

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pro-Ko Properties, Inc.	:	
	:	
v.	:	C-2022-3032078
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Charece Z. Collins
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Pro-Ko Properties, Inc. due to Complainant’s failure to comply with the presiding officer’s order to have an attorney enter an appearance on its behalf, consistent with 52 Pa. Code §§ 1.21, 1.22.

HISTORY OF THE PROCEEDING

On April 21, 2022, Pro-Ko Properties, Inc. (Complainant), through its business owners, James Davenport and John Prokopchak, filed a Formal Complaint (complaint) with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL). Complainant averred that it called PPL seven weeks prior to the filing of its complaint, and its electric service had not yet been turned on. Complainant further averred it was placed on a “42-minute hold” when it called PPL for updates regarding its service. Complainant requested “\$3,000+” for damages due to PPL’s failure to activate service; that PPL turn Complainant’s power on; that PPL change customer service policies that result in “7 week+ activation”; that PPL change customer service policies that result in 42-minute wait times on

calls to speak with an agent; and that the Commission terminate PPL's contract and award a new supplier if PPL fails to address Complainant's requests. Complainant attached to its complaint an email dated April 20, 2022 expressing concern to PPL regarding the amount of time Complainant was waiting for its electricity to be turned on, and outlining alleged damages sustained to date due to "delayed sales and marketing costs." The complaint was served on PPL on April 25, 2022.

On May 16, 2022, PPL filed a timely answer to the complaint. In its answer, PPL denied that its response to Complainant's request for service was inadequate. PPL averred that Complainant requested service on February 14, 2022, and PPL began providing electric service at the service address on April 25, 2022. PPL further averred that the Commission has no jurisdiction to award monetary damages. PPL requested that the complaint be denied in its entirety and with prejudice.

Also on May 16, 2022, PPL filed preliminary objections, accompanied by a notice to plead, in response to Complainant's complaint. In its preliminary objections, PPL reiterated its argument that the Commission does not have authority to award damages and requested that Complainant's request for damages be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(2). Complainant did not file a response to PPL's preliminary objections. PPL's preliminary objections were granted via my order dated June 10, 2022.

On June 10, 2022, the Commission served an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for August 16, 2022 at 10:00 a.m. and assigning me as the presiding officer. In anticipation of the hearing, I served a prehearing order on June 10, 2022, setting forth hearing information and the rules that would govern the proceeding.

My prehearing order also advised that, as Pro-Ko Properties, Inc. is a corporation, it was required to obtain an attorney to represent it at the hearing. In the prehearing order, Pro-Ko Properties, Inc. was instructed to have an attorney enter his or her appearance no later than July 13, 2022. An attorney did not enter an appearance on behalf of Pro-Ko Properties, Inc.

On August 9, 2022, PPL filed a motion to dismiss Complainant's complaint for failure to obtain counsel pursuant to the Commission's regulations and my June 10, 2022 prehearing order. In the alternative, PPL requested that the complaint be held in abeyance until counsel is obtained.

On the evening of August 15, 2022, Mr. Davenport and Mr. Prokopchak sent an email to me and PPL stating that they did not "object to the removal of Pro-Ko Properties, Inc. as Plaintiff." Mr. Davenport and Mr. Prokopchak further stated that they would remove the request for monetary damages, and the request to turn the power on, from their complaint, as PPL had turned on the electric service at the service location.

The August 16, 2022 hearing was held as scheduled. James Davenport and John Prokopchak appeared on behalf of Pro-Ko Properties, Inc. Lindsay A. Berkstresser, Esquire, appeared on behalf of PPL. The parties placed their respective arguments on the record regarding whether Pro-Ko Properties, Inc. was required to have an attorney. I decided that, given that the complaint listed Pro-Ko Properties, Inc. as a customer; the property at issue was in the name of Pro-Ko Properties, Inc.; and the subject matter of the complaint concerned a property that Pro-Ko Properties Inc. was seeking to renovate and sell, Pro-Ko Properties, Inc. is required to be represented by counsel to proceed with the litigation of its complaint. *See*, Tr. 5-6, 10-11. Pro-Ko Properties, Inc. was given 30 days, or until September 15, 2022, to obtain counsel. I advised that if an attorney had not entered an appearance by September 15, 2022 and I had not heard from the Complainant, I would dismiss the complaint. I further advised the parties that an attorney is not required to engage in settlement discussions, and the parties were permitted to discuss the potential settlement of this matter at any time. Tr, 12, 14.

Also on August 16, 2022, I issued an order memorializing what occurred at the August 16 hearing and directing Complainant to obtain counsel by September 15, 2022.

To date, there is no record of an attorney filing a notice of appearance on behalf of Pro-Ko Properties, Inc.

The record in this proceeding consists of the complaint with its attachment, which is admitted into the record via this Decision, and a transcript consisting of 15 pages that was submitted to the Commission on September 14, 2022. The record closed on September 15, 2022, the due date for the Complainant to have an attorney enter an appearance on its behalf.

FINDINGS OF FACT

1. The Complainant is Pro-Ko Properties, Inc.
2. The Respondent is PPL Electric Utilities Corporation.
3. The service address is 1554 Mt. Zion Rd., Harding, PA 18643.
4. Pro-Ko Properties, Inc. is registered with the Pennsylvania Department of State as a domestic business corporation.
5. On April 21, 2022, Complainant, through its business owners, James Davenport and John Prokopchak, filed a Formal Complaint with the Commission against PPL.
6. The “customer name” line of the complaint lists, “Jim Davenport & John Prokopchak/Pro-Ko Properties, Inc.”
7. The property where the issue alleged in the complaint occurred is in the name of Pro-Ko Properties, Inc. Tr. 5.
8. In an email attached to the complaint, Mr. Davenport and Mr. Prokopchak referred to themselves as business partners, expressed concern to PPL regarding the alleged delay in the initiation of electric service, and outlined alleged damages sustained due to “delayed sales and marketing costs.” April 20, 2022 Email attached to Complaint.
9. On May 16, 2022, PPL filed a timely answer in response to the complaint.

10. By hearing notice dated June 10, 2022, an initial telephonic hearing was scheduled for August 16, 2022 at 10:00 a.m.

11. The June 10, 2022 hearing notice stated, in part, “If you are an individual, you may represent yourself or you may have an attorney represent you. All others, 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*. Only an attorney may represent someone else.”

12. The first page of the prehearing order dated June 10, 2022 stated, “**As a corporation, you are required to have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. An attorney licensed to practice in the Commonwealth of Pennsylvania must enter their appearance on your behalf no later than July 13, 2022. Failure to comply may produce an unfavorable result for you.**”

13. In the June 10, 2022 prehearing order, the Complainant was informed that corporations must be represented by counsel and instructed to have an attorney enter an appearance on its behalf no later than July 13, 2022.

14. Paragraph 6 of the June 10, 2022 prehearing order further stated, “[I]f you are a partnership, corporation, trust, association, or governmental agency or subdivision, an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, must represent you in this proceeding.”

15. No attorney entered an appearance on behalf of Complainant on or before July 13, 2022.

16. The hearing was held on August 16, 2022 as scheduled.

17. No attorney appeared at the hearing on behalf of the Complainant nor had any attorney entered an appearance on behalf of the Complainant.

18. Complainant was provided 30 days from August 16, 2022, or until September 15, 2022, to obtain counsel and have counsel enter a notice of appearance in this proceeding. Tr. 12.

19. My order dated August 16, 2022 also directed Complainant to have an attorney enter his or her appearance on its behalf no later than September 15, 2022.

20. To date, no attorney has entered an appearance on behalf of the Complainant.

DISCUSSION

The Complainant is a corporation that is not represented by counsel. Commission regulations provide that “persons” in adversarial proceedings, except for individuals representing themselves, shall be represented by an attorney admitted to practice in the Commonwealth of Pennsylvania. 52 Pa. Code §§ 1.21(b), 1.22(a). The term “person” is defined in the Commission's regulations to include corporations. 52 Pa. Code § 1.8. This same regulation also defines an “adversarial proceeding” as one that is contested and will be decided on the basis of a formal record. *Id.*

The Commission addressed the issue of non-representation in the cases of *Cars R Us c/o Holman Copeland v. Phila. Gas Works*, Docket No. C-2008-2033437, (Opinion and Order entered Feb. 4, 2010) (*Cars R Us*), and *Torino Inc. v. PECO Energy Co.*, Docket No. C-2008-2034595, (Opinion and Order entered Feb. 2, 2010) (*Torino*). In those cases, the Commission specifically ruled that non-individuals must be represented by counsel at all stages of Commission proceedings once those proceedings become adversarial.

Once the answer and preliminary objections to the complaint were filed, this became an adversarial proceeding. 52 Pa. Code § 1.8. Pro-Ko Properties Inc. is listed as a complainant on the complaint. Although not identified in the complaint, I take judicial notice of the fact that Pro-Ko Properties, Inc. is registered with the Pennsylvania Department of State as an active corporation at entity 2853326. Pennsylvania Department of State records show that the company was created on December 30, 1998. Accordingly, the Complainant, a corporation, is required to be represented by counsel. No attorney is listed on the complaint, nor has one entered an appearance to represent the Complainant.

Complainant argued at the hearing that it should be permitted to proceed as individuals (John Prokopchak and James Davenport). Tr. 9-11. However, the subject matter of the complaint pertains to the business, Pro-Ko Properties, Inc. The property where the issue alleged in the complaint occurred is in the name of Pro-Ko Properties, Inc. Tr. 5. The “customer name” line of the complaint lists, “Jim Davenport & John Prokopchak/Pro-Ko Properties, Inc.” The complaint sought “\$3,000+ for damages due to failure to activate service.” Complaint ¶ 5. An asterisk next to this sentence appended the statement, “see attached email.” The email attached to the complaint, dated April 20, 2022 and written by James Davenport, states in part, “we intend to renovate this property and sell it; delayed sales/marketing costs could be \$70+ per day when adding taxes, insurance, maintenance, capital costs, ETC.; we could argue that we have suffered \$3000 of damages SO FAR.” April 20, 2022 Email attached to Complaint; Tr. 6. Mr. Davenport’s email further states, “we have left multiple messages at the above referenced number; my business partner John Prokopchak/Pro-Ko Properties Inc. was told “this week or next week...” *Id.* It is clear that the business interests of Pro-Ko Properties, Inc. are being represented in this hearing, and therefore, attorney representation is required to proceed with the complaint.

Additionally, the Complainant failed to comply with my June 10, 2022 prehearing order directing it to have counsel enter a notice of appearance in this proceeding no later than July 13, 2022, and my August 16, 2022 order directing it to have counsel enter a notice of appearance in this proceeding no later than September 15, 2022. Failure to comply with an order issued by a presiding officer warrants dismissal of the complaint. *See, e.g., New Fizon Catering,*

Inc. v. PECO Energy Co., Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006); *Treffinger v. PPL Elec. Utils. Corp.*, 2003 Pa.P.U.C. LEXIS 3 (2003).

The Complainant was informed of the requirement that it must be represented by counsel by the hearing notice dated June 10, 2022, the prehearing order dated June 10, 2022, at the August 16, 2022 hearing, and in the order dated August 16, 2022. The hearing notice, prehearing order, and order were both e-served on and emailed to the Complainant. Notification of filings via electronic mail constitutes valid service of e-filed documents. *See, e.g., Messick v. PPL Elec. Utils. Corp.*, Docket No. C-2018-3004260 (Opinion and Order entered June 18, 2020); *Potora v. Pa.-Am. Water Co.*, Docket No. C-2017-2627873 (Opinion and Order entered Aug. 8, 2019). Complainant was also directly notified at the August 16, 2022 hearing. Accordingly, Pro-Ko Properties, Inc. was adequately notified that it must obtain counsel to proceed with its complaint.

I noted in my August 16, 2022 order that Pro-Ko Properties, Inc. is a corporation, and I provided the Complainant an additional 30 days to have an attorney enter an appearance to represent it, after it did not comply with the direction in my June 10, 2022 prehearing order. The Complainant has not contacted me regarding such representation, nor has an attorney filed a notice of appearance on behalf of the Complainant. Therefore, the Complainant failed to comply with my order. Consequently, no further hearing will be scheduled, and the complaint is dismissed.¹

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa. C.S. § 1101, *et seq.*

¹ As the complaint is dismissed for Complainant's failure to have counsel enter an appearance on its behalf in violation of my orders as discussed herein, the motion to dismiss filed by PPL is moot.

2. Notification of filings via electronic mail constitutes valid service of e-filed documents. *See, e.g., Messick v. PPL Elec. Utils. Corp.*, Docket No. C-2018-3004260 (Opinion and Order entered June 18, 2020); *Potora v. Pa.-Am. Water Co.*, Docket No. C-2017-2627873 (Opinion and Order entered Aug. 8, 2019).

3. The Commission’s regulations require corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities, municipal corporations or other political subdivisions to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa. Code §§ 1.8, 1.21-1.23; *Cars R Us c/o Holman Copeland v. Phila. Gas Works*, Docket No. C-2008-2033437, (Opinion and Order entered Feb. 4, 2010); *Torino Inc. v. PECO Energy Co.*, Docket No. C-2008-2034595, Opinion and Order entered Feb. 2, 2010).

4. This proceeding became an “adversarial proceeding” when the answer to the complaint was filed. 52 Pa. Code § 1.8.

5. Failure to comply with an order issued by a presiding officer warrants dismissal of the complaint. *See, e.g., New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006); *Treffinger v. PPL Elec. Utils. Corp.*, 2003 Pa.P.U.C. LEXIS 3 (2003).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint filed on April 21, 2022, with its attachment, is admitted into the record.

2. That the complaint of Pro-Ko Properties, Inc. at Pro-Ko Properties v. PPL Electric Utilities Corporation, Docket No. C-2022-3032078 is dismissed.

3. That the Secretary's Bureau shall mark Docket No. C-2022-3032078 as closed.

Date: December 6, 2022

_____/s/_____
Charece Z. Collins
Administrative Law Judge