

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Holly Kisailus	:	
	:	
v.	:	F-2019-3014843
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Alphonso Arnold III  
Special Agent

**INTRODUCTION**

This Initial Decision dismisses the formal Complaint of Holly Kisailus against PPL Electric Utilities Corporation. The Complainant, Ms. Kisailus, filed this Formal Complaint on behalf of the Estate of her deceased father, Clement Kisailus. As the Estate is not represented by an attorney, as required by Commission regulations, this matter will be dismissed for lack of Commission jurisdiction.

**HISTORY OF THE PROCEEDING**

On December 5, 2019, Holly Kisailus (Complainant or Ms. Kisailus) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent or PPL). Ms. Kisailus alleged that the bills issued to the account of her father, Clement Kisailus, from October 2018 to November 2019 were incorrect. Ms. Kisailus requested that these bills be reduced to reflect the actual usage of electricity in the home. The Complaint is a timely appeal of a Decision made by the Commission's Bureau of Consumer Services (BCS) at BCS No. 3677505.

On December 30, 2019, PPL filed an Answer to the Complaint. PPL denied that it issued incorrect bills to the account in question, asserting that all billing was based upon actual meter readings. PPL asserted that the readings are in line with historical usage and appear to increase when outside temperatures decrease, consistent with electricity being used to heat the home. PPL also noted that it offered to test the meter for a \$35 fee that would be returned if the meter was found to be inaccurate, but that Ms. Kisailus declined. PPL requested that the Commission deny the Complaint.

By Hearing Notice served on the parties on December 30, 2019, the Commission scheduled this matter for a telephonic hearing on February 11, 2020. A Prehearing Order was served on the parties on January 31, 2020, addressing, inter alia, the procedures applicable to the hearing.

I conducted the February 11, 2020 telephonic hearing as scheduled. Ms. Kisailus appeared for the hearing *pro se* and presented testimony on behalf of the Complaint. Attorney Kimberly G. Krupka was present at the hearing on behalf of PPL and presented the testimony of Sherry Shaffer, a customer service representative employed by PPL. Ms. Shaffer sponsored two exhibits, both of which were admitted into the record.<sup>1</sup> During the hearing, PPL was asked to submit a Status Report following the resolution of an issue raised during the hearing. The record closed on March 25, 2020, the date PPL's Status Report was filed with the Commission.

By Order dated May 14, 2020, the record was reopened to address the Commission's jurisdiction over this matter. Specifically, as became apparent during the hearing, the Complaint was filed on behalf the Estate of Clement Kisailus (the owner of the service address at issue), and Commission regulations require that estates must be represented by an attorney in adversarial proceedings before the Commission.<sup>2</sup> Therefore, a Hearing Notice, served on May 12, 2020, scheduled a further hearing for May 28, 2020 to address this issue.

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<sup>1</sup> A 69-pg. transcript of the February 11, 2020 hearing was filed with the Commission on March 3, 2020.

<sup>2</sup> See 52 Pa. Code § 1.21(b).

At the request of Ms. Kisailus, the May 28, 2020 further hearing was continued. By Hearing Notice served to the parties on May 26, 2020, the further hearing was rescheduled for July 1, 2020.

At the request of PPL, the July 1, 2020 further hearing was continued. By Hearing Notice served to the parties on June 24, 2020, the further hearing was rescheduled for July 14, 2020.

The further hearing was held on July 14, 2020. Ms. Kisailus did not appear for the further hearing. Attorney Krupka appeared for PPL ready to proceed with two witnesses. The hearing was held without Ms. Kisailus, and no witnesses or exhibits were presented for the record.<sup>3</sup> PPL was informed on the record that Ms. Kisailus would be given two weeks following the conclusion of the hearing to have an attorney enter an appearance on behalf of the Estate of Clement Kisailus. In the event that no attorney entered their appearance on behalf of the Estate, PPL moved for the Complaint to be dismissed.

In order to allow Ms. Kisailus another opportunity to have counsel enter an appearance, by Order dated July 14, 2020, I directed that Ms. Kisailus have an attorney licensed in Pennsylvania enter an appearance for the Estate of Clement Kisailus by July 28, 2020. An Entry of Appearance was not submitted by July 28, 2020, nor did Ms. Kisailus send any other communication to PPL or me concerning this case.

By Order served to the parties on July 29, 2020, the record in this matter was closed. For the reasons explained below, the Complaint will be dismissed.

#### FINDINGS OF FACT

1. The Complainant is Holly Kisailus.
2. The Respondent is PPL Electric Utilities Corporation.

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<sup>3</sup> An eight-page transcript of the July 14, 2020 hearing was filed with the Commission on July 28, 2020.

3. Holly Kisailus is the daughter of Clement Kisailus.
4. Clement Kisailus is deceased.
5. The service address is 195 Peninsula Drive, Wilkes Barre, Pennsylvania.
6. The Estate of Clement Kisailus is the owner of the service address.
7. The account in question is in the name of Clement Kisailus. Tr. 40, 46.
8. Ms. Kisailus is the Executrix of the Estate of Clement Kisailus.

9. On July 14, 2020, an Order was served to the parties directing that Ms. Kisailus, by no later than July 28, 2020, have an attorney enter an appearance on behalf of the Estate of Clement Kisailus.

10. As of the date of this Initial Decision, there is no record of an attorney entering their appearance in this proceeding on behalf of the Estate of Clement Kisailus.

### DISCUSSION

Sections 1.21 and 1.22 of the Commission's regulations address representation before the Commission, and state the following:

#### **§ 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). . . .

52 Pa. Code § 1.21(a)-(b).

**§ 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.

52 Pa. Code § 1.22(a). An “adversarial proceeding” is defined as the following:

**§ 1.8. Definitions.**

*Adversarial proceeding*--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.

The absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter. McCain v. Curione, 527 A.2d 591 (Pa. Cmwlth. 1987) (Commonwealth Court was without jurisdiction to consider arguments and motions made on behalf of a parolee in a civil action that was filed by another person who was not licensed to practice law); and Spirit of the Avenger Ministries v. Commonwealth of Pa., 767 A.2d 1130 (Pa. Cmwlth. 2001) (appeal quashed because the court was without jurisdiction to consider an administrative appeal of a non-profit association represented by its pastor, who was not an attorney licensed to practice law in Pennsylvania, and the Court has the obligation to raise the issue of its jurisdiction *sua sponte*).

This matter constitutes an adversarial proceeding, as it involves a Formal Complaint filed by Ms. Kisailus against PPL seeking relief from the Commission regarding a billing dispute. Specifically, Ms. Kisailus filed the Complaint on behalf of the Estate of her deceased father, Clement Kisailus, the owner of the Service Address and accountholder in question. The Commission’s regulations concerning representation before the Commission, cited above, require estates to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa. Code § 1.21, See also, Daniel v. Philadelphia Gas Works, Docket No.

F-2019-3013371 (Order entered July 10, 2020). Therefore, the Estate of Clement Kisailus is required to be represented by counsel in this matter. Participation in a formal adversarial proceeding before the Commission constitutes the practice of law, and as such, that participation is limited to those who either file as individuals and represent themselves or to attorneys who are representing others. Lesley A. Scheaffer for Leslie W. Scheaffer v. PPL Electric Utilities Corp., Docket No. F-2016-2577647 (Opinion and Order entered April 3, 2018).

The initial hearing in this matter was held on February 11, 2020. Ms. Kisailus was permitted to provide testimony for the Complaint at the hearing, however, the Estate of Clement Kisailus required legal representation at the hearing.<sup>4</sup> No attorney was present at the hearing on behalf of the Estate, therefore, there was no attorney to call Ms. Kisailus as a witness.

To address the issue highlighted above, the record was reopened, and a further hearing was scheduled for July 14, 2020. Ms. Kisailus did not appear at the further hearing. By Order dated July 14, 2020, I directed that Ms. Kisailus have an attorney licensed in Pennsylvania enter an appearance for the Estate of Clement Kisailus by July 28, 2020.<sup>5</sup> An Entry of Appearance to represent the Estate of Clement Kisailus was not filed. As absence of an attorney where one is required deprives the Commission of jurisdiction, this instant matter must be dismissed for lack of Commission jurisdiction. The Complaint will be dismissed without prejudice, permitting the refile of the Complaint with attorney representation on behalf of the Estate of Clement Kisailus.

### CONCLUSIONS OF LAW

1. The Commission's Regulations require estates to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa. Code § 1.21(b); Daniel v. Philadelphia Gas Works, Docket No. F-2019-3013371 (Order entered July 10, 2020).

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<sup>4</sup> During the initial hearing, Ms. Kisailus testified that she was an attorney. (Tr. 54). However, the online records of the Disciplinary Board of the Pennsylvania Supreme Court lists Ms. Kisailus' licensure status as "inactive."

<sup>5</sup> 52 Pa. Code § 1.24(b)(2).

2. An adversarial proceeding is 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.

3. Absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter. McCain v. Curione, 527 A.2d 591 (Pa. Cmwlth. 1987); Spirit of the Avenger Ministries v. Commonwealth of Pa., 767 A.2d 1130 (Pa. Cmwlth. 2001).

4. The Commission lacks jurisdiction over this matter because the owner of the service address in question, an estate, is not represented by an attorney licensed to practice law in Pennsylvania.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Holly Kisailus v PPL Electric Utilities Corporation at Docket No. F-2019-3014843 is dismissed without prejudice.

2. That the docket at Docket No. F-2019-3014843 is marked closed.

Date: October 6, 2020

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/s/  
Alphonso Arnold III  
Special Agent