

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Edward J. Smith Post 3428 Veterans of Foreign Wars of the United States, Inc.	:	
	:	
	:	C-2025-3052969
v.	:	
	:	
SFE Energy Pennsylvania, Inc.	:	

**INTERIM ORDER
DISMISSING PRELIMINARY OBJECTIONS AND
REFERRING PROCEEDING TO MEDIATION REVIEW**

For the reasons discussed below, this Order dismisses preliminary objections and refers this proceeding to the Office of Administrative Law Judge’s mediation unit.

On January 8, 2025, Terry Jacobs filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against SFE Energy Pennsylvania, Inc. (SFE Energy or Respondent) regarding electric utility service provided for Edward J. Smith Post 3428 Veterans of Foreign Wars of the United States, Inc. (VFW or Complainant). Ms. Jacobs claims that SFE Energy is charging VFW a cancelation fee, even though VFW never signed a contract with SFE Energy. As relief, Ms. Jacobs wants SFE Energy to drop the cancelation fee. Ms. Jacobs signed the Complaint as VFW’s “Manager” but also identified Jonathan L. DeWald, Esquire, of Williamsport, Pennsylvania as VFW’s attorney.

On January 16, 2025, the Complaint was served on SFE Energy.

On February 1, 2025, Samantha L. Brutout, Esquire, filed a Notice of Appearance for SFE Energy. On the same date, SFE Energy requested a 30-day extension of time to respond to the Complaint.

By Secretarial Letter issued on February 3, 2025, the Commission granted SFE Energy's requested extension and set a deadline of March 3, 2025 at 4:30 p.m. for filing an answer or other responsive pleading.

On March 3, 2025, SFE Energy timely filed preliminary objections but did not file an answer. SFE Energy seeks dismissal of the Complaint because it avers that the Complainant is a Domestic Nonprofit Corporation customer. As a corporation, SFE Energy contends that VFW is required to be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania. Although VFW identified Jonathan L. DeWald, Esquire, as its legal representative, Mr. DeWald informed the Commission's Secretary via email that he was not representing VFW. Therefore, the Secretary via email informed the Complainant to amend the Complaint to remove or replace Mr. DeWald as its legal representative. SFE Energy claims that since the Complainant has not filed an amendment, the existing Complaint fails to conform to Chapter 52 of the Commission's regulations and asks the Commission to dismiss the existing Complaint, and direct VFW to obtain counsel and file an amended complaint which conforms to Chapter 52. The preliminary objections included a notice to plead which directed a response to the preliminary objections within 10 days of service. To date, no response has been filed.

By notice dated March 27, 2025, this matter was assigned to me.

The Commission's Rules of Administrative Practice and Procedure provide for the filing of preliminary objections. Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transp. Intervenor v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Department of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*,

802 A.2d 705 (Pa. Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

Accordingly, a preliminary objection can be granted only if recovery or relief is not possible after all of the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted.

The Commission's Rules at 52 Pa. Code § 5.101(a) limit preliminary objections to certain grounds. SFE Energy raises several of those grounds:

- (2) Failure of a pleading to conform to this chapter
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue

52 Pa. Code §§ 5.101(a)(2)-(5). SFE Energy avers that VFW is required to be represented by counsel in an adversarial proceeding, does not have counsel, and the information provided in the Complaint about having counsel is not correct and not compliant. For relief, SFE Energy asks the Commission to dismiss the Complaint and order the Complainant to file an amended complaint and obtain counsel.

To the extent that SFE Energy's preliminary objections are based on the failure to file an amended complaint to remove or update counsel, I decline to dismiss the Complaint at this point solely due to a procedural error.¹ The Rules of Administrative Practice and Procedure at 52 Pa. Code § 1.21(a) provide that the Commission's procedural rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or

¹ Identification of legal representation can be, and frequently is, updated during the course of a proceeding and the Commission's regulations provide for filing of notice and withdrawal of appearance. 52 Pa. Code § 1.24.

proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.

SFE Energy is correct that a corporation must be represented by counsel at all stages of formal Commission proceedings after those proceedings become adversarial. Preliminary Objections ¶¶ 16-18 (citing 52 Pa. Code § 1.8, 1.21, 1.22); *see also Torino Inc. v. PECO Energy Co.*, Docket No. C-2008-2034595 (Opinion and Order entered Feb. 2, 2010); *Cars R Us c/o Copeland v. Philadelphia Gas Works*, Docket No. C 2008-2033437 (Opinion and Order entered Feb. 4, 2010). However, filing preliminary objections based on VFW being unrepresented is premature. Attorney representation is not required for a corporation to file a complaint. *See, e.g., Snyderville Cmty. Dev. Corp. v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006) (*Snyderville*) (the act of filing a formal complaint without an attorney alone does not constitute the unauthorized practice of law); *Tyler Run, LLC v. Metropolitan Edison Co.*, Docket No. C-20043888 (Order entered Jan. 5, 2005).

A complaint proceeding does not become adversarial unless and until a party files an answer. 52 Pa. Code § 1.8; *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009) (*New Fizon*). SFE Energy has not filed an answer.

Moreover, the Commission has recognized that many complaints can be resolved without the adversarial process of a hearing, through the procedures available under 52 Pa. Code § 5.42 or the mediation process. *Snyderville; New Fizon*. It is the Commission's policy to encourage mediation and settlement. 52 Pa. Code § 5.231(a); 52 Pa. Code §§ 69.391– 69.397.

The instant case appears to be appropriate for mediation. An attorney is not required to participate in mediation or settlement discussions. To the extent that a settlement can be reached to resolve VFW's complaint regarding the cancellation fee, a hearing will not be required.

Because they are premature, the preliminary objections will be dismissed. Consistent with the Commission's policy on settlement, and Commission rules and precedent regarding when an attorney is required, this case will be referred to the Commission's Mediation Unit for mediation review.

In the event that the mediation process does not resolve in a settlement and the matter is returned to me, the Respondent will be directed to file an answer to the Complaint and VFW will be afforded a reasonable opportunity to obtain attorney representation.

THEREFORE

IT IS ORDERED:

1. That the preliminary objections filed on March 3, 2025 by SFE Energy Pennsylvania, Inc. are dismissed.

2. That the case be and is hereby referred to the Commission's Mediation Unit for the Commission's mediation review process.

3. That the parties are reminded that Commission policy encourages settlements. 52 Pa. Code § 5.231(a). The parties are not required to obtain counsel to engage in settlement discussions and mediation, and are strongly encouraged to discuss the potential resolution of this matter.

Date: April 9, 2025

_____/s/
Erin L. Gannon
Administrative Law Judge

**C-2025-3052969 - EDWARD J SMITH POST 3428 VETERANS OF FOREIGN WARS
OF THE UNITED STATES INC C/O TERRI JACOBS v. SFE ENERGY
PENNSYLVANIA INC**

Revised 4/9/2025

EDWARD SMITH POST 3428 VETERANS OF FOREIGN WARS OF THE UNITED
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C/O TERRI JACOBS

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