

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Susan Hineman	:	
	:	C-2023-3044412
v.	:	
	:	
Duquesne Light 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 for Judgment on the Pleadings seeking to dismiss the Complaint. This decision grants the Motion and dismisses the Complaint.

HISTORY OF THE PROCEEDING

Susan Hineman (Ms. Hineman) filed a Formal Complaint (Complaint) dated November 17, 2023, regarding 2134 Brodhead Road, Aliquippa, Pennsylvania (Service Location). Complainant alleges the existence of reliability, safety or quality problems

with her electric utility service and seeks to be reimbursed for damages that she alleges she sustained.¹

On December 18, 2023, Duquesne Light Company (Respondent, Duquesne Light or Company) filed its Answer and New Matter, contemporaneously with its Preliminary Objections. Respondent averred that Ms. Hineman is the owner and president of a restaurant and catering company called Harold's Inn which operates at the Service Location. Respondent avers it provides commercial electric service to Harold's Inn at the Service Location. Respondent also avers that on April 10, 2023, Duquesne Light replaced a 3-phase electrical transformer set and safely restored electric service to Harold's Inn on April 11, 2023. Respondent denied that it caused or contributed to the incident described in the Complaint and denied that it acted negligently in any way.

Pursuant to 52. Pa. Code § 5.101, Respondent objected to the Complaint on the grounds that the Pennsylvania Public Utility Commission (Commission) lacks jurisdiction to award monetary damages.

On January 18, 2024, this case was assigned to the undersigned presiding officer.

In its Preliminary Objections, Respondent averred that the subject of the Formal Complaint is beyond the jurisdiction of the Commission as the Commission is without authorization to grant the Complainant's request for damages. Respondent requested that the Commission grant its Preliminary Objections and dismiss the portions of the Complaint that request money damages.

¹ Complaint at ¶ 4-5.

On February 5, 2024, Respondent filed a Motion For Judgment On The Pleadings seeking to dismiss the Formal Complaint with prejudice (Motion). No response to the Motion was filed.

On March 5, 2024, an Interim Order was entered granting the Preliminary Objections dismissing the claims for money damages set forth in the Formal Complaint.

On March 5, 2024, an Interim Order was entered extending the deadline for Ms. Hineman to file a response to the Motion until March 29, 2024. Ms. Hineman did not file a responsive pleading to the New Matter or the Motion.

The Motion requests in part, that the Commission deem the allegations in the New Matter as admitted.² In addition, the Respondent argues that because Harold's Inn is actually the complainant, it be required to have an attorney enter an appearance by a date certain.³

² Motion For Judgment On The Pleadings, ¶ 22. One of the facts Respondent seeks to have admitted is that complainant is not the individual Susan Hineman, but rather the complainant is actually the business operating as Harold's Inn. New Matter ¶¶ 14-20.

³ Respondent's New Matter states, "[t]he Complainant in the above-captioned matter is Susan Hineman." New Matter ¶ 13. This fact, if admitted as Respondent requests, is contrary to Respondent's argument that the Complainant is actually a business. However, given the totality of the circumstances including, *inter alia*, the nature of the claims presented; that all of the damages sought by Ms. Hineman are for alleged losses to Harold's Inn business equipment; Ms. Hineman identified herself as an "authorized employee or officer" on behalf of a business complainant when she signed the Complaint as "owner/pres[ident]"; the billing account is in the name of the business Harold's Inn; and the business Harold's Inn operates from the service address Ms. Hineman identifies as the service location in the Complaint; I find below that the Complainant in this matter is the business entity Harold's Inn and not the individual person Susan Hineman.

On June 12, 2024, an Interim Order was entered extending the deadline for Ms. Hineman to file and serve a responsive pleading to the New Matter and a responsive pleading to the Motion to July 10, 2024. In addition, the Parties were reminded that the failure of Ms. Hineman to file a responsive pleading to the New Matter, in a timely manner, consistent with the terms set forth in the Order, may result in all of the factual averments set forth in the New Matter being deemed admitted and a decision being entered against Ms. Hineman, without a hearing or further notice in this proceeding. The Parties were also reminded that the Commission's rules require non-individual litigants, such as corporations, associations, partnerships, and limited liability companies, to be represented by counsel and to dismiss a complaint for failure to comply with an order requiring counsel to represent such complainants. No responsive pleading was filed by Ms. Hineman.

On July 22, 2024, an Interim Order was entered granting Respondent's request that the factual averments set forth in the New Matter be deemed admitted. The Interim Order further provided that on or before August 30, 2024, Harold's Inn, shall 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 Harold's Inn is not required to be represented by counsel under the Commission's rules. The Parties were advised that the failure of Ms. Hineman and Harold's Inn to comply with the provisions of the Interim Order may result in the dismissal of the Formal Complaint filed in this proceeding, with prejudice, and without further notice or a hearing in this proceeding.

No response was received from Ms. Hineman, Harold's Inn, or legal counsel for Harold's Inn and the record closed by Interim Order entered on September 18, 2024.

FINDINGS OF FACT

1. Respondent is Duquesne Light Company, a jurisdictional public utility providing jurisdictional electric service in the Commonwealth of Pennsylvania. Complaint ¶ 2.

2. Susan Hineman filed the Formal Complaint in the above-captioned matter . Complaint ¶¶ 1, 11.

3. Susan Hineman, lists the service address on the Complaint as 2134 Brodhead Road, Aliquippa, Pennsylvania (Property). Complaint ¶ 1.

4. According to Beaver County online real estate records, the Property is owned by Susan Hineman, c/o “HAROLDS INN, INC.” New Matter ¶14.

5. The address for Harold’s Inn is 2134 Brodhead Road, Aliquippa, Pennsylvania. Complaint Attachment.

6. Duquesne Light provides commercial electric service to Harold’s Inn, located at the Property. New Matter ¶15.

7. The electric account associated with the Property is listed in the name of “HAROLDS INN.” Complaint ¶ 1; New Matter ¶16.

8. It is clear that Ms. Hineman executed and filed the Complaint on behalf of and as owner and president of her restaurant business, Harold’s Inn. *See* Complaint pp. 1, 7-16; New Matter ¶17, 20.

9. Throughout the Complaint filed in this proceeding, Ms. Hineman seeks relief on behalf of Harold's Inn, not Susan Hineman as an individual. New Matter ¶18.

10. Ms. Hineman provided invoices with the Complaint pertaining to equipment and services provided to Harold's Inn at the Property. Complaint pp. 11-16; New Matter ¶19.

11. Complainant is Harold's Inn, a business entity owned and operated by Susan Hineman.

12. Susan Hineman is not a licensed attorney in the Commonwealth of Pennsylvania. Complaint ¶¶ 10-11; New Matter ¶23.

13. No attorney licensed to practice in Pennsylvania has filed a notice of appearance on behalf of Complainant.

DISCUSSION

Ms. Hineman filed the Complaint seeking damages sustained by the business, Harold's Inn. The Complainant sought relief on behalf of Harold's Inn, not Ms. Hineman as an individual. In addition, Ms. Hineman attached invoices to the Complaint pertaining to equipment and services provided to Harold's Inn at the Property and she signed the Complaint as the Owner and President of Complainant.⁴

⁴ Complaint at ¶ 4-5, attachments.

On December 18, 2023, Respondent filed an Answer and New Matter denying the material averments raised by Ms. Hineman and averring Ms. Hineman was seeking relief on behalf of Harold's Inn, not Ms. Hineman as an individual. Specifically, Respondent avers Ms. Hineman provided invoices pertaining to equipment and services provided to Harold's Inn at the Property and that Ms. Hineman signed the Complaint as the Owner and President of Complainant.

Respondent further averred that Ms. Hineman is the owner and president of a restaurant and catering company called Harold's Inn which operates at the Service Location. Respondent averred it provides commercial electric service to the Service Location. Respondent averred that on April 10, 2023, Duquesne Light replaced a 3-phase electrical transformer set and safely restored electric service to Harold's Inn on April 11, 2023. Respondent denied that it caused or contributed to the incident described in the Complaint and denied that it acted negligently in any way. Respondent further averred Complainant is required to be represented by legal counsel.⁵ The Answer and New Matter included a Notice to Plead directed to Ms. Hineman.

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*.⁶ 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

⁵ See 52 Pa. Code §§ 1.22–23.

⁶ See 52 Pa. Code §§ 1.21–23.

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.⁷

The Motion For Judgment On The Pleadings seeking to dismiss the Formal Complaint filed by Ms. Hineman, with prejudice, requested in part, that the Commission deem the allegations in the New Matter as admitted.⁸ In addition, the Respondent requested that Complainant be required to have an attorney enter an appearance by a date certain.

On June 12, 2024, an Interim Order was entered extending the deadline for Complainant to file and serve a responsive pleading to the New Matter and a responsive pleading to the Motion to July 10, 2024. The Parties were also reminded of the Commission practice to require non-individual litigants, such as limited liability companies and incorporated companies to be represented by counsel and to dismiss a complaint for failure to comply with an order requiring counsel to represent such complainants. No responsive pleading was filed by Ms. Hineman or Complainant.

On July 22, 2024, an Interim Order was entered granting Respondent's request that the factual averments set forth in the New Matter filed by Respondent be deemed admitted, which includes properly identifying Harold's Inn as the Complainant in this matter as opposed to Ms., Hineman personally. The Interim Order further provided that on or before August 30, 2024, Complainant shall either: (1) cause its legal counsel to enter his or her appearance with the Commission in accordance with the provisions of

⁷ 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).

⁸ Motion For Judgment On The Pleadings, ¶ 22.

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.

No response was received from Complainant or legal counsel for Complainant. Accordingly, on September 18, 2024, an interim order was entered closing the evidentiary record.

Despite the additional time granted to Complainant to file a responsive pleading to the Motion For Judgment On The Pleadings and to obtain legal counsel, Complainant failed to file a responsive pleading to the Motion, failed to seek a further extension of the responsive pleading deadlines, and failed to obtain legal counsel. Consequently, consistent with the provisions of the June 12 and July 22, 2024 Interim Orders, all of the factual averments set forth in the New Matter of Respondent were deemed admitted.

Motions for judgment on the pleadings are governed by Section 5.102 of the Commission's regulations.⁹ 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.¹⁰

⁹ 52 Pa. Code § 5.102.

¹⁰ *Day v. Volkswagenwerk 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).

No response was filed to the New Matter or the Motion For Judgment On The Pleadings, and consistent with the notice to plead attached to the New Matter, the facts alleged in New Matter were deemed admitted. This includes the allegations that Duquesne Light provides commercial electric service to Harold's Inn, located at the Property; the electric account associated with the Property is listed in the name of Harold's Inn; that Ms. Hineman filed the Complaint on behalf of her restaurant business, Harold's Inn; that Ms. Hineman seeks relief on behalf of Harold's Inn, not herself as an individual; that Ms. Hineman provided invoices with the Complaint pertaining to equipment and services provided to Harold's Inn at the Property; and Susan Hineman, signed the Complaint as the Owner and President of Complainant. In addition, Complainant is not represented by counsel, but by a non-attorney representative of the company.

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.¹¹ As a commercial customer and corporation, Complainant is required to be represented by counsel in adversarial proceedings before the Commission. *In re: Checker Cab*, 49 Pa.P.U.C. 159 (1975).

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

¹¹ 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).

proceeding that the Complainant must be represented by counsel.^{12]}

The absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter.¹³

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.¹⁴ Given the facts presented, it is clear that the Commission is without jurisdiction to adjudicate this case. Without jurisdiction, there is no point in holding a formal hearing. Therefore, the Motion is granted, and the Complaint is dismissed.

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.

¹² See *Cars R Us*.

¹³ See *McCain v. Curione, Pa. Bd. of Prob. and Parole*, 527 A.2d 591 (Pa. Cmwlth. 1987) (Commonwealth Court was without jurisdiction to consider arguments and motions made on behalf of parolee in a civil action that was filed by another prisoner who was not licensed to practice law).

¹⁴ 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 (Final 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).

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. Volkswagenwerk 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 non-individual complainant or corporation, Complainant must be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania in an adversarial proceeding before the Commission. *In re: Checker Cab*, 49 Pa.P.U.C. 159 (1975).

5. 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. *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)).

6. The absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter. *See McCain v. Curione, Pa. Bd. of Prob. and Parole*, 527 A.2d 591 (Pa. Cmwlt. 1987).

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. Cmwlt. 1989).

