

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Zimoras 1 Stop Beauty Bar	:	
	:	
v.	:	C-2023-3042217
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of Zimoras 1 Stop Beauty Bar due to the Complainant’s failure appear for the hearing to prosecute the Complaint and failure to comply with the presiding officer’s order to have an attorney licensed to practice law in Pennsylvania enter an appearance on its behalf.

**HISTORY OF THE PROCEEDING**

On August 14, 2023, Janice Thomas (Ms. Thomas) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO) involving utility service provided to Zimoras 1 Beauty Bar (Complainant) at 312 W. Trenton Ave., Morrisville, PA 19067 (service location) alleging incorrect charges and seeking a Commission payment arrangement.<sup>1</sup>

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<sup>1</sup> On the Complaint form, Complainant selected eService and email as the method of communication and service of all hearing notices, orders, and related documents. Complaint ¶ 2.

PECO filed an Answer to the Complaint on August 29, 2023, in which PECO denied all allegations set forth in the Complaint and averred that the Complainant was not entitled to a payment arrangement. In its Answer, PECO also alleged that the Complainant is a commercial customer and is registered as a limited liability company under the name “Zimoras 1 Stop Beauty LLC.” Exhibit 1 to PECO’s Answer reflects information from the Pennsylvania Department of State which also shows that Complainant’s business address is the same address as the service location identified in the Complaint. In the Answer, PECO requested that the Commission establish a date certain by which the Complainant is required to have an attorney enter an appearance in this matter.

By Initial Call-In Telephone Hearing Notice (Hearing Notice) issued September 13, 2023, a call-in telephonic hearing was scheduled for November 15, 2023, at 10:00 a.m. and the matter was assigned to me. The Hearing Notice specifically advised the parties that:

**REPRESENTATION.** 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.

I issued a Prehearing Order on September 15, 2023 (Prehearing Order #1). Prehearing Order #1 directed the parties to comply with various procedural requirements. Specifically, Paragraph 7 of Prehearing Order #1 reiterated and emphasized the requirement that unless a party is an individual, the party must be represented by counsel.

On October 18, 2023, I issued Prehearing Order #2, specifically directing the Complainant to have an attorney licensed in Pennsylvania to enter his/her appearance on its behalf on or before November 14, 2023.

On October 23, 2023, a Rescheduled Initial Hearing Change Notice was issued changing the time for the November 14, 2023 hearing. The Rescheduled Initial Hearing Change Notice reiterated the requirement that any entity other than an individual must be represented by

an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*. On November 6, 2023, an informal Motion for Continuance of the November 15, 2023, hearing was made by email, sent from Janice Little to the Office of Administrative Law Judge (OALJ) on the basis of unspecified family emergency. No other information was provided. No statement was made describing the nature of the emergency, whether it concerned the person who filed the Complaint form or a relative, nor was there any indication of the anticipated duration of the emergency.

On November 7, 2023, the Complainant was informed via email that the request for a continuance in this matter was denied and an Order memorializing the denial was issued that same day.

On November 13, 2023, Ms. Little sent another email to OALJ, again, without copying counsel for PECO, stating “I need time to retain Counsel. Request a continuance.” OALJ forwarded the email to counsel for PECO, who responded that PECO did not object to the request.

On November 14, 2023, an Order was issued granting the Complainant’s request for a continuance to secure counsel. The November 14, 2023 Order directed the Complainant to have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance to represent the Complainant in this matter on or before December 15, 2023. The Order also informed the Complainant that if the Complainant fails to have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance to represent the Complainant on or before December 15, 2023, the Complaint at Docket No. C-2023-3042217 will be dismissed.

Commission records indicate that no entry of appearance was filed on behalf of the Complainant in this matter.

On December 20, 2023, an Initial Call-In Telephone Hearing Notice was issued advising the parties that a call-in telephonic hearing was scheduled for January 9, 2022, at 10:00 a.m.

On January 9, 2024, the hearing commenced as scheduled. Counsel for the Respondent called in with a witness available to testify. Neither the Complainant, nor a licensed attorney on its behalf, called in to the hearing. The Complainant was given additional time to call and participate in the hearing but failed to do so.

No witnesses were presented, and no exhibits were introduced into the record. At the hearing, counsel for PECO moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245.

As of the date of this decision, no attorney licensed to practice in the Commonwealth of Pennsylvania has entered an appearance on behalf of the Complainant.

The record closed on January 30, 2024, upon the filing of the transcript with the Commission.

#### FINDINGS OF FACT

1. The Complainant is Zimoras 1 Stop Beauty Bar LLC.
2. The Respondent is PECO Energy Company.
3. On August 14, 2023, Janice Thomas filed a Formal Complaint against PECO Energy Company involving utility service provided to Zimoras 1 Stop Beauty Bar at 312 W. Trenton Ave., Morrisville, PA 19067.
4. On August 29, 2022, PECO filed an Answer to the Complaint, in which PECO alleged that the Complainant is a commercial customer and is a limited liability company registered with the Pennsylvania Department of State under the name Zimoras 1 Stop Beauty LLC.

5. By Initial Call-In Telephone Hearing Notice issued September 13, 2023, a call-in telephonic hearing was scheduled for November 15, 2023, at 10:00 a.m.

6. The September 13, 2023, Hearing Notice informed the Complainant of the following requirement:

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.

7. By Prehearing Order dated September 15, 2023, the Complainant, a limited liability company, was instructed to have an attorney licensed to practice law in Pennsylvania enter an appearance on its behalf.

8. By Prehearing Order #2 dated October 18, 2023, the Complainant was specifically directed to have an attorney licensed in Pennsylvania to enter his/her appearance on its behalf on or before November 14, 2023.

9. A Rescheduled Initial Hearing Change Notice issued October 23, 2023, reiterated the requirement that any entity other than an individual must be represented by an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*.

10. By Order dated November 14, 2023, the Complainant was granted a continuance to secure counsel.

11. The Order dated November 14, 2023, instructed the Complainant to have an attorney licensed in Pennsylvania to enter his/her appearance on its behalf on or before December 15, 2023.

12. A Call-In Telephone Hearing Notice issued December 20, 2023, informed the parties that a call-in telephonic hearing was scheduled for January 9, 2024, at 10:00 a.m.

13. The Hearing Notices, the Prehearing Order, Prehearing Order #2, and the November 14, 2023 Order were eServed upon the Complainant at the email address provided by the Complainant and registered with the Commission.

14. The Hearing Notices, the Prehearing Order, Prehearing Order #2, and the November 14, 2023 Order were not returned as undeliverable.

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

16. Neither Complainant, nor a licensed attorney on Complainant's behalf have contacted the Commission to explain why Complainant's failure to appear at the hearing was unavoidable.

### DISCUSSION

Administrative agencies such as the Commission are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016).

The Hearing Notices for the November 15, 2023 and January 9, 2024 hearings, the Prehearing Order and Prehearing Order #2, and my November 14, 2023 Order granting the Complainant's request for a continuance to obtain legal counsel were all eServed on the Complainant at the email address that the Complainant provided in the Complaint. None of the Notices or Orders served on the Complainant was returned as undeliverable. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were

received by the Complainant. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, "[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." *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-263304, p. 6 (Opinion and Order entered July 18, 2018) (citing, *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). Additionally, all Hearing Notices and Prehearing Orders advised the Complainant that the case could be dismissed if the Complainant did not call in and participate in the hearing. The Complainant was notified of the scheduled telephonic hearing and did not appear.

In this case, the Complainant did not call in for the scheduled hearing. Under the circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). By failing to call in to the scheduled hearing, the Complainant has waived the opportunity to participate in the hearing. 52 Pa. Code § 5.245(a)(1); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

Additionally, failure to comply with an order issued by a presiding officer provides justification for the Commission to act against the non-complying party and dismiss a complaint. *Application of And Ex Cor*, Docket No. A-2012-2337848 (Final Order entered June 19, 2013); *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. PECO Energy Co.*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006); *Treffinger v. PPL Elec. Utils. Corp.*, Docket No. C-20027978 (Opinion and Order entered Mar. 3, 2003).

Here, the Complainant requested, and was granted, a continuance specifically to retain an attorney. However, the Complainant failed to comply with my November 14, 2023 Order directing the Complainant, *inter alia*, to have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance on behalf of the Complainant by the close of business on December 15, 2023.<sup>2</sup> Therefore, the Complaint shall be dismissed on these grounds as well.

Finally, 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. The Complainant was advised in the Hearing Notices and the Prehearing Orders that the Complainant could lose the case for failure to participate in the hearing or present facts on the issues raised. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Because the Complainant failed to appear, the Complainant is not permitted to reopen the disposition of this matter. 52 Pa. Code § 5.245(a)(2). Further, Complainant has not contacted the Commission to explain why the failure to appear at the hearing was unavoidable.<sup>3</sup> Consequently, the Complaint will be dismissed with prejudice. *Zimoras I Stop Beauty Bar v. PECO Energy Company* Docket No. C-2022-3030694 (Final Order Entered July 22, 2022); *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 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.

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<sup>2</sup> The Commission's regulations require partnerships, corporations, and other business organizations (including limited liability companies) to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa. Code §§ 1.21-1.23. This proceeding became an "adversarial proceeding" when the Answer to the Complaint was filed. 52 Pa. Code § 1.8.

<sup>3</sup> The party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

In light of the Complainant's failure to respect the Commission's regulations and comply with the Orders issued in this matter, I find it appropriate to dismiss the Complaint with prejudice.

### CONCLUSIONS OF LAW

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

2. Documents electronically served and not returned as undeliverable are presumed to have been received. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

3. The Commission's regulations require partnerships, corporations, other business organizations, trusts, associations, agencies, political subdivisions, and government entities to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa. Code §§ 1.21-1.23.

4. This proceeding became an "adversarial proceeding" when the Answer 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) (citing *Treffinger v. PPL Elec. Utils. Corp.*, Docket No. C-20027978 (Opinion and Order entered March 3, 2003)).

6. 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 Oct. 25, 1993).

7. If there are no facts in the record that the party's failure to appear at a hearing was unavoidable, the complaint will be dismissed with prejudice. *Zimoras 1 Stop Beauty Bar v. PECO Energy Company* Docket # C-2022-3030694 (Final Order Entered July 22, 2022); *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

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

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

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Formal Complaint of Zimoras 1 Stop Beauty Bar at Docket No. C-2023-3042217 with prejudice is granted.

2. That the Formal Complaint of Zimoras 1 Stop Beauty Bar in Zimoras 1 Stop Beauty Bar v. PECO Energy Company at Docket No. C-2023-3042217 is dismissed with prejudice.

3. That the Secretary's Bureau shall mark Docket No. C-2023-3042217 as closed.

Date: April 24, 2024

\_\_\_\_\_/s/  
Arlene Ashton  
Administrative Law Judge