

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Dominic’s Villa Rosa Pizzeria	:	
-vs-	:	
Nordic Energy Services, LLC	:	14-0412
	:	
Complaint as to contract agreement in	:	
Schaumburg, Illinois.	:	

ORDER

By the Commission:

On June 6, 2014, Dominic’s Villa Rosa Pizzeria (“Complainant”) filed a complaint against Nordic Energy Services, LLC (“Respondent”) pursuant to Section 10-108 of the Public Utilities Act (220 ILCS 5/10-108) (“PUA”).

I. Background

Pursuant to notice required by the rules and regulations of the Commission, a prehearing conference was scheduled in this matter on July 10, 2014, before a duly authorized Administrative Law Judge (“ALJ”) of the Commission at its offices in Chicago, Illinois. Complainant appeared telephonically by Dominic Manzella, a current shareholder and former owner. Respondent appeared by counsel.

Complainant alleges that Respondent renewed its contract without its knowledge, tripled its gas bill for February, March and April, 2014, and charged it an early termination fee of \$1245.11.

Respondent filed an Answer to the complaint on July 30, 2014 denying the allegations in ¶1, admitting the allegations in ¶2, and admitting in ¶3 that Complainant was charged an early termination fee, but denying the remaining allegations in ¶3. Respondent also raised as affirmative defenses that Complainant breached its contracts with Respondent and failed to comply with the terms of the contracts, including but not limited to termination provisions, thereby incurring early termination fees.

This matter was continued for evidentiary hearing to August 19, 2014. Complainant was advised in the Notice of Continuance of Hearing dated July 11, 2014, that Illinois corporations are required to appear by a licensed attorney in good standing in Illinois. Mr. Manzella was advised that, since the contract with Respondent was in the name of Manzella Inc. d/b/a Dominic’s Villa Rosa Pizzeria, it was a corporation that must be represented by a licensed attorney in Illinois. Mr. Manzella stated that he could not afford an attorney.

On July 30, 2014, Respondent filed a Motion to Dismiss. Respondent's Motion stated two grounds for dismissal. First, the Motion alleged that it is unclear as to whether the Complainant is Dominic Manzella or Dominic's Villa Rosa Pizzeria. Respondent's contract is with Manzella Inc. d/b/a Dominic's Villa Rosa Pizzeria. A copy of the contract was attached to the motion as Exhibit A. The Motion argued that Respondent has no agreement with Mr. Manzella individually. To the extent that the Complainant is Dominic Manzella the individual, the Respondent avers that the proper party has not filed the complaint, and it should therefore be dismissed.

Second, the motion argues that the Complaint should be dismissed on the grounds that Mr. Manzella has engaged in the unauthorized practice of law by representing a corporation in legal proceedings. The Motion cited to Downtown Disposal Services, Inc. v. City of Chicago in support. 2012 IL 112040, 979 N.E.2d 50.

Respondent requested that Mr. Manzella be directed by the ALJ to retain counsel within 21 days. If he fails to retain counsel, dismissal of the complaint would be reasonable and equitable.

On August 5, 2014, the ALJ sent a ruling requiring Mr. Manzella to have an active status Illinois attorney file an appearance in this Docket, to file an amended complaint in the name of Manzella, Inc. d/b/a Dominic's Villa Rosa Pizzeria, and to file an answer to the Motion to Dismiss by August 18, 2014. Respondent was directed to file a reply by August 25, 2014. The August 5, 2014 ruling also canceled the August 19, 2014 hearing and continued this matter generally. The ALJ served the parties with a Proposed Order on September 3, 2014 recommending that the Complaint be dismissed without prejudice.

On February 4, 2015, Respondent was served with an ALJ Ruling directing it to provide information as to the Complainant's load usage classification and average load usage figures. Respondent filed its response February 10, 2015, and Complainant had until March 6, 2015 to respond—no response was filed.

II. Commission Analysis and Conclusions

An agency has only the authorization given to it by the legislature through the statutes. "Consequently, to the extent an agency acts outside its statutory authority, it acts without jurisdiction." Business & Professional People for the Public Interest v. Illinois Commerce Comm'n, 136 Ill.2d 192, 243–45 (1989). Further, "[a] decision rendered by an administrative agency which lacks jurisdiction over the parties or the subject matter, or which lacks the inherent power to make or enter the decision involved, is void." Bd. of Educ. of City of Chicago v. Bd. of Trustees of Pub. Sch. Teachers' Pension & Ret. Fund of Chicago, 395 Ill. App. 3d 735, 739, 917 N.E.2d 527, 531 (2009). Therefore, prior to addressing whether the proper party is named in the Complaint or whether Mr. Manzella has engaged in the unauthorized practice of law, the Commission will first address whether it has jurisdiction to hear this matter.

Article 19 of the PUA governs the Commission's authority over Alternative Retail Gas Suppliers ("ARGS"). 220 ILCS 5/19-100 et seq. The Commission's authority covers the certification of ARGS (Section 19-110), ARGS' obligations to customers (Section 19-115), and oversight (Section 19-120), but only to the extent the ARGS are "serving or seeking to serve residential or *small commercial customers* and only to the extent that such [ARGS] provide services to residential and *small commercial customers*." Section 19-110(a) (emphasis added); see also Sections 19-115(a); 19-120(a).

The PUA defines "small commercial customer as "a nonresidential retail customer of a natural gas utility who consumed 5,000 or fewer therms of natural gas during the previous year." Section 5/19-105. In its response to the interrogatory issued February 4, 2014, Respondent states that at no point during the relevant time period did Respondent or the distribution utility classify Complainant as a small commercial customer. Further, Respondent explained that at the time Complainant engaged in the service agreement with Respondent, Complainant's average annual usage figures were 7,700.08 therms for Jan. 2012-Jan. 2013, 6,855.84 therms for Sept. 2012-Sept. 2013, and 8,472.75 therms for March 2013-March 2014. (Response to ALJ's February 4th Ruling, filed Feb. 10, 2014.) Complainant is not in the class of customers within the scope of Article 19.

The Commission concludes it lacks jurisdiction over the parties, and does not have the authority under the PUA to hear this complaint.¹ Accordingly, the Commission need not address the merits of the two issues raised in Respondent's Motion to Dismiss.

III. Findings and Ordering Paragraphs

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) on June 6, 2014, Dominic's Villa Rosa Pizzeria filed a complaint against Nordic Energy Services, LLC alleging that Respondent renewed a contract with Complainant without its knowledge, tripled its gas bill for February, March and April, 2014, and charged it an early termination fee of \$1245.11;
- (2) Complainant is not a "small commercial customer" as defined by 220 ILCS 5/19-101 of the PUA;
- (3) Respondent is an Illinois limited liability company, a certificated Alternative Retail Electric Supplier engaged in selling electricity to Illinois customers, and a certificated Alternative Gas Supplier engaged in selling natural gas to Illinois customers;

¹ "[I]n administrative review, the term 'jurisdiction' has three aspects: (1) personal jurisdiction—the agency's authority over the parties and intervenors involved in the proceeding, (2) subject matter jurisdiction—the agency's power to 'hear and determine cases of the general class of cases to which the particular case belongs' [citation], and (3) an agency's scope of authority under the statutes." Bus. & Prof'l People for the Public Interest, 136 Ill.2d at 243.

- (4) the Commission lacks the jurisdiction over the parties to hear and determine the allegations raised in the Complaint; and
- (5) the Commission finds that Docket 14-0412 should be dismissed with prejudice.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Respondent's Motion to Dismiss is granted.

IT IS FURTHER ORDERED by the Illinois Commerce Commission that Docket 14-0412 is dismissed with prejudice.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 25th day of March, 2015.

(SIGNED) BRIEN SHEAHAN

Chairman