

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

This Initial Decision grants the Motion for Judgment on the Pleadings filed by Duquesne Light Company and dismisses the Formal Complaint filed by Schaaf Excavating against Duquesne Light Company.

HISTORY OF THE PROCEEDINGS

Schaaf Excavating (Complainant or Schaaf) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) 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 Complainant may be deemed to be in default for its failure to file a Reply to New Matter, and the 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.

Respondent argued in its Motion that 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. Motion pp. 2, 4-5.

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. No notice of appearance by an attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted *Pro Hac Vice* 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 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 follows:

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

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.

See New Matter ¶¶ 12-18.

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.

The record closed by interim order entered on August 12, 2024.

FINDINGS OF FACT

1. Complainant, Schaaf Excavating, is a business corporation, with a business address of PO Box 187, Finleyville, Pennsylvania. Complaint ¶ 1.

2. Respondent, Duquesne Light Company, is a jurisdictional public utility providing electric service to Pennsylvania customers.

3. On August 7, 2023, Schaaf Excavating filed a Formal Complaint against Duquesne Light Company regarding services provided to property located at 1016-1024 Wood Street, Pittsburgh, Pennsylvania. Complaint ¶ 1.

4. On September 5, 2024, Respondent filed an Answer and New Matter which, *inter alia*, sought dismissal of the Complaint on the grounds that Complainant is a business corporation and must be represented in this proceeding by an attorney licensed to practice law in the Commonwealth of Pennsylvania. New Matter ¶ 15.

5. No attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted *Pro Hac Vice* has entered an appearance on behalf of Complainant. Complaint ¶ 9; New Matter ¶ 16.

6. An Interim Order was entered on January 29, 2024, which advised the parties of various procedures applicable to this proceeding and advised that corporations were required to be represented by legal counsel.

7. The Interim Order further advised the Parties that, pursuant to 52 Pa. Code §§ 1.21 and 1.22, individual parties may represent themselves, however, a partnership, limited liability company, corporation, trust, association, or governmental agency or subdivision must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent them in this proceeding.

8. On September 27, 2023, Respondent filed a Motion for Judgment on the Pleadings requesting that Complainant be required to obtain legal representation by a date certain and failing to do so the Formal Complaint be dismissed without a hearing.

9. The January 29, 2024 Interim Order extended Complainant's deadline to file and serve a responsive pleading to the New Matter and Motion for Judgment on the Pleadings until February 9, 2024.

10. 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.

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

12. Complainant failed to file a responsive pleading to the New Matter or to the Motion for Judgment on the Pleadings.

13. 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.

14. On March 6, 2024, an Interim Order was entered deeming the facts averred in the New Matter, as set forth in Paragraphs 13 through 16, as follows:

- a. The Complainant in the above-captioned matter is “Schaaf Excavating.” (“Schaaf” or “Complainant”). Complaint ¶ 1; New Matter ¶ 13.
- b. Complainant is a business corporation, and listed in the attachments to the Complaint as “Schaaf Excavating, Inc.” See Complaint ¶ 1; New Matter ¶ 14.
- c. 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. New Matter ¶ 15.

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

15. No attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, has entered his/her appearance on behalf of the Complainant.

DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the proponent of a rule or order. Therefore, Complainant had the burden of proving entitlement to the relief requested in the Complaint. Respondent was represented by legal counsel throughout this proceeding. However, Complainant, a corporation, was not represented by an attorney as required by 52 Pa. Code §§ 1.21 and 1.22.

The Commission's regulation at 52 Pa. Code § 1.21(b) provides that persons in adversarial proceedings, except for individuals representing themselves, shall be represented by an attorney admitted to practice in the Commonwealth of Pennsylvania. A corporation is included in the definition of persons. 52 Pa. Code § 1.8.

An adversarial proceeding is a proceeding which is contested by one or more other persons, and which will be decided on the basis of a formal record. 52 Pa. Code § 1.8. The simple filing of a formal complaint alone, does not automatically create an adversarial proceeding because, until the answer is filed, it is not known whether the formal complaint will be contested. *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered Jun. 24, 2009) (*New Fizon*); *see also Application of Ketih Custus*, Docket No. A-2023-3043249 (Opinion and Order

entered Feb. 22, 2024); and *Pa. Pub. Util. Comm'n v. T.L. Trucking, Inc.*, Docket No. C-2021-3023661 (Opinion and Order May 12, 2022); and *Pa. Pub. Util. Comm'n v. Quality Drive-Away, Inc.*, Docket No. C-2021-3025330 (Opinion and Order entered Dec. 16, 2021). However, once an answer to the complaint is filed the matter becomes adversarial. *Pa. Pub. Util. Comm'n v. West Penn Utils.*, Docket No. C-2022-3031862 (Opinion and Order entered May, 18, 2023) (*West Penn*); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006) (*Snyderville*); *New Fizon*.

The Commission's regulations requiring attorney representation in adversarial proceedings are consistent with Pennsylvania court decisions holding that a corporation must have counsel in order to proceed in any legal action because a corporation cannot represent itself. *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. *Walacavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super 1984). Also in *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*) and *Torino Inc. v. PECO Energy Co.*, Docket No. C-2008-2034595 (Opinion and Order entered Feb. 2, 2010) (*Torino*). Consequently, while a corporate officer may file a complaint on behalf of a corporation, the corporation must be represented by an attorney in an adversarial proceeding. *West Penn*; *New Fizon*; *Snyderville*.

In *Cars R Us* and *Torino*, the Commission reiterated the general rule requiring attorney representation of corporate complainants in adversarial proceedings. The Commission held that, absent exigent circumstances, it would not allow individuals to offer testimony on a corporation's behalf if the corporation was not represented by an attorney. *Cars R Us*.

Under 52 Pa. Code §§ 1.21-23, a company must have an attorney licensed to practice law in the Commonwealth of Pennsylvania represent it in this proceeding. Complainant is not represented by counsel, but by Kellie Fleming, who is a non-attorney representative of the Complainant. Complaint ¶¶8-9; Answer and New Matter ¶ 16.

Given that the Complainant is not represented by a licensed attorney, failed to obtain legal counsel to prosecute the Complaint, and failed to show cause why counsel was not required, in violation of the interim order entered on January 29, 2024, the Complaint must be dismissed. *West Penn; New Fizon; Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006) (dismissing complaint for failure to comply with administrative law judge order); *Treffinger v. PPL Elec. Utils. Corp.*, Docket No. C-20027978 (Opinion and Order entered Mar. 3, 2003) (dismissing complaint for failure to comply with administrative law judge order). Notwithstanding my decision to dismiss the Complaint for Complainant's failure to obtain counsel, as this defect is curable upon Complainant's retaining counsel, I will dismiss the Complaint without prejudice.

CONCLUSIONS OF LAW

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

2. Corporations in adversarial proceedings shall be represented by an attorney. 52 Pa. Code §1.21–1.23; *Pa. Pub. Util. Comm'n v. West Penn Utils.*, Docket No. C-2022-3031862 (Opinion and Order entered May, 18, 2023); *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered Jun. 24, 2009); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

3. Once an answer to the complaint is filed the matter becomes adversarial. *Pa. Pub. Util. Comm'n v. West Penn Utils.*, Docket No. C-2022-3031862 (Opinion and Order entered May, 18, 2023).

4. Failure to comply with Administrative Law Judge's order warrants dismissal of a complaint. *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Duquesne Light Company's Motion for Judgment on the Pleadings requesting dismissal of the Formal Complaint filed at Docket No. C-2023-3042244 is hereby granted for Complainant's failure to have a duly licensed attorney to represent Complainant and to prosecute the corporation's Complaint as required by 52 Pa. Code §§ 1.21 and 1.22.

2. That the Formal Complaint filed by Schaaf Excavating in *Schaaf Excavating v. Duquesne Light Company* at Docket No. C-2023-3042244 is hereby dismissed without prejudice for Complainant's failure to have a duly licensed attorney represent Complainant and to prosecute the corporation's Complaint as required by 52 Pa. Code §§ 1.21 and 1.22.

