

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Potoka Trucking	:	
	:	
v.	:	C-2024-3049031
	:	
FirstEnergy Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Michael J. Mroczka
Special Agent

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Potoka Trucking against FirstEnergy Pennsylvania Electric Company for failure to comply with an order to obtain representation of counsel.

HISTORY OF THE PROCEEDING

On May 15, 2024, Potoka Trucking (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against FirstEnergy Pennsylvania Electric Company (FEPA or Respondent).¹

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3976013, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a). It is unclear from the record why this case was not

Complainant checked the boxes on the Complaint form stating that it would like a payment arrangement. Complainant also claimed that it was being charged the incorrect rate by FEPA.

In its Complaint, Complainant identified itself as a “small business,” indicating it was seeking relief in the nature of having “rates changed to small business and payment arrangement made.” Complaint ¶¶ 1, 5. Further, the Complaint was signed by an officer of the Complainant. Complaint ¶ 11.

On June 4, 2024, FEPA filed an Answer to the Complaint. Respondent admitted it provides electric service to Complainant. FEPA denied that Complainant is entitled to a Commission-issued payment arrangement or that it is not properly billing Complainant under the correct rate schedule. Additionally, Respondent argued that per the Commission’s regulations, Complainant, must be represented by counsel in these proceedings.

On July 23, 2024, the Commission issued a Hearing Notice assigning this matter to me and scheduling an evidentiary hearing for October 3, 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,

assigned an F-docket number. Regardless, a BCS determination was entered May 14, 2024, and the instant Complaint was filed May 25, 2024. Further, the Complainant indicated on its Complaint form that this case was an appeal of the May 14, 2024 BCS determination. Complaint ¶ 7. The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party. 52 Pa. Code § 1.2(c). Accordingly, I will treat this Complaint as a timely appeal from the May 14, 2024 BCS determination.

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, at 2.

On July 25, 2024, FEPA filed a Motion to Dismiss the Formal Complaint. FEPA alleged that Complainant is a business corporation and as such must be represented by counsel. FEPA requested that Complainant be ordered to have an attorney file an Entry of Appearance and if Complainant failed to have an attorney enter an appearance within 10 days of that order, that the Complaint be dismissed.

On September 10, 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, at 4 (citations omitted).

On October 1, 2024, Complainant emailed me requesting to reschedule the October 3, 2023 hearing. Complainant stated that it was unaware it needed an attorney for the hearing and is in the process of attaining one. I forwarded the email to FEPA's attorney.

On October 2, 2024, Respondent replied, objecting to the continuance request. FEPA alleged that the request does not constitute good cause.

On October 2, 2024, I issued an Interim Order continuing the matter to November 12, 2024. Also in the Interim Order, Complainant was ordered to cause an attorney to enter an appearance in accordance with 52 Pa. Code §§ 1.21-1.25, on or before November 4, 2024. Failure of Complainant to cause an attorney to enter an appearance would result in cancellation of the November 12 hearing and dismissal of the Complaint.

No attorney entered an appearance on behalf of Complainant by November 4, 2024. Therefore, on November 6, 2024, a hearing cancellation notice was issued, cancelling the November 12, 2024 hearing.

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.

It is now appropriate to adjudicate this matter.

FINDINGS OF FACT

1. Complainant is Potoka Trucking, a Pennsylvania Corporation. Complaint ¶¶ 1, 5, 11.

2. Respondent is FirstEnergy Pennsylvania Electric Company, a jurisdictional public utility in the Commonwealth of Pennsylvania.

3. On May 15, 2024, Complainant filed a Complaint against Respondent.
4. On June 4, 2024, FEPA filed an Answer and New Matter to the Complaint in which it admitted Complainant is a corporation. Answer and New Matter generally.
5. On July 23, 2024, the Commission issued a Hearing Notice assigning this matter to me and scheduling an evidentiary hearing for October 3, 2024.
6. 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.”
7. On September 10, 2024, I issued a Prehearing Order.
8. 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.”
9. On July 25, 2024, Respondent filed a Motion to Dismiss the Complaint, again arguing that Complainant, as a business corporation, 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.

10. Complainant did not file a response to Respondent’s New Matter or Respondent’s Motion to Dismiss.

11. On October 2, 2024, I issued an Interim Order continuing the hearing to November 12, 2024, and ordering Complainant to, by November 4, 2024, cause counsel to enter an appearance.

12. The October 2, 2024, Interim Order warned Complainant that its failure to comply with the order would result in dismissal of the Complaint.

13. Counsel did not enter an appearance on Complainant’s behalf by November 4, 2024.

14. On November 6, 2024, notice was issued cancelling the November 12, 2024 hearing.

DISCUSSION

The Complainant filed a Complaint on May 15, 2024, requesting a Commission-issued payment arrangement.

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. An adversarial proceeding begins with the filing of an answer. 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*, 193 A. 20 (Pa. 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 FEPA filed an Answer in this proceeding, it became adversarial. In order to proceed, Complainant, as a corporation,² is required by the Commission's regulations to be represented by counsel.

² In its Complaint, Complainant identified itself as a "small business," indicating it was seeking relief in the nature of having "rates changed to small business." Complaint ¶¶ 1, 5. Further, the Complaint was signed by an officer of the Complainant. Complaint ¶ 11. Denise Schreckengost signed the verification of the Complaint as "President – Secretary." *Id.* Further, Ms. Schreckengost signed the signature line dedicated for corporate complainants. Immediately below the corporate signature line signed by Ms. Schreckengost is the following language: "**Title of authorized employee**

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, as a corporation, 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 a presiding officer. *Snyderville Cmty. 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.*

or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)." *Id.* (emphasis original). Finally, paragraph 11 of the Complaint also contains a "Note" that states: "[i]f the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee." *Id.* (emphasis original).

In the October 2, 2024, Interim Order, Complainant was directed to cause counsel to enter an appearance by November 4, 2024. The 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.

Complainant was made aware of its obligation to obtain counsel and was given opportunity to do. Complainant's failure to cause counsel to enter an appearance precludes these matters from moving forward before the Commission. As such, the Complaint must be dismissed. However, this matter will be dismissed without prejudice to refiling, if an attorney is retained by Complainant.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Potoka Trucking 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).
4. Parties must comply with the orders of a presiding officer, and failure to do so may result in the dismissal of the complaint. *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

5. Complainant's failure to cause an attorney to enter an appearance on its behalf is a failure to comply with the order of the presiding officer and is grounds for dismissal of its Formal Complaint. *Sherwood Springs Prop. Holdings, LLC v. Pittsburgh Water and Sewer Auth.*, Docket C-2018-3004826 (Final Order entered Jan. 1, 2019); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Potoka Trucking in Potoka Trucking v. FirstEnergy Pennsylvania Electric Company, at Docket No. C-2024-3049031, is dismissed without prejudice.

2. That the Secretary shall mark this docket closed.

Date: January 14, 2025

_____/s/
Michael J. Mroczka
Special Agent