

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vitalized Research, LLC	:	
	:	
v.	:	C-2018-3003207
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

This Initial Decision dismisses the formal Complaint of Vitalized Research, LLC against PECO Energy Company due to the Complainant’s failure to comply with the presiding officer’s Order to have an attorney, licensed to practice in the Commonwealth of Pennsylvania, enter an appearance on its behalf.

HISTORY OF THE PROCEEDING

On July 2, 2018, Vitalized Research, LLC (Complainant or Vitalized Research) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, under reason for Complaint, the Complainant placed a check mark next to the statement: “The utility is threatening to shut off my service or has already shut off my service.”

This matter is the untimely appeal of a decision from the Bureau of Consumer Services (BCS) dated April 13, 2018, at Case No. 3590124, which dismissed the informal complaint of the Complainant.

On July 26, 2018, PECO filed an Answer and New Matter to the Complaint. In its Answer, PECO denied all material allegations of the Complaint. In its New Matter, PECO requested that the Commission establish a date certain by which the Complainant was required to have an attorney enter an appearance on its behalf since it is a Limited Liability Corporation (LLC).

By Hearing Notice dated August 31, 2018, an Initial In-Person Hearing was scheduled for October 26, 2018, and the matter was assigned to me.

On September 6, 2018, I issued a Prehearing Order advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding. Also, I directed the Complainant to have an attorney licensed in Pennsylvania enter an appearance on its behalf on or before October 1, 2018.

To date, there is no record of an attorney filing a notice of appearance on behalf of Vitalized Research, LLC. As the Complainant did not comply with my September 6, 2018 Prehearing Order, the Complaint will be dismissed as discussed below.

A Hearing Cancellation Notice was issued on October 9, 2018, and the record was closed.

The record in this case consists of the pleadings and my Prehearing Order.

FINDINGS OF FACT

1. The Complainant is Vitalized Research, LLC.
2. The Respondent is PECO Energy Company.
3. The Complainant is a Limited Liability Corporation.

4. By Hearing Notice dated August 31, 2018, an Initial In-Person Hearing was scheduled for October 26, 2018, and the matter was assigned to me.

5. The Hearing Notice contained the following statement:

Individuals representing themselves are not required to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you should file a Notice of Appearance before the scheduled hearing date.

(emphasis in original).

6. A Prehearing Order was issued on September 6, 2018, containing the following direction to the Complainant:

1. Vitalized Research, LLC: Have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance to represent you prior to October 1, 2018. FAILURE TO DO SO WILL RESULT IN YOUR COMPLAINT BEING DISMISSED.

(emphasis in original).

7. Both the Hearing Notice and Prehearing Order were sent to the Complainant by U.S. Postal Service regular first-class mail.

8. Neither the Hearing Notice nor Prehearing Order was returned by the U.S. Postal Service as undeliverable.

9. A Hearing Cancellation Notice was issued on October 9, 2018.

10. As of the date of this initial decision, the Complainant has not had an attorney enter an appearance on its behalf.

DISCUSSION

The Complainant in this case is a Limited Liability Corporation that is not represented by counsel. The Commission's Regulations require Limited Liability Corporations, *inter alia*, to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa. Code § 1.21(b).¹

The term "adversarial proceeding" is defined as "[a] proceeding initiated by a person to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission 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. Additionally, the term "person" is defined as including "individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities, municipal corporations or other political subdivisions." *Id.*

This matter constitutes an adversarial proceeding, as it involves the formal Complaint filed by Vitalized Research against PECO regarding a billing dispute, in which Vitalized Research seeks relief from the Commission and PECO has filed an Answer denying all material allegations of the Complaint. Accordingly, pursuant to the Commission's Regulations, Vitalized Research is required to be represented by counsel in this adversarial proceeding since it is a Limited Liability Corporation.

The Complainant was informed of this requirement by both the Hearing Notice and my Prehearing Order. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission by the U.S. Postal Service as undeliverable, and therefore are deemed to have been received. *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa. Cmwlth. 1994). Nevertheless, to date, no notice of appearance to represent the Complainant has been filed.

¹ The Commission's regulations concerning representation and notice of appearance are set forth in 52 Pa.Code §§ 1.21-24.

Moreover, failure to comply with an order issued by a presiding officer warrants dismissal of the application or complaint. See, e.g., *Application of And Ex Cor*, Docket No. A-2012-2337848 (Final Order entered June 19, 2013); *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket Nos. C-2008-2065498 and C-2008-2079076 (Opinion and Order entered June 24, 2009); *Snyderville Community Development Corp. v. PECO Energy Company*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

In this case, the Complainant failed to comply with my September 6, 2018 Prehearing Order directing it to be represented by counsel since it is a Limited Liability Corporation. Therefore, the Complaint shall be dismissed.

CONCLUSIONS OF LAW

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

2. The Commission's Regulations require Limited Liability Corporations, *inter alia*, to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa. Code § 1.21(b).

3. This matter constitutes an adversarial proceeding, as it involves the formal Complaint filed by Vitalized Research against PECO regarding a billing dispute, in which Vitalized Research was seeking relief from the Commission and PECO has filed an Answer denying all material allegations of the Complaint. 52 Pa. Code § 1.8.

4. Mail sent to a party's last known address and not returned by the U.S. Postal Service is presumed to have been received. *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa. Cmwlth. 1994).

