

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tony Gardner	:	
	:	
v.	:	C-2025-3056317
	:	
PECO Energy Company	:	

INTERIM ORDER #2
DENYING COMPLAINANT’S
PETITION FOR INTERIM EMERGENCY RELIEF AS MOOT

This Interim Order denies Complainant’s Petition for Interim Emergency Relief as moot.¹

HISTORY OF THE PROCEEDING

On July 16, 2025, Dr. Tony Gardner (Dr. Gardner) filed a Complaint against PECO Energy Company (PECO). Dr. Gardner averred that he is the owner of K Fish Comestible LLC (K Fish). Dr. Gardner checked the box that indicated there are reliability, safety or quality problems with K Fish’s utility service.² Complaint ¶ 4. Dr. Gardner alleged that he placed an initial service call in June of 2025 to PECO “reporting the loss of one leg of our three-phase power line” and further alleged that PECO closed the case without appearing or providing service. *Id.*

¹ Although Section 3.10 of Commission regulations, 52 Pa. Code § 3.10(b), provides, the presiding officer will also certify the question of the grant or denial of relief to the Commission as a material question, no material question will be certified to the Commission, because the Petition is moot. *See also, Stefanowica v. Verizon Pennsylvania LLC*, Docket No. P-2014-2400041 (Order entered Jan. 22, 2014) (presiding officer did not certify a material question regarding the order denying complainant’s petition for interim emergency relief as moot).

² Respondent admitted that it provides non-residential electric service in the name of K Fish Comestible, to 2401 N. Front Street, Philadelphia, Pennsylvania. Answer ¶ 3.

As relief, the Complainant seeks the following: (1) immediate restoration of full three-phase power; (2) an investigation into PECO's discriminatory service practices; and (3) compensation requested for spoiled inventory losses, daily sales losses, electrical inspection costs, and damaged equipment. *Id.* ¶ 5.

On August 7, 2025, PECO filed an Answer and a Preliminary Objection. In its Answer, PECO denied the material allegations of providing electric service with any reliability, safety or quality issues. Answer ¶ 4.

In its Preliminary Objection, the Company requested that the portion of the Complaint pertaining to a request for monetary damages be summarily dismissed.

On August 18, 2025, the Commission issued a Motion Judge Assignment Notice that informed the parties that I was assigned as the Presiding Officer responsible to resolve any issues which may arise during the preliminary phase of the proceeding.

On August 28, 2025, I issued an order that granted PECO's Preliminary Objection and referred the matter to the Commission's mediation unit for possible resolution.

On September 9, 2025, Chief Administrative Law Judge Charles E. Rainey, Jr. issued an interim order that referred this matter to mediation.

On April 1, 2026, while this matter was in mediation, Complainant e-Filed a document titled "Complainant's Emergency Request to Prevent Termination of Service During Pending Proceedings" (hereinafter, Emergency Petition) with the Commission. Though Complainant failed to serve the Emergency Petition on the undersigned Presiding Officer, I became aware of the Emergency Petition on April 3, 2026, when the Petition was assigned to me for disposition.

In the Emergency Petition, Dr. Gardner alleged immediate relief was necessary to prevent PECO from terminating electric service to K Fish at 2401 N. Front Street, Philadelphia,

Pennsylvania on April 3, 2026. For relief, Dr. Gardner requested that the Commission, *inter alia*, direct PECO to: (1) refrain from terminating electric service to K Fish; (2) re-establish K Fish's account; and (3) explain why K Fish's account was closed.

Upon review of the Emergency Petition, I determined that a hearing must be scheduled within ten (10) days of the date of filing, April 1, 2026, in accordance with Section 3.6a of Commission regulations, 52 Pa. Code § 3.6a. Thus, on April 7, 2026, I caused a Hearing Notice and Prehearing Order to be issued, which scheduled an Emergency Hearing for April 10, 2026, and set forth the rules and procedures for the hearing.

On April 8, 2026, Dr. Gardner filed Complainant's Motion for Continuance (Motion) to continue the April 10, 2026 Emergency Hearing.

On April 8, 2026, Counsel for PECO emailed the undersigned, with a copy to Dr. Gardner, and further advised that PECO: (1) did not consent to the continuance based on Commission regulations in Chapter 3 requiring that a hearing be held within 10 days; (2) surmised Dr. Gardner does not have the ability to file the motion on behalf of K Fish Comestible LLC, a corporate entity; and (3) averred that neither the Motion nor the Emergency Petition were properly before the Commission.

PECO contended that the Commission should decline to consider either the Motion or the Emergency Petition based on Commission precedent, *citing Ronald Angle, Jr. c/o Sharon Angle v. Met-Ed*, Docket No. F-2018-3006055 (Opinion and Order entered Dec. 19, 2019) (holding that exceptions filed by a non-attorney where one is required is improperly filed).

Because an Emergency Hearing must be held within 10 days of filing an Emergency Petition, Dr. Gardner's Motion for Continuance was denied.

On April 10, 2026, the Emergency Hearing convened as scheduled. Dr. Gardner appeared, without counsel, and was therefore prohibited from representing K Fish or otherwise presenting evidence regarding the Emergency Petition. Ms. Margaret A. Morris, Esq., appeared

on behalf of PECO, along with one witness, Lisa Crespo, Senior Regulatory Assessor. Ms. Crespo provided testimony and sponsored five (5) exhibits, all of which were admitted into the record. I also note that there was some discussion, both on and off the record, between the parties addressing a proposed resolution to the request for relief in the Emergency Petition, specifically how to re-establish service in K Fish's name and prevent termination.

Following the April 10 Emergency Hearing, Ms. Morris, with a copy to Dr. Gardner, provided a status update to the undersigned, which indicated that Dr. Gardner contacted PECO after the hearing and re-established service in the name of K Fish.

The Emergency Petition is ripe for disposition.

DISCUSSION

Representation required

The Commission rules require that all non-individuals, including a limited liability company, be represented by counsel in adversarial proceedings.³ Once the answer is filed, the proceeding becomes adversarial, which occurred in this case.⁴ This rule is consistent with the Pennsylvania Bar Rules promulgated by the Pennsylvania Supreme Court.⁵

The Pennsylvania Supreme Court explained that where the procedural rules require a party to be represented by counsel, the party cannot be permitted to continue the

³ 52 Pa. Code § 1.21; *see also Cars R Us c/o Holman Copeland v. Phila. Gas Works*, Docket No. C-2008-2033437 (Opinion and Order entered Feb. 4, 2010); *Torino Inc. v. PECO Energy Co.*, Docket No. C-2008-2034595 (Opinion and Order entered Feb. 2, 2010).

⁴ *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009) (*New Fizon Catering*); *see also* 52 Pa. Code § 1.8.

⁵ *See New Fizon Catering* at 7-8.

action.⁶ That is, a tribunal cannot permit the unauthorized practice of law. Though the failure to secure representation is a “technical defect” that an unrepresented party should have an opportunity to cure,⁷ the Commission cannot allow the unauthorized practice of law.⁸

Here, K Fish was directed to obtain legal counsel to participate in the April 10 Emergency Hearing in both the Telephonic Hearing Notice and Prehearing Order issued on April 7, 2026, as follows:

REPRESENTATION. Although the caption of this matter reflects the Complainant as an individual, Tony Gardner, the Complaint and the Emergency Petition, indicate that the utility service at issue is a non-residential account with the account holder as “K Fish Comestible.” Tony Gardner signed the verification of the Complaint as “owner.” Based upon the foregoing representations, Tony Gardner averred that K Fish Comestible is a company. Sections 1.21 and 1.22 of Commission regulations require that K Fish Comestible must be represented in adversarial proceedings, such as, at the instant scheduled hearing, by an attorney licensed to practice law in Pennsylvania or admitted pro hac vice. 52 Pa. Code §§ 1.21, 1.22. Section 1.24 of Commission regulations provides that an attorney shall file a written notice of appearance with the Commission’s Secretary; this notice of appearance shall be contemporaneously served on opposing counsel and the undersigned Presiding Officer. 52 Pa. Code § 1.24. **Complainant will not be permitted to testify or otherwise present evidence at the hearing unless represented by an attorney.**

April 7 Telephonic Hearing Notice; April 7 Prehearing Order (emphasis in original).

No attorney entered her or his appearance prior to the Emergency Hearing, nor did an attorney appear at the Emergency Hearing on behalf of K Fish, and Dr. Gardner, though present at the hearing, was not permitted to represent K Fish. On this basis alone, the Petition for

⁶ *Bisher v. Lehigh Valley Health Network, Inc.*, 265 A.3d 383, 406 (Pa. 2021) (holding that the Court disapproved a line of cases to the extent they suggest the unauthorized practice of law implicates subject-matter jurisdiction) (*Bisher*).

⁷ *Bisher* at 407.

⁸ *Bisher*.

Emergency Interim Relief could not proceed to a hearing on the merits. However, the parties' actions following the Emergency Hearing rendered the Emergency Petition as moot.

Mootness

During the Emergency Hearing, Ms. Morris explained that the Company would not terminate service to K Fish, if Dr. Gardner called the Company to re-establish service in the name of K Fish. Following the Emergency Hearing, Ms. Morris advised that Dr. Gardner called PECO the afternoon of April 10, 2026, and service was re-established in the name of K Fish, thus rendering the Emergency Petition moot.

Disposition

Since PECO did not terminate service on April 3, 2026, and electric service has been re-established in the name of K Fish, the Emergency Petition shall be denied as moot.

THEREFORE,

IT IS ORDERED:

1. That the Petition for Emergency Interim Relief, filed by Tony Gardner, on behalf of K Fish Comestible LLC, is denied as moot.
2. That the Parties are directed to appear at the Evidentiary Hearing on the underlying Formal Complaint scheduled for Monday, June 29, 2026, at 10:00 a.m., as separately noticed.

C-2025-3056317 - TONY GARDNER v. PECO ENERGY COMPANY

TONY GARDNER
664 LINCOLN HIGHWAY
FAIRLESS HILLS PA 19030
215.547.1977

docfright@aol.com

Served via email and eService April 15, 2026

MARGARET A MORRIS ESQUIRE
REGER RIZZO AND DARNALL LLP
CIRA CENTRE 13TH FL
2929 ARCH STREET
PHILADELPHIA PA 19104
215.495.6524

mmorris@regerlaw.com

Served via eService April 15, 2026

(Counsel for PECO Energy Company)