

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

McCann Enterprises, LLC	:	
	:	
v.	:	C-2024-3045852
	:	
PECO Energy Company-Electric,	:	
Spartacus Energy Services, LLC, and	:	
CleanChoice Energy, Inc.	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Decision dismisses the Formal Complaint of McCann Enterprises, LLC for 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 January 29, 2024, McCann Enterprises, LLC (Complainant) eFiled¹ a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission

¹ The Complainant utilized the Commission’s eFile service to electronically file the Formal Complaint. When the Complainant registered for an eFile account with

(Commission) against PECO Energy Company-Electric (PECO), Spartacus Energy Services, LLC (Spartacus), and CleanChoice Energy, Inc. (CleanChoice) alleging an unauthorized switch of its energy supplier from CleanChoice to Spartacus.

On February 8, 2024, Spartacus filed an Answer in which it denied the material allegations of fact and conclusions of law in the Complaint.

On February 14, 2024, CleanChoice filed a Certificate of Satisfaction of the Complaint against CleanChoice.

On February 19, 2024, PECO filed an Answer in which it denied the material allegations of fact and conclusions of law in the Complaint.

By Initial Call-In Telephonic Hearing Notice dated March 26, 2024, a telephonic hearing was scheduled for May 28, 2024, at 10:00 a.m., and the matter was assigned to me.

A Prehearing Order was issued on April 18, 2024. The Prehearing Order reminded the parties of the date and time of the hearing and informed them of the procedures applicable to this proceeding. Also, I ordered the Complainant to have an attorney licensed in Pennsylvania enter an appearance on its behalf on or before May 21, 2024 and warned in bold: **FAILURE TO DO SO WILL RESULT IN YOUR COMPLAINT BEING DISMISSED.**

The Hearing Notice and Prehearing Order were both eServed to the Complainant at the Complainant's request and in the ordinary course of the Commission's business to the email address provided by the Complainant. Neither the

the Commission, the Complainant also registered an email address in order to be served Commission documents via the Commission's eService process.

Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

On May 24, 2024, Spartacus filed a Certificate of Satisfaction of the Complaint against Spartacus.

On May 28, 2024, the hearing convened as scheduled. Khadijah Scott, Esquire, appeared on behalf of PECO and was ready to proceed. Prior to going on the record, Mr. Kevin McCann called in on behalf of the Complainant. When informed that only an attorney can represent the Complainant, Mr. McCann disconnected from the call. The hearing then proceeded in the Complainant's absence. No testimony was taken, and no exhibits were introduced into the record. At the hearing, the Respondent moved to dismiss the Complaint for the Complainant's failure to appear and prosecute. I took this motion under advisement.

The record closed on June 20, 2024, upon the filing of the transcript with the Commission.

To date, there is no record of an attorney filing a notice of appearance on behalf of McCann Enterprises, LLC.

FINDINGS OF FACT

1. The Complainant is McCann Enterprises, LLC.
2. The Respondents are PECO Energy Company-Electric, Spartacus Energy Services, LLC, and CleanChoice Energy, Inc.
3. On February 8, 2024, Spartacus filed an Answer to the Complaint.

4. On February 14, 2024, CleanChoice filed a Certificate of Satisfaction of the Complaint against CleanChoice.

5. On February 19, 2024, PECO filed an Answer to the Complaint.

6. By Initial Call-In Telephonic Hearing Notice dated March 26, 2024, a telephonic hearing was scheduled for May 28, 2024, at 10:00 a.m.

7. The Hearing Notice contained the advisement:

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 the original).

8. A Prehearing Order was issued on April 18, 2024, containing the following order:

1. McCann Enterprises, LLC: Have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance to represent you by May 21, 2024. FAILURE TO DO SO WILL RESULT IN YOUR COMPLAINT BEING DISMISSED.

(Emphasis in the original).

9. The Hearing Notice and Prehearing Order were eServed to the Complainant at the Complainant's request and in the ordinary course of the Commission's business to the email address provided by the Complainant.

10. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

11. On May 24, 2024, Spartacus filed a Certificate of Satisfaction of the Complaint against Spartacus.

12. On May 28, 2024, the hearing convened as scheduled. Tr. 1-5.

13. Counsel for PECO called in to the May 28, 2024 hearing. Tr. 3-4.

14. Prior to going on the record at the hearing, Mr. Kevin McCann called in on behalf of the Complainant but disconnected when informed that only an attorney can represent the Complainant. Tr. 3.

15. As of this date, an attorney has not entered an appearance on behalf of the Complainant.

DISCUSSION

The Complainant in this case is a limited liability company that is not represented by counsel. The Commission's Regulations require limited liability companies to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa. Code § 1.21(b).²

The term "adversarial proceeding" is defined as "[a] proceeding initiated by a person to seek authority, approvals, tariff changes, enforcement, fines, remedies or

² The Commission's regulations concerning representation and notice of appearance are set forth in 52 Pa. Code §§ 1.21-24.

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 McCann Enterprises, LLC against PECO regarding a billing dispute, in which McCann Enterprises, LLC was seeking relief from the Commission. When PECO and Spartacus filed answers to the Formal Complaint, the matter became contested. *See 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 Company*, Docket No. C-2008-2065498 (Opinion and Order entered Jun. 24, 2009). Accordingly, pursuant to the Commission’s regulations, McCann Enterprises, LLC is required to be represented by counsel in this adversarial proceeding since it is a limited liability company.

The Complainant was informed of this requirement by both the Hearing Notice and my Prehearing Order. Both the Hearing Notice and the Prehearing Order were eServed and emailed to the Complainant at the email address provided by the Complainant. They were not returned as undeliverable. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *Hu v. Phila. Gas Works*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. PGW Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017). Nevertheless, to date, no notice of appearance to represent the Complainant has been filed.

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*, 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 Cmty. Dev. Corp. v. PECO Energy Co.*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

In this case, the Complainant failed to comply with my April 18, 2024 Prehearing Order directing it to be represented by counsel since it is a limited liability company. 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 companies 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 McCann Enterprises, LLC against PECO Energy Company regarding a billing dispute, in which McCann Enterprises, LLC was seeking relief from the Commission. 52 Pa. Code § 1.8.
4. When PECO and Spartacus filed answers to the Formal Complaint, this matter became contested. *See 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 Company, Docket No. C-2008-2065498 (Opinion and Order entered Jun. 24, 2009).

5. Notice electronically served to a party with no notification that service failed is presumed received. *Hu v. PGW Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. PGW Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

6. 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*, 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 Cmty. Dev. Corp. v. PECO Energy Co.*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by McCann Enterprises, LLC in *McCann Enterprises, LLC v. PECO Energy Co.*, Docket Number C-2024-3045852, is dismissed.

