

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frankford Avenue Redevelopment Authority, LLC	:	
	:	
v.	:	C-2021-3028574
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This decision denies the Complaint of Frankford Avenue Redevelopment Authority, 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 September 15, 2021, John Ross filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) on behalf of Frankford Avenue Redevelopment Authority, LLC (Complainant) against PECO Energy Company (PECO or Respondent). The Complainant avers that the Respondent is threatening to shut off its electric service and that there are incorrect charges in its electricity bills from PECO. The Complainant seeks the Commission’s assistance in resolving these issues.

On October 4, 2021, Respondent filed an Answer denying the material allegations of the Complaint.

By Initial Call-In Telephonic Hearing Notice dated October 8, 2021, a telephonic hearing was scheduled for December 2, 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, “including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented by an attorney licensed to practice law in Pennsylvania or admitted *pro hac vice*.”

In addition, I issued a Prehearing Order, dated October 22, 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 also instructed the Complainant to obtain legal representation going forward.

The Hearing Notice and the Prehearing Order were served electronically upon the parties at the email addresses provided by the parties in their pleadings, per the audit history of the docket.<sup>1</sup> Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

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

The hearing convened as scheduled on December 2, 2021. Khadijah Scott, Esq. appeared representing the Respondent. The Complainant did not appear at the hearing. The hearing convened at approximately 10:17 a.m. after I confirmed that the Complainant had not called or otherwise shown good cause not to appear at the scheduled hearing.

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<sup>1</sup> Both parties have registered to accept electronic service of documents issued by the Commission (eService). See 66 Pa.C.S. § 702.

Counsel for the Respondent orally moved that the Complaint be dismissed with prejudice for failure to prosecute. The record in this matter closed upon receipt of the hearing transcript on December 9, 2021.

### FINDINGS OF FACT

1. On September 15, 2021, John Ross filed a Complaint on behalf of Frankford Avenue Redevelopment Authority, LLC against PECO alleging that the utility is threatening to shut off its electric service and that there are incorrect charges on its bills.
2. On October 4, 2021, Respondent filed an Answer denying the material allegations of the Complaint.
3. By Initial Call-In Telephonic Hearing Notice dated October 8, 2021, a telephonic hearing was scheduled for December 2, 2021, at 10:00 a.m.
4. 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.
5. A Prehearing Order dated October 22, 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.”**
6. 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.
7. The Hearing Notice and the Prehearing Order were served electronically upon the Complainant at the email address provided by Complainant in the Complaint.

8. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.
9. No attorney entered an appearance on behalf of the Complainant in this proceeding.
10. Neither Complainant nor any counsel representing Complainant appeared at the scheduled initial hearing on December 2, 2021.
11. The Complainant did not request a continuance or withdrew the Complaint.

#### DISCUSSION

In this Complaint, the Complainant alleges that the Respondent is threatening to shut off its electric service and that there are incorrect charges in its electricity bills from PECO. The Complainant seeks the Commission's assistance in resolving these issues. 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).

Both the Hearing Notice and the Prehearing Order were served via email to the Complainant using the email address provided in the Complaint. Neither was returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time and participation information for the December 2, 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." Opinion and Order at 6 (*citing, Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and 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. W. 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 to represent itself. The entity at issue in the Complaint is 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 PECO Energy 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 Frankford Avenue Redevelopment Authority, 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-20027978, 2003 Pa. PUC LEXIS 3 (Opinion and Order entered March 3, 2003))*.

The Complainant’s 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 a sufficient basis to dismiss the Complaint, with or without a hearing.

#### 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. & Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & 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, (Opinion and Order entered March 3, 2003); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032, (Opinion and Order entered July 31, 2006).

