

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ryan Kirkpatrick	:	
	:	
v.	:	C-2024-3047187
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Ryan Kirkpatrick on behalf of Ryzown Properties LLC at Docket No. C-2024-3047187 due to Ryzown Properties LLC’s 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 February 9, 2024, Ryan Kirkpatrick filed a Formal Complaint (Complaint) on behalf of Ryzown Properties LLC against PECO Energy Company with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Kirkpatrick specifically identified that this Complaint involved utility service provided to Ryzown Properties LLC, 669 Bush Street, Rear Apt. and Office, Bridgeport, PA 19405 (service address). On the Complaint form, Mr. Kirkpatrick placed checkmarks in the boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” “[i]ncorrect charges are on my bill,” and “[o]ther,” next to which Mr. Kirkpatrick indicated that a PECO Representative “provided false, inaccurate

and fraudulent information to the PUC.” As Relief, Mr. Kirkpatrick advised that he is seeking “a zero out of my bills at 669 bush st [sic] office, Bridgeport[,] PA 19405, my account at 669 Bush St. rear apartment Bridgeport PA 19405 and my account at 312 River Rd. Collegetown[,] PA 19426.”

On March 27, 2024, the Respondent filed an Answer denying all material allegations set forth in the Complaint. In its Answer, the Respondent noted that the Complainant is a commercial customer operating a business under the name of Ryzown Properties, LLC at the premises of 669 Bush St., Bridgeport, PA 19405 where services are rendered. The Respondent further indicated: that Ryzown Properties LLC established service in its name at 669 Bush St., Rear Apt., Bridgeport, PA 19405 on December 9, 2022 under account number 15240-78074; that in June 2023, it was determined that PECO’s meter was not reading usage from the property at 669 Bush St., Rear Apt. since service had been established in December 2022; that PECO back-billed Ryzown Properties, LLC in the amount of \$73.37 for usage accrued during December 2022 through June 2023 in compliance with 52 Pa. Code § 56.14; that on July 14, 2023, PECO cancelled the \$73.37 bill and rebilled Ryzown Properties LLC in the amount of \$82.01 to include charges through June 14, 2023; and that the Complainant’s total past due balance is \$311.50.

The Respondent further averred: that on June 9, 2023, Ryzown Properties, LLC established electric service in its name at 669 Bush St., Office, Bridgeport, PA 19405; that on June 14, 2023, the account finalized, leaving an outstanding balance of \$7.76; that on July 14, 2023, PECO transferred the finalized account balance of \$7.76 to Ryzown Properties, LLC’s active account at 669 Bush St., Rear Apt. in compliance with 52 Pa. Code § 56.16(b).

Lastly, the Respondent averred: that Mr. Kirkpatrick contacted PECO on September 25, 2023 claiming that his bills for service at 312 River Rd., Collegetown, PA 19426 were high; that PECO opened a high bill investigation; that a PECO high bill field technician went to the property to investigate; that the field technician did not identify a meter issue, error code or estimated readings; and that the Complainant was advised that he was being billed on actual usage and that his usage was in line with historical usage at the property. The Respondent further averred: that Mr. Kirkpatrick’s outstanding balance at the 312 River Rd., Collegetown,

PA address is \$953.68; that the Complainant does not have a pending ten-day termination notice, and that the bills and balance are correct.

By Initial Telephonic Hearing Notice dated April 3, 2024, an initial call-in telephonic hearing was scheduled for June 5, 2024, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on April 10, 2024. The Prehearing Order also advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing. Additionally, the Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. It also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that the Complainant is entitled to the relief requested in the Complaint.

Additionally, my Prehearing Order specifically advised as follows:

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.¹ And, unless you are an attorney, you may not represent someone else.

Accordingly, my Prehearing Order directed, in bold type, the following:

Ryzown LLC: You must have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance to represent you on or before April 26, 2024.

¹ 52 Pa. Code §§ 1.21 & 1.22.

No Attorney entered an appearance on behalf of Ryzown Properties, LLC by the April 26, 2024, deadline.

By Interim Order dated May 30, 2024, I granted Mr. Kirkpatrick's request for a continuance. As part of that Interim Order, I again advised Ryzown Properties, LLC that it must be represented by an attorney admitted to practice law in Pennsylvania and gave Ryzown Properties, LLC until June 12, 2024, to have an attorney licensed to practice law in Pennsylvania enter an appearance on its behalf.

By email received on June 12, 2024, Mr. Kirkpatrick advised that he was unable to secure legal representation for Ryzown Properties, LLC. Mr. Kirkpatrick advised, in pertinent part:

I have made many attempts to secure legal representation for docket number C-2024-394187 [sic] by the extended June 12 deadline only to find most do not handle this type of case. I have left messages with 3 different lawyers from consumeradvocates.org and await their call back after being referred to the site. I also went to the montco bar website and was left a message that no attorneys match my criteria on June 3. That message is attached in this email. The point is, I tried and found either no one takes this type of case or the fee to do so exceeds my claim by 5-20x.

Mr. Kirkpatrick also indicated that there are actually two complaints. The instant Formal Complaint, which pertains to Ryzown Properties, LLC, and a separate Formal Complaint that pertains to Mr. Kirkpatrick's personal residence. Mr. Kirkpatrick also attached copies of these two Formal Complaints for my review. Mr. Kirkpatrick asked that these two Complaints "be severed" so that he may, at the very least, pursue his personal Complaint.

To date, there is no record of an attorney filing a notice of appearance on behalf of Ryzown Properties, LLC.

The record closed on June 12, 2024, the due date for Ryzown Properties, LLC to have an attorney enter an appearance on its behalf.

FINDINGS OF FACT

1. On February 9, 2024, Ryan Kirkpatrick filed a Formal Complaint on behalf of Ryzown Properties LLC against PECO Energy Company with the Pennsylvania Public Utility Commission.

2. In the Complaint, Mr. Kirkpatrick specifically identified that this Complaint involved utility service provided to Ryzown Properties LLC, 669 Bush Street, Rear Apt. and Office, Bridgeport, PA 19405.

3. On March 27, 2024, the Respondent filed an Answer denying all material allegations set forth in the Complaint.

4. In its Answer, the Respondent noted that the Complainant is a commercial customer operating a business under the name of Ryzown Properties, LLC at the premises of 669 Bush St., Bridgeport, PA 19405 where services are rendered.

5. By Hearing Notice dated April 3, 2024, an initial call-in telephonic hearing was scheduled for June 5, 2024, at 10:00 a.m.

6. The April 3, 2024 Hearing Notice informed the parties 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 April 10, 2024, the Complainant, a limited liability company, was directed to have an attorney licensed to practice law in Pennsylvania enter an appearance on its behalf on or before April 26, 2024.

8. Ryzown Properties LLC did not have an attorney enter an appearance on its behalf by the April 26, 2024 deadline.

9. By Interim Order dated May 30, 2024, Ryzown Properties LLC was again advised that it must be represented by an attorney admitted to practice law in Pennsylvania and extended the deadline to June 12, 2024 for it to have an attorney licensed to practice law in Pennsylvania enter an appearance on its behalf.

10. To date, no attorney has entered an appearance on behalf of Ryzown Properties LLC.

DISCUSSION

The Complainant in this case is a limited liability company that is not represented by counsel. The Commission's regulations concerning representation and notice of appearance are set forth in 52 Pa. Code §§ 1.21-1.24. 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.

The Commission's regulations at 52 Pa. Code §§ 1.21-1.24 provide in pertinent part:

§ 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). For purposes of this section, any request for a general rate increase under §1307(f) or §1308(d) of the act (relating to sliding scale of rates; adjustments; and voluntary changes in rates) shall be considered to be an adversarial proceeding.

§ 1.24. Notice of appearance or withdrawal.

(b) *Attorneys.*

(1) *Appearance by initial pleading.* An attorney who signs an initial pleading in a representative capacity shall be considered to have entered an appearance in that proceeding.

(2) *Appearance in all other instances.* An attorney shall file with the Secretary a written notice of appearance.

(i) *Content of notice.* Initial pleadings, entries of appearance and notices of withdrawal must include:

(A) The attorney's name, mailing address and electronic mailing address, if available.

(B) Pennsylvania attorney identification number or, if not licensed in this Commonwealth, identification of the jurisdictions in which the attorney is licensed to practice law.

(C) Telephone number and telefacsimile number, if applicable.

(D) The name and address of the person represented.

(ii) *Filing.*

(A) *Appearance.* The notice of appearance shall be served on the parties to the proceeding, and a certificate of service shall be filed with the Secretary.

In 52 Pa. Code § 1.8, the term “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.” Additionally, the term “person” is defined as “individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities or other political subdivisions.” *Id.*

Once PECO filed an Answer to the Formal Complaint, this became an adversarial proceeding. Accordingly, the Complainant, a limited liability company, is required to be represented by counsel. No attorney is listed on the Complaint, nor has one entered an appearance to represent Ryzown Properties LLC.

Additionally, the Complainant failed to comply with my April 10, 2024 Prehearing Order and my May 30, 2024 Order directing it to be represented by counsel since it is a limited liability company. 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. Util. Corp.*, Docket No. C-20027978, 2003 Pa. PUC LEXIS 3 (March 3, 2003)); *Franconia Mennonite Conf. v. Verizon Pa. Inc.*, Docket No. C-2010-2193709 (Order entered June 6, 2003).

The Complainant was informed of the requirement that it must have counsel by the Hearing Notice dated April 3, 2024, my Prehearing Order dated April 10, 2024, and my Interim Order dated May 30, 2024. The Hearing Notice, the Prehearing Order, and the Interim Order were eServed to the Complainant, and none of these documents were returned as undeliverable.² Moreover, the communication received from Mr. Kirkpatrick clearly

² Mr. Kirkpatrick selected service by email on the Complaint form. He also registered for an eFiling/eService account with the Commission. When Mr. Kirkpatrick registered for an eFiling account he agreed to the following terms and conditions:

demonstrates that these documents were received. Accordingly, I must presume that the Hearing Notice, the Prehearing Order and the Interim Order, which were sent in the ordinary course of business, were received by the Complainant. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016).

On the Complaint form, Mr. Kirkpatrick specifically identified that this Complaint involved utility service provided to Ryzown Properties LLC. As such, I instructed the Complainant, a limited liability company, to have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance to represent it prior to April 26, 2024. I then extended that deadline to June 12, 2024. Mr. Kirkpatrick has advised that legal representation for this Complaint is cost prohibitive. Accordingly, no attorney has filed a notice of appearance on behalf of the Complainant. Therefore, the Complainant failed to comply with my Order. Consequently, the hearing scheduled for July 10, 2024, is cancelled and the Complaint at Docket No. C-2024-3047187 is dismissed.

I will note that Mr. Kirkpatrick indicated in his June 12, 2024 email that he has two outstanding Complaints, the instant Formal Complaint which pertains to Ryzown Properties, LLC, and a separate Formal Complaint that pertains to Mr. Kirkpatrick's personal residence. Mr. Kirkpatrick also attached copies of these two Formal Complaints for my review. Mr. Kirkpatrick asked that these two Complaints "be severed" so he can at the very least pursue his personal Complaint. However, these two Formal Complaints were never consolidated for

I agree that I will accept electronic service in the Commission proceeding in which I am a party of record. By creating this account, notification of filings via electronic mail shall constitute valid service of Commission documents. I understand that such electronic service of any and all documents will be substituted for service by mail. I agree to be served via email with all subsequent filings. I agree that email notices will be sent on the same day the document is posted.

By clicking on the 'Create Account' button below, [I am] agreeing to all the Terms and Agreements listed above.

eFiling Registration Page, <https://efiling.puc.pa.gov/Accounts/Create?accountType=I> (last visited May 14, 2024).

purposes of hearing and decision. Since they were never consolidated, I cannot “separate” out this second Complaint as he has requested. Mr. Kirkpatrick will have to contact the Secretary’s Bureau regarding the status of that second Formal Complaint pertaining to his personal residence. Since that second Complaint pertains to Mr. Kirkpatrick’s personal residence, he will be able to pursue that Complaint *pro se*.

CONCLUSIONS OF LAW

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

2. Notice eServed to a party with no notification that service failed is presumed received. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); and *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 an 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) (citing *Treffinger v. PPL Elec. Util. Corp.*, Docket No. C-20027978, 2003 Pa. PUC LEXIS 3 (March 3,

