

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nora Hospitality LLC d/b/a Red Roof Inn	:	
	:	
v.	:	C-2024-3047524
	:	
FirstEnergy Pennsylvania Company f/k/a	:	
Pennsylvania Power Company	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Nora Hospitality LLC d/b/a Red Roof Inn against FirstEnergy Pennsylvania Company for failure to comply with an order to obtain representation of counsel and for failure to appear at the evidentiary hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On March 18, 2024, Nora Hospitality LLC d/b/a Red Roof Inn (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against the Penn Power Rate District of FirstEnergy Pennsylvania Electric Company (FE PA or Respondent),¹ alleging FE PA was threatening to shut off or had already

¹ On January 1, 2024, FirstEnergy's Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies' tariffs were consolidated into a single tariff, with each former operating company's rates becoming its

shut off service at 20009 State Route 19, Cranberry Township, Butler, PA (service location) and requesting a payment arrangement. In the “other” box, Complainant explained, “Yes we are commercial but we have residents who are residents past 30 days’ stay and staff who live on property.” As relief, Complainant writes, “The past due is \$31,000. We have asked and begged for some sort of payment plan or budget billing. We would only need 30-45 days to pay the full balance.” The Complaint was signed by Joanne Miller, who is identified as “Accounts Payable/Accounts Receivable.”

On April 8, 2024, FE PA filed an Answer to the Complaint. Respondent admitted it provides electric service to Complainant and that Joanne Miller is listed as an authorized contact. FE PA further admitted it sent Complainant a termination notice on February 29, 2024, due to an account balance of \$31,011.57, advising that service was subject to termination on or after March 12, 2024. Respondent denied that it had active intent to terminate service to the service location.

Respondent further averred the Complainant does not pay its bills in full or by the due date and the last payment was received on February 12, 2024. The Respondent averred that at all times relevant to this proceeding, its actions have been reasonable and performed in accordance with all applicable laws, as well as Commission-approved tariffs, the Public Utility Code, and Commission regulations and orders.

Additionally, Respondent argued that per the Commission’s regulations, Complainant, as a limited liability company, must be represented by counsel in these proceedings.

By Order dated April 11, 2024, Chief Administrative Law Judge Charles Rainey (CALJ Rainey) directed the parties to hold a mediation conference.

own rate district. As such, the customers of the former Penn Power Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

This matter was not resolved, so, on May 24, 2024, the Commission issued a Hearing Notice assigning this matter to me and scheduling an evidentiary hearing for July 1, 2024. The Hearing Notice reads, in pertinent part,

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.

See Hearing Notice, pg. 2.

On May 24, 2024, I issued a Prehearing Order, which reads, in pertinent part,

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 an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*. And, unless you are an attorney, you may not represent someone else.

See Prehearing Order, pg. 4 (citations omitted).

On June 7, 2024, Respondent filed a Motion to Dismiss the Complaint, again arguing that Complainant, as a limited liability company, was required by the Commission's rules to be represented by counsel, and Complainant's failure to obtain counsel deprives the Commission of jurisdiction to adjudicate the matter. *Scheaffer v PPL Elec. Utils. Corp.*, Docket No. F-2016-2577647 (Opinion and Order entered Apr. 3, 2018).

Complainant did not file a response to the Motion to Dismiss.

On June 10, 2024, I issued an Interim Order directing Complainant to, by June 28, 2024, cause counsel to enter an appearance or show cause why it is not required to be

represented by counsel in this proceeding. I also advised the parties that the July 1, 2024, hearing would convene as scheduled, that Complainant's failure to comply with my order would result in dismissal of the Complaint, and that Respondent's Motion to Dismiss would be held in abeyance pending the hearing scheduled on July 1, 2024.

The Hearing Notice, Prehearing Order, and June 10, 2024, Interim Order were all eServed on Complainant consistent with its selection on the Complaint form. Complaint ¶ 9.

As of the date of this Initial Decision, no attorney has entered an appearance on behalf of Complainant, and Complainant has made no filing to show cause why it is not required to be represented by counsel in this proceeding.

On July 1, 2024, the hearing convened as scheduled. Angelina Umsted, Esq., appeared on behalf of FE PA. Complainant failed to appear. Ms. Umstead requested the Complaint be dismissed with prejudice due to Complainant's failure to appear. I advised I would take Ms. Umsted's oral motion to dismiss under advisement and would render a decision on the pending Motion to Dismiss.

The hearing record closed upon conclusion of the hearing on July 1, 2024. It is now appropriate to adjudicate this matter.

FINDINGS OF FACT

1. Complainant is Nora Hospitality LLC d/b/a Red Roof Inn.
2. Respondent is FirstEnergy Pennsylvania Company, a jurisdictional public utility in the Commonwealth of Pennsylvania.
3. On March 18, 2024, Complainant filed a Complaint identifying itself as a limited liability company.

4. On the Complaint form, Complainant indicated it wanted to be served by eService for all hearing notices, orders, and related documents from the Commission.

5. Complainant's Complaint was signed by Joanne Miller, who is identified as "Accounts Payable/Accounts Receivable."

6. On April 8, 2024, FE PA filed an Answer to the Complaint.

7. On May 24, 2024, the Commission issued a Hearing Notice assigning this matter to me and scheduling an evidentiary hearing for July 1, 2024.

8. The Hearing Notice reads, in pertinent 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."

9. On May 24, 2024, I issued a Prehearing Order.

10. The Prehearing Order reads, in pertinent 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 an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*. And, unless you are an attorney, you may not represent someone else."

11. On June 7, 2024, Respondent filed a Motion to Dismiss the Complaint, arguing that Complainant, as a limited liability company, was required by the Commission's rules to be represented by counsel, and Complainant's failure to obtain counsel deprives the Commission of jurisdiction to adjudicate the matter.

12. Complainant did not file a response to the Motion to Dismiss.

13. On June 10, 2024, I issued an Interim Order directing Complainant to, by June 28, 2024, cause counsel to enter an appearance or show cause why it is not required to be represented by counsel in this proceeding.

14. The June 10, 2024, Interim Order also advised the parties the July 1, 2024, hearing would convene as scheduled.

15. The June 10, 2024, Interim Order also warned Complainant that its failure to comply with the order would result in dismissal of the Complaint.

16. The Hearing Notice, Prehearing Order, and June 10, 2024, Interim Order were all eServed on Complainant consistent with its selection for service by the Commission as indicated on the Complaint form.

17. Complainant made no filing in response to the June 10, 2024, Interim Order.

18. On July 1, 2024, the hearing convened as scheduled.

19. Complainant or its representative failed to appear for the hearing on July 1, 2024.

20. Complainant did not settle or withdraw this matter.

21. No attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*, has entered an appearance on behalf of Complainant.

22. Complainant has not contacted the Commission to explain why its failure to appear at the hearing was unavoidable.

DISCUSSION

The Complainant filed a Complaint on March 18, 2024, requesting a Commission-issued payment arrangement (PAR). The Complaint was signed by Joanne Miller, who is identified as “Accounts Payable/Accounts Receivable.”

The Commission’s regulations provide that “[i]n adversarial proceedings, partnerships, corporations, trusts, associations, agencies, political subdivisions and government entities shall be represented only by . . . an attorney.” 52 Pa. Code § 1.21. A proceeding becomes adversarial with the filing of an answer to the complaint. 52 Pa. Code § 1.8; *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket Nos. C-2008-2065498 (Opinion and Order entered June 24, 2009).

A non-attorney owner/operator of a limited liability corporation may file a formal complaint pleading, without an attorney, but thereafter must be represented by counsel. *Tyler Run, LLC v. Penelec*, Docket No. C-20043888 (Order entered Jan. 5, 2005); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

The Commission’s obligation to require attorneys in adversarial proceedings for parties other than individual *pro se* proceedings is well-settled:

In Pennsylvania, the Supreme Court is responsible for regulating the practice of law, and this Commission is bound by the Supreme Court’s rules. The only persons authorized to practice law in Pennsylvania are as follows: (1) persons fully admitted to the Pennsylvania Bar; (2) persons admitted *pro hac vice* under Rule 301; and (3) persons qualified as certified legal interns under Rule 321. The Pennsylvania Supreme Court in *Shorz v. Farrell*, 327 Pa. 81, 193 A.20 (1937), held that if the nature of an administrative hearing is to determine questions of fact or interpretation of administrative law, then the hearing is of a judicial character. Any participation in such a hearing

constitutes the practice of law. Accordingly, it would be unlawful to allow non attorney representation in adversarial proceedings before the Commission.

Simon v. Franklin Water Co., Docket No. C-00956589 (Opinion and Order entered Jan. 29, 1996).

When FE PA filed an Answer in this proceeding, it became “adversarial.” In order to proceed, Complainant is required by the Commission’s regulations to be represented by counsel.

The Commission’s regulations regarding representation are consistent with the rules of the Pennsylvania Supreme Court and may not be waived. *Smaha v. Landy*, 638 A.2d 392 (Pa. Cmwlth. 1994). Pennsylvania courts have ruled that a corporation can only act through its agents and an agent representing it in court must be an attorney admitted to practice. *Walcavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super. 1984).

Accordingly, to participate in these proceedings once the Answer was filed, Complainant was required to obtain counsel licensed to practice law in the Commonwealth of Pennsylvania or admitted *pro hac vice*. *Cars R Us c/o Holman Copeland v. Phila. Gas Works*, Docket No. C-2008-2033437 (Opinion and Order entered Feb. 4, 2010). Failure to obtain counsel is grounds to dismiss the Complaint. *Sherwood Springs Prop. Holdings, LLC v. Pittsburgh Water and Sewer Auth.*, Docket C-2018-3004826 (Final Order entered Jan. 1, 2019) (dismissing a complaint due to the corporation’s failure to secure representation).

The Notice and Prehearing Order also advised Complainant of its responsibility to obtain representation by counsel.

Furthermore, parties must comply with the orders of an Administrative Law Judge. *Snyderville Comty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006). Failure to do so may result in the dismissal of the complaint. *Id.*

In the June 10, 2024, Interim Order, Complainant was directed to cause counsel to enter an appearance by June 28, 2024. The June 10, 2024, Interim Order warned Complainant that its failure to cause counsel to enter an appearance or show cause as to why it is not required to be represented by counsel would result in dismissal of the Complaint.

Additionally, Complainant failed to appear at the evidentiary hearing on July 1, 2024.

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

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). This due process requirement is satisfied when the parties are afforded notice and the opportunity to be heard. *Id.*

Complainant filed the instant Complaint seeking relief from the Commission in the form of a payment arrangement. Complainant must prove that it is entitled to this relief from the Commission. 66 Pa.C.S. § 332. Complainant was eServed with the Notice scheduling the hearing for July 1, 2024. The Hearing Notice and Prehearing Order issued in this case gave clear

instructions regarding how to request a continuance. Under the circumstances, the due process rights of Complainant have been fully protected.

Complainant was made aware of its obligation to obtain counsel and was given opportunity to do so. Complainant's failure to cause counsel to enter an appearance precludes these matters from moving forward before the Commission. Additionally, Complainant failed to appear at the evidentiary hearing.² As such, the Complaint must be dismissed.

While Respondent requested the Complaint be dismissed with prejudice, I am using my discretion to dismiss without prejudice, in the event Complainant is able to secure counsel in the future and re-file the Complaint.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Nora Hospitality LLC d/b/a Red Roof Inn, a limited liability company, must be represented by counsel in matters before the Commission. 52 Pa. Code § 1.22.
3. Failure of a complainant corporation to obtain counsel is sufficient grounds to dismiss a Complaint. *Sherwood Springs Prop. Holdings, LLC v. Pittsburgh Water and Sewer Auth.*, Docket C-2018-3004826 (Final Order entered Jan. 1, 2019).

² 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). When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice. *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); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

4. Parties must comply with the orders of an Administrative Law Judge, and failure to do so may result in the dismissal of the complaint. *Snyderville Comty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

5. The Commission is 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 be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

6. The due process rights of Complainant have been fully protected in this proceeding and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. Complainant failed to cause counsel to enter an appearance on its behalf after receiving notice of its obligation to do so and ample opportunity to comply with the Commission's rules. 52 Pa. Code § 1.22; *Sherwood Springs Prop. Holdings, LLC v. Pittsburgh Water and Sewer Auth.*, Docket C-2018-3004826 (Final Order entered Jan. 1, 2019); *Snyderville Comty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

8. By failing to appear for the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet its burden of proving it is eligible for the relief it seeks from the Commission. 66 Pa.C.S. § 332(a); 52 Pa. Code § 5.245(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of FirstEnergy Pennsylvania Company to Dismiss the Complaint filed by Nora Hospitality LLC d/b/a Red Roof Inn, at Docket No. C-2024-3047524, is granted.

2. That the Formal Complaint of Nora Hospitality LLC d/b/a Red Roof Inn in Nora Hospitality LLC d/b/a Red Roof Inn v. FirstEnergy Pennsylvania Company, at Docket No. at Docket No. C-2024-3047524, is dismissed.

3. That the Secretary shall mark this docket closed.

Date: September 25, 2024

_____/s/
Emily I. DeVoe
Administrative Law Judge