

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ya Davi LLC	:	
	:	C-2024-3048451
v.	:	
	:	
FirstEnergy Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

Complainant, a Limited Liability Company, filed a Formal Complaint against Respondent disputing electric utility bills received from Respondent and requesting a payment arrangement. Respondent filed an Answer and Motion to Dismiss Complaint for lack of jurisdiction due to Complainant’s failure to obtain legal counsel to prosecute the Formal Complaint. This decision grants the Motion to Dismiss Complaint.

HISTORY OF THE PROCEEDING

Ya Davi LLC (Complainant) filed a Formal Complaint (Complaint) against FirstEnergy Pennsylvania Electric Company (Company or Respondent), on or about April 16, 2024, regarding electric service provided to an address known or designated as 515 South Avenue, Bradford, PA 16701 (Service Address or Property). In the

Complaint, Complainant disputes electric bills issued by Respondent and seeks a payment arrangement.

On May 6, 2024, Respondent filed an Answer and New Matter which was accompanied by a Notice to Plead. In the New Matter, Respondent alleged, *inter alia*, that Complainant, as an LLC, needs to be represented in this proceeding by an attorney licensed to practice law in the Commonwealth of Pennsylvania; and that Prakash Patel, who signed the Formal Complaint and verification for Complainant is not an attorney and that Complainant has not caused an attorney to enter his appearance on behalf of Complainant.

On May 23, 2024, a Call-In Telephone Hearing Notice was issued scheduling the evidentiary hearing for July 1, 2024. The Notice also advised the Parties that provided, *inter alia*, as follows:

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*.¹

On May 24, 2024, a prehearing order was entered in this proceeding that provided, *inter alia*, as follows:

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

¹ 52 Pa. Code §§ 1.21 & 1.22.

Pennsylvania, or admitted *pro hac vice*.² And, unless you are an attorney, you may not represent someone else.

On June 10, 2024, Respondent filed a Motion to Dismiss, averring that Complainant is required to obtain legal representation and its failure to comply with this requirement should result in dismissal of the Formal Complaint without a hearing. A Notice to Plead was attached to the Motion advising Complainant to file a responsive pleading by Monday, July 1, 2024. No responsive pleading was filed by Complainant.

The hearing convened as scheduled. Respondent appeared with legal counsel and its witness and indicated that Respondent was prepared to present its case. Prakash Patel appeared for Complainant without legal counsel and requested a continuance, stating that Complainant needed a few days to obtain counsel.

On July 1, 2024, an Interim Order was entered extending the deadline for Complainant, Ya Davi LLC, to obtain legal counsel; to cause a notice of appearance to be filed with the Commission Secretary; and to serve a responsive pleading to the Motion to Dismiss by July 12, 2024. The Interim Order further provided that the failure of Complainant to cause legal counsel to enter his or her appearance for Complainant by July 12, 2024, consistent with the terms set forth in the Order, may result in all of the factual averments set forth in the Motion To Dismiss 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.

Complainant did not file a responsive pleading to Respondent's Motion to Dismiss the Complaint or cause a notice of appearance to be filed by legal counsel. In addition, Complainant did not request a further extension to the deadline of July 12, 2024, and did not comply with the terms of the July 1, 2024, Interim Order.

² 52 Pa. Code §§ 1.21 & 1.22.

On July 23, 2024, an Interim Order was entered accepting as admitted the facts averred in Respondent's Motion to Dismiss; treating the Motion to Dismiss as a Motion for Judgment on the Pleadings (MJOP) seeking dismissal of the Complaint; and closing the record.

FINDINGS OF FACT

1. Complainant is Ya Davi LLC, with an address of 515 South Avenue, Bradford, PA 16701.
2. Respondent is FirstEnergy Pennsylvania Electric Company, a jurisdictional public utility providing jurisdictional electric service in the Commonwealth of Pennsylvania.
3. Complainant is a limited liability corporation.
4. No attorney licensed to practice in Pennsylvania has filed a notice of appearance on behalf of Complainant.
5. The Formal Complaint, filed on April 16, 2024, disputes utility bills issued by Respondent and requests a payment arrangement.
6. On May 6, 2024, Respondent filed an Answer to the Complaint.
7. On May 23, 2024, a Call-In Telephone Hearing Notice was issued scheduling an evidentiary hearing for July 1, 2024, and explaining that partnerships, corporations, trusts, associations, and governmental agencies and subdivisions must be represented by an attorney licensed to practice law in Pennsylvania.

8. On May 24, 2024, a prehearing order was entered in this proceeding that explained that partnerships, corporations, trusts, associations, and governmental agencies and subdivisions must be represented by an attorney licensed to practice law in Pennsylvania.

9. On June 10, 2024, Respondent filed a Motion to Dismiss the Complaint.

10. Attached to the Motion to Dismiss was a Notice to Plead, advising Complainant that an Answer or other responsive pleading to the Motion to Dismiss of Respondent must be filed within 20 days of the date of service.

11. On July 1, 2024, the hearing convened as scheduled. Respondent appeared with legal counsel and its witness and indicated that Respondent was prepared to present its case. Prakash Patel appeared for Complainant without legal counsel and requested a continuance, stating that Complainant needed a few days to obtain counsel.

12. On July 1, 2024, an Interim Order was entered extending the deadline for Complainant, Ya Davi LLC, to obtain legal counsel and to cause a notice of appearance with the Commission Secretary and serve a responsive pleading to the Motion to Dismiss filed by Respondent, to July 12, 2024.

13. The Interim Order further provided that the failure of Complainant to cause legal counsel to enter his or her appearance for Complainant by July 12, 2024, consistent with the terms set forth in the Order, may result in all of the factual averments set forth in the Motion To Dismiss 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.

14. No responsive pleading was filed by Complainant, and Complainant did not cause a notice of appearance to be entered by legal counsel.

15. On July 1, 2024, an Interim Order was entered extending the deadline for Complainant to file a responsive pleading to the Motion to Dismiss and to have counsel enter an appearance to July 12, 2024.

16. Complainant failed to file a responsive pleading to the Motion to Dismiss.

17. Complainant failed to comply with the terms of the July 1, 2024, Interim Order.

18. Prakash Patel is not an attorney licensed to practice law in Pennsylvania.

19. On July 23, 2014, an Interim Order was entered advising the Parties that the averments set forth in Respondent's Motion to Dismiss were deemed admitted for failure of Complainant to file a responsive pleading in a timely manner, advising that Respondent's Motion to Dismiss would be treated as a Motion for Judgment on the Pleadings and closing the evidentiary record.

DISCUSSION

Complainant filed a Formal Complaint against Respondent disputing electric bills issued by Respondent and requesting a payment arrangement. Respondent

filed an Answer denying the material averments raised by Complainant and averring Complainant was required to be represented by legal counsel.³

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*.⁴ 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 the hearing.⁵

The Complaint identifies Ya Davi LLC as a limited liability Company. In addition, a verification is attached to the Complaint signed by Prakash Patel as owner/operator.

On May 23, 2024, a Call-In Telephone Hearing Notice was issued scheduling an evidentiary hearing for July 1, 2024, and explaining that partnerships, corporations, trusts, associations, and governmental agencies and subdivisions must be represented by an attorney licensed to practice law in Pennsylvania.

³ See 52 Pa. Code §§ 1.22–23.

⁴ See 52 Pa. Code §§ 1.21–23.

⁵ See *St. Phillip the Apostle Church v. City of Lancaster – Bureau of Water*, Docket No. C-2010-2206276 (Final Order entered Mar. 25, 2011); *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*); *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009).

On May 24, 2024, a prehearing order was entered that explained that partnerships, corporations, trusts, associations, and governmental agencies and subdivisions must be represented by an attorney licensed to practice law in Pennsylvania.

On June 10, 2024, Respondent filed a Motion to Dismiss the Complaint. Attached to the Motion to Dismiss was a Notice to Plead, advising Complainant that an Answer or other responsive pleading to the Motion to Dismiss of Respondent must be filed within 20 days of the date of service.

On July 1, 2024, the hearing convened as scheduled. Respondent appeared with legal counsel and a witness and indicated that Respondent was prepared to present its case. Prakash Patel appeared for Complainant without legal counsel and requested a continuance, stating that Complainant needed a few days to obtain counsel.

On July 1, 2024, an Interim Order was entered extending the deadline for Complainant, Ya Davi LLC, to obtain legal counsel and to cause a notice of appearance with the Commission Secretary and serve a responsive pleading to the Motion to Dismiss filed by Respondent, to July 12, 2024. The Interim Order further provided that the failure of Complainant to cause legal counsel to enter his or her appearance for Complainant by July 12, 2024, consistent with the terms set forth in the Order, may result in all of the factual averments set forth in the Motion To Dismiss 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 was filed by Complainant and Complainant did not cause a notice of appearance to be entered by legal counsel.

The July 1, 2024, Interim Order also advised Complainant that if it failed to fully comply with the terms of the Interim Order, a decision may be entered against the Complainant, without a hearing or further notice in this proceeding.

Despite the additional time granted to Complainant to file a responsive pleading to the Motion to Dismiss and to obtain legal counsel, Complainant failed to file a responsive pleading to the Motion to Dismiss the Complaint, failed to seek a further extension of the response deadlines, and failed to obtain legal counsel. Consequently, consistent with the provisions of the July 1, 2024, Interim Order, all of the factual averments set forth in the Motion to Dismiss were deemed admitted. Accordingly, based upon the circumstances, the pleadings are now closed and the Motion to Dismiss filed by Respondent is treated as a Motion for Judgment on the Pleadings.

Motions for judgment on the pleadings are governed by Section 5.102 of the Commission's regulations, 52 Pa. Code § 5.102. Judgment on the pleadings is available when the pleadings show that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Judgment on the pleadings should only be granted when the right to relief is clear and free from doubt. In determining the absence of a genuine issue of material fact, the Commission must take the view of the evidence most favorable to the non-moving party and resolve any doubts against the entry of the judgment.⁶

No response was filed to the Motion to Dismiss, and consistent with the notice to plead attached to the Motion, the facts alleged in the Motion to Dismiss were deemed admitted pursuant to 52 Pa. Code § 5.62. This includes the allegation that

⁶ *Day v. Volkswagonwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983). *Util. Workers Union of Am. System Local 537 v. Pa.-Am. Water Co.*, Docket No. C-2012-2287204 (Opinion and Order entered June 21, 2012).

Complainant is a limited liability corporation. Complainant must be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania in an adversarial proceeding before the Commission.⁷

If an organization chooses to incorporate to reap the benefits of incorporation, it must also accept the burdens of incorporation such as retaining legal counsel in adversarial proceedings.⁸

It is Commission practice to require the non-individual litigant to be represented by counsel and to dismiss a complaint for failure to comply with an order to do so (after giving ample time to obtain counsel):

More importantly, we take administrative notice that the Complainant is a registered corporation in the Commonwealth of Pennsylvania and is accorded the protection afforded to such legal entities. As such, it is a requirement for the proper adjudication of this Complaint proceeding that the Complainant must be represented by counsel.⁹

The Commission has held that the orders of an administrative law judge must be complied with and that a failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006). Complainant failed to comply with two orders of the undersigned administrative law judge and failed to obtain legal counsel. Failure to comply with an ALJ's multiple orders

⁷ *In re: Checker Cab*, 49 Pa.P.U.C. 159 (1975).

⁸ *See Walacavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super.1984) (citing *Shamey v. Hickey*, 433 A.2d 1111 (D.C. App. 1981) (*Walacavage*)).

⁹ *Walacavage*, at 284.

directing the entry of appearance of an attorney to represent the Complainant at the hearing warrants the dismissal of a complaint without a hearing. *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009).

Given the facts presented, there is no point in holding a formal hearing. Therefore, the Motion is granted, and the Complaint is dismissed. However, given that this issue is curable by Complainant's retention of legal counsel, I will dismiss the Complaint without prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this Complaint. 66 Pa.C.S. § 701.
2. Motions for judgment on the pleadings are governed by Section 5.102 of the Commission's regulations. 52 Pa. Code § 5.102.
3. Judgment on the pleadings is available when the pleadings show that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Judgment on the pleadings should only be granted when the right to relief is clear and free from doubt. In determining the absence of a genuine issue of material fact, the Commission must take the view of the evidence most favorable to the non-moving party and resolve any doubts against the entry of the judgment. *Day v. Volkswagonwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983). *Util. Workers Union of Am. System Local 537 v. Pa.-Am. Water Co.*, Docket No. C-2012-2287204 (Opinion and Order entered June 21, 2012).

4. As a Limited Liability Company, Complainant must be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania in an adversarial proceeding before the Commission. 52 Pa. Code §§ 1.8, 1.21-1.27; *In re: Checker Cab*, 49 Pa.P.U.C. 159 (1975).

5. Orders of an administrative law judge must be complied with and failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

6. Failure to comply with an ALJ's multiple orders directing the entry of appearance of an attorney to represent the Complainant at the hearing warrants the dismissal of a complaint without a hearing. *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009).

7. If there is no factual issue pertinent to the ultimate resolution of a proceeding before the Commission, it is not necessary to hold a hearing. 66 Pa.C.S. §703(a); *see also, Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 557 (Pa. Cmwlth. 1989); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Auth. v. Pa. Pub. Util. Comm'n*, 103 A.2d 502 (Pa. Super. 1954); *Kaczmarczyk v. Lakewood Tel. Co.*, Docket No. F-00162260 (Order entered Jan. 22, 1993); *Joint Petition of Pa. Power & Light Co., Phila. Elec. Co. and UGI Corp. for a Declaratory Order Regarding the Proposed Purchase of Coal from the Florence Mining Co.*, Docket No. P-920569 (Order entered May 19, 1992).

