

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Schaaf Excavating	:	
	:	
v.	:	C-2023-3042244
	:	
Duquesne Light Company	:	

INTERIM ORDER CLOSING THE EVIDENTIARY RECORD

Schaaf Excavating (Complainant or Schaaf) filed a Formal Complaint (Complaint) against Duquesne Light Company (Respondent or Duquesne Light), on August 7, 2023, regarding services provided to property located at 1016-1024 Wood Street, Pittsburgh, PA (Service Address, Service Location or Property). In the Complaint, Complainant avers the Commission should require utility companies to come up with a faster and more efficient way of handling emergency demolitions and routine demolition process.

On September 5, 2023, Respondent filed an Answer and New Matter, which was accompanied by a Notice to Plead. In the New Matter, Respondent alleged that Complainant is a business corporation and, pursuant to 52 Pa. Code Section 1.21-22, must be represented in this proceeding by an attorney licensed to practice law in the Commonwealth of Pennsylvania.

On September 27, 2023, Respondent filed a Motion for Judgment on the Pleadings (Motion), requesting that Complainant be required to obtain legal representation by a date certain and contending that the failure to comply with this requirement should result in dismissal of the Formal Complaint without a hearing. Respondent also averred that a Reply to New Matter was due on September 25, 2023, and that Complainant did not file a Reply to New Matter. Respondent averred a failure to file a Reply to New Matter may be deemed in default, and relevant facts stated in the New Matter may be deemed to be admitted.

In its Motion, Respondent requested the issuance of an Interim Order requiring the Complainant to secure legal representation prior to holding an evidentiary hearing in this matter and sought the issuance of an Interim Order directing Complainant to secure legal representation for this proceeding within a set period of time.

No responsive pleading to the New Matter or the Motion was filed by Complainant or served upon the undersigned presiding officer.

According to Sections 1.21 through 1.23 of the Pennsylvania Public Utility Code, if a party is an individual, he or she may represent him or herself, or the individual may be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted *Pro Hac Vice*. However, if a party is not an individual, such as a partnership, limited liability company, corporation, trust, association, or governmental agency or subdivision, the party must have an attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted *Pro Hac Vice* to represent the party at the hearing. If a party is not an individual, and the party is not represented by an attorney, the party is not permitted to participate in a Commission proceeding.

The Complaint identified Schaaf Excavating as the Complainant in this proceeding and stated that the Complaint involves utility services provided to the Service Location. In addition, a verification was attached to the Complaint signed by Kellie Fleming, office manager. Attached to the Complaint was a letter on letterhead of Schaaf Excavating Contractors Inc. Complainant, if indeed a corporation or limited liability Company or LLC, must be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted *Pro Hac Vice*, however no notice of appearance was entered in this proceeding on Complainant's behalf.

On January 29, 2024, an Interim Order was entered extending Complainant, Schaaf Excavating's deadline to file and serve a responsive pleading to the New Matter filed by Respondent, and to the Motion for Judgment on the Pleadings filed by Respondent, until February 9, 2024. Complainant was directed to serve copies of the responsive pleading to the

New Matter filed by Respondent and to the Motion for Judgment on the Pleadings filed by Respondent, upon counsel for Respondent and upon the undersigned presiding officer, not later than February 9, 2024. In addition, Complainant was directed to either (1) cause its legal counsel to enter his or her appearance with the Commission in accordance with the provisions of 52 Pa.Code § 1.24(b), or (2) show cause in writing, filed with the Commission Secretary, as to why it is not required to be represented by counsel under the Commission's rules, not later than February 9, 2024.

The Interim Order entered on January 29, 2024, further provided that the failure of Complainant to file a responsive pleading to the New Matter of Respondent, in a timely manner, consistent with the terms set forth in the Order, would result in all of the factual averments set forth in the New Matter of the Respondent being deemed admitted and a decision being entered against the Complainant, and in favor of the Respondent, without a hearing or further notice in this proceeding.

No responsive pleading to the New Matter filed by Respondent, or to the Motion for Judgment on the Pleadings was filed by Complainant. In addition, Complainant failed to (1) cause its legal counsel to enter his or her appearance with the Commission in accordance with the provisions of 52 Pa. Code § 1.24(b), or (2) show cause in writing, filed with the Commission Secretary, as to why it is not required to be represented by counsel under the Commission's rules.

The New Matter filed by Respondent included factual averments set forth in Paragraphs 12 through 18, as follows¹:

12. The averments in the preceding paragraphs of this Answer are incorporated by reference as if fully restated herein.

¹ See New Matter ¶¶ 12-18.

13. The Complainant in the above-captioned matter is “Schaaf Excavating.” (“Schaaf” or “Complainant”). Complaint ¶ 1.

14. Complainant is a business corporation, and listed in the attachments to the Complaint as “Schaaf Excavating, Inc.” See Complaint ¶ 1.

15. Pursuant to 52 Pa. Code §§ 1.21-22, a business corporation must be represented in this proceeding by an attorney licensed to practice law in the Commonwealth of Pennsylvania.

16. Schaaf is not represented by counsel, but by a non-attorney representative of the company. See Complaint ¶ 10.

17. Given the foregoing, Duquesne Light respectfully requests that the Presiding Officer assigned to this proceeding issue an Order requiring the Complainant to have an attorney enter an appearance by a date certain, in advance of the hearing.

18. If the Complainant fails to comply with the requested Order, Duquesne Light requests the Formal Complaint be dismissed with prejudice.

On March 6, 2024, an Interim Order was entered deeming the facts averred in the New Matter filed by Respondent in this proceeding, at Paragraphs 12 through 18 identified above, to be admitted. The Interim Order further provided that the facts averred in the New Matter filed by Respondent shall be made a part of the evidentiary record and may be cited and/or referenced in the Initial Decision in this matter.

Complainant has failed to cause legal counsel to enter an appearance on behalf of Complainant and no responsive pleading to the Motion For Judgment On The Pleadings has been filed. Accordingly, it is appropriate to close the evidentiary record and to issue a decision on the Motion.

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