. C-2019-3011993 is dismissed for failure to comply with a Commission Order requiring that it be represented by an attorney.

4. That the Secretary's Bureau should mark this matter closed.

Date: June 30, 2020

_____/s/_____
Angela T. Jones
Administrative Law Judge