

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JEVAN, LLC	:	
	:	F-2021-3025453
v.	:	
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This decision denies the Complaint of JEVAN, LLC because the Complainant failed to comply with an order of the presiding officer and failed to appear at the scheduled hearing and prosecute its Complaint.

HISTORY OF THE PROCEEDING

On April 22, 2021, Justin Berger filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) on behalf of JEVAN, LLC (Complainant) against Duquesne Light Company (Duquesne Light or Respondent). The Complainant avers that the Respondent mistakenly identified foreign load on its property. As a result of this mistake, the Complainant avers that Duquesne Light improperly placed the tenant's balance on the Complainant's account and forced the Complainant to hire an electrician to repair a non-existent foreign load. As relief, the Complainant requests that Duquesne Light: (1) issue a refund of \$940.43, which the Complainant paid to the Respondent following the latter's incorrect finding of foreign wiring; and (2) reimburse the Complainant for the cost of hiring an electrician.

This Complaint is a timely appeal from an informal decision issued by the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3779603.

On May 13, 2021, Respondent filed an Answer denying the material allegations of the Complaint, along with New Matter in which the Respondent requested that the Complaint be dismissed if the Complainant, a limited liability company, failed to be represented by an attorney in this proceeding. The New Matter contained a Notice to Plead, requiring Complainant to file a response within twenty days of service. Complainant did not file a response to the New Matter.

On May 13, 2021, Respondent also filed a Preliminary Objection to the Complaint seeking to dismiss the portion of the Complaint requesting monetary damages. The Preliminary Objection contained a Notice to Plead, requiring Complainant to file a response within ten days of service. Complainant did not file a response to the Preliminary Objection.

On June 13, 2021, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to me.

On June 18, 2021, Duquesne Light filed a Motion for Judgment on the Pleadings seeking the dismissal of the Complaint because Complainant is a limited liability company that was not represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania. Complainant did not file a response to the Motion for Judgment on the Pleadings.

On July 6, 2021, I issued an Order sustaining Duquesne Light's Preliminary Objection. Specifically, the Order dismissed the portion of the Complaint requesting monetary damages in connection with the fee to hire an electrician while allowing the rest of the issues raised in the Complaint to proceed to a hearing.

By Initial Call-In Telephonic Hearing Notice dated July 8, 2021, a telephonic hearing was scheduled for August 19, 2021, at 10:00 a.m., and the matter was assigned to me.

The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned them that they may lose the case if they do not take part in the hearing and present evidence on the issues raised. The Hearing Notice also explained that, while an individual may represent himself or herself, all other entities must be represented by an attorney licensed to practice law in Pennsylvania or admitted *pro hac vice*.

In addition, a Prehearing Order, dated August 4, 2021, directing the parties to comply with various procedural requirements. The Prehearing Order warned in bold type: “**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**” The Prehearing Order specifically instructed the Complainant to obtain legal representation going forward. In bold and underline type, the Prehearing Order stated as follows,

JEVAN, LLC: As a limited liability company, you are required have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. 52 Pa. Code §§ 1.8, 1.21-1.24. An attorney licensed to practice in the Commonwealth of Pennsylvania must enter his/her appearance on your behalf prior to hearing. Failure to comply may produce an unfavorable result for you, the Complainant.

No attorney entered his or her appearance on behalf of the Complainant.

The hearing convened as scheduled on August 19, 2021. Emily M. Farah, Esq. appeared representing the Respondent. The Complainant did not appear at the hearing. The hearing convened at approximately 10:15 a.m. after I confirmed that the Complainant had not called, or otherwise shown good cause not to appear at the scheduled hearing.

Counsel for the Respondent moved that the Complaint be dismissed with prejudice for failure to prosecute. The record in this matter closed on September 17, 2021, 30 days after the hearing.

FINDINGS OF FACT

1. On April 22, 2021, Justin Berger filed a Complaint on behalf of JEVAN, LLC against Duquesne Light alleging that there are incorrect charges on its bill resulting from Duquesne Light's incorrect finding of foreign wiring in its property.
2. As relief, the Complainant requests that Duquesne Light: (1) issue a refund of \$940.43, which the Complainant paid to the Respondent following the latter's incorrect finding of foreign wiring; and (2) reimburse the Complainant for the cost of hiring an electrician.
3. On May 13, 2021, Respondent filed an Answer and New Matter denying the material allegations of the Complaint.
4. On May 13, 2021, Respondent also filed a Preliminary Objection to the Complaint seeking to dismiss the portion of the Complaint requesting monetary damages.
5. On June 18, 2021, Duquesne Light filed a Motion for Judgment on the Pleadings seeking the dismissal of the Complaint because Complainant is a limited liability company that was not represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania.
6. Complainant did not file a response to the Motion for Judgment on the Pleadings.
7. On July 6, 2021, I issued an Order sustaining Duquesne Light's Preliminary Objection while allowing the rest of the issues raised in the Complaint to proceed to a hearing.
8. By Initial Call-In Telephonic Hearing Notice dated July 8, 2021, a telephonic hearing was scheduled for August 19, 2021, at 10:00 a.m.

9. The Hearing Notice warned the parties that they may lose the case if they do not take part in the hearing and present evidence on the issues raised.

10. A Prehearing Order dated August 4, 2021, warned in bold type: “**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**”

11. The Hearing Notice and Prehearing Order directed that the Complainant have an attorney licensed in Pennsylvania, or admitted *pro hac vice*, enter an appearance on its behalf in this proceeding prior to the hearing.

12. The Hearing Notice and the Prehearing Order were sent to the Complainant by electronic mail at the email address listed in the Complaint, pursuant to Commission work from home orders related to the COVID-19 pandemic.¹

13. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

14. No attorney entered an appearance on behalf of the Complainant in this proceeding.

15. Neither Complainant nor any counsel representing Complainant appeared in a timely manner at the scheduled initial hearing on August 19, 2021.

16. The Complainant did not request a continuance or withdraw the Complaint.

¹ The Commission issued an Order on March 26, 2020, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. *See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262, at 4 (Order entered March 26, 2020).

DISCUSSION

In this Complaint, the Complainant alleges that there are incorrect charges on its bill resulting from Duquesne Light's incorrect finding of foreign wiring in its property. As relief, the Complainant requests that Duquesne Light issue a refund of \$940.43, which the Complainant paid to the Respondent following the latter's finding of foreign wiring. As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S. § 332(a).

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).

During the period of the Governor's Disaster Emergency Declaration in response to the COVID-19 pandemic, the Commission directed service to be electronic. Here, email was the method of delivery of notice for the hearing and prehearing order. Service was made pursuant to the Commission's Order issued on March 26, 2020, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. *See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262, at 4 (Order entered March 26, 2020). Notice electronically served to a party with no notification that service failed is presumed received. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*); and *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019).

None of the emails sent by the Commission to the Complainant were returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time and participation information for the August 19, 2021, hearing. *Zirkel; Morella*.

As the Commission noted in *Strydio v. PPL Elec. Utils. Corp.*, 2018 Pa. PUC LEXIS 258, 8, Docket No. C-2017-263304 (Opinion and Order entered July 18, 2018), "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing." *Id.* at 6 (*citing, Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Order entered January 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993).

The Complainant was notified of the scheduled hearing and did not appear for the hearing. Additionally, the Hearing Notice and Prehearing Order advised the Complainant that the case could be dismissed for failure to call-in and participate in the hearing. Thus, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, 1995 Pa. PUC LEXIS 159 (Opinion and Order entered December 26, 1995).

Next, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Consequently, the Complaint will be dismissed on this basis as well. *Jefferson v. UGI Utils., Inc.*, Docket No. Z 00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. West Penn Power Co.*, Docket No. F 2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

Additionally, the Complainant failed to comply with a Commission order to obtain a licensed attorney. The Complainant did not dispute that the entity at issue in the Complaint was a limited liability company. Pursuant to 52 Pa. Code § 1.21(a) and (b),

§ 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) and (b).

Pursuant to 52 Pa. Code § 1.8, an adversarial proceeding is defined 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.” Based on this definition, when Duquesne Light Company filed its Answer to the Complaint, this proceeding became adversarial, thereby requiring Complainant to be represented by counsel. *Id.* To date, the Complainant has failed to file a notice of appearance by a licensed attorney on behalf of JEVAN, LLC, as directed by the Prehearing Order.

Failure to comply with a presiding officer's order directing an action to be taken can warrant the dismissal of a formal complaint. *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032, (Opinion and Order entered July 31, 2006). “An ALJ's Orders must be complied with, and such a lack of compliance presents a sufficient basis to dismiss the Complaint without a hearing.” *Id. at 10 (citing, Treffinger v. PPL Elec. Utils. Corp., C-2027978, 2003 Pa. PUC LEXIS 3 (Order entered March 3, 2003))*, *See also, Complaint of Black Diamond Cab Co.*, Docket No. A-00122566 (Order entered December 1, 1966).

The failure to comply with the undersigned Administrative Law Judge’s (ALJ's) Order is not reasonable or excused. Failed compliance with a Commission Order is sufficient basis to dismiss the Complaint without a hearing.

Because one of the grounds for dismissing the Complaint is Complainant’s failure to comply with the ALJ’s Order to obtain legal representation in this proceeding, Respondent’s Motion for Judgement on the Pleadings seeking dismissal of the Complaint for failure to obtain legal representation is dismissed as moot.

CONCLUSIONS OF LAW

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

2. The Complainant received notice of the hearing. *Chartiers Indus. & Commercial Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals and Review*, 645 A.2d 944 (Pa. Cmwlth. 1994), *appeal den.*, 653 A.2d 1234 (Pa. 1994).

3. The due process rights of the Complainant have been fully protected in this proceeding. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

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

5. The Complainant did not participate in the hearing, failed to appear for the hearing, did not present any evidence and, therefore, failed to meet the Complainant's burden of proving eligibility for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

6. A limited liability company must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent it in an adversarial proceeding. 52 Pa. Code §§ 1.8, 1.21-1.24.

7. An adversarial proceeding is defined 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.

8. A presiding officer's orders must be complied with, and such a lack of compliance presents a sufficient basis to dismiss a Complaint. *Treffinger v. PPL Elec. Utils. Corp.*, Docket No. C-20027978, (Order entered March 3, 2003); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032, (Opinion and Order entered July 31, 2006); *Complaint of Black Diamond Cab Co.*, Docket No. A-00122566 (Order entered December 1, 1966).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Duquesne Light Company's Motion to dismiss the Complaint of Justin Berger for JEVAN, LLC at Docket No. F-2021-3025453 for failure to prosecute its claims is granted.
2. That the Complaint filed by Justin Berger for JEVAN, LLC at Docket No. F-2021-3025453 is dismissed without prejudice.
3. That Duquesne Light Company's Motion for Judgement on the Pleadings is dismissed as moot.
4. That the Secretary's Bureau mark this matter closed.

Date: December 21, 2021

/s/
Eranda Vero
Administrative Law Judge