

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kevin C. Spearing	:	
	:	
v.	:	C-2021-3023999
	:	
Aqua Pennsylvania, Inc.	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint (Complaint) for failure to comply with the presiding officer’s order to file an amended Complaint in this matter.

HISTORY OF THE PROCEEDING

On January 28, 2021, Kevin C. Spearing (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission), using the Commission’s Formal Complaint form, against Aqua Pennsylvania, Inc. (Respondent, Company, or Aqua), alleging there was a quality of service issue related to water quality. The Complainant asserts that the Company refused to place a sampling station in a location that the Township requested.

On February 24, 2021, the Company filed an Answer with New Matter to the Formal Complaint, as well as a Preliminary Objection pursuant to 52 Pa.Code § 5.101. In its Answer, the Company denied the material allegations of the Complaint.

Additionally, the Company, in the New Matter, avers the Commission lacks the jurisdiction to deal with water quality issues.

In its Preliminary Objection, the Company argues the Commission lacks the jurisdiction to deal with water quality issues because the Pennsylvania Department of Environmental Protection (DEP) has the purview of water quality in the Commonwealth. The Preliminary Objection contained a Notice to Plead directing the Complainant to file a response within ten days of service.

The Complainant filed a response to the Preliminary Objection on March 9, 2021.

On March 16, 2021, the Commission issued a Motion Judge Assignment Notice and the matter was assigned to me.

On April 15, 2021, I issued an Interim Order which granted the Preliminary Objection and directed the Complainant to file an Amended Complaint with the Secretary's Bureau within ten (10) days of the date of the Order or by Monday, April 26, 2021.

On May 3, 2021, the Respondent filed a Motion to Dismiss, alleging that the Complainant failed to file an amended Complaint as directed by the Interim Order and requested that the Complaint be dismissed. The Motion contained a Notice to Plead advising that the Complainant had 20 days to file a response to the Motion. The Complainant's response to the Motion to Dismiss was due by Monday, May 24, 2021. As of the date of this decision, the Complainant has not filed a response to the Motion to Dismiss.

The record closed on May 24, 2021, and the matter is now ripe for decision.

FINDINGS OF FACT

1. The Complainant is Kevin C. Spearing.
2. Aqua Pennsylvania Inc. is the Respondent.
3. On January 28, 2021, the Complainant filed this Formal Complaint.
4. The Respondent filed an Answer and New Matter as well as Preliminary Objections on February 24, 2021.
5. On March 9, 2021, the Complainant filed a response to the Preliminary Objections.
6. On March 16, 2021, the Commission issued a Motion Judge Assignment Notice, and the matter was assigned to me.
7. On April 15, 2021, I issued an Interim Order which granted the Preliminary Objection and directed the Complainant to file an Amended Complaint with the Secretary's Bureau within ten (10) days of the date of the Order or by Monday, April 26, 2021.
8. The Interim Order dated April 15, 2021, was sent to the Complainant by electronic mail at the email address listed in the Complaint, pursuant to Commission order related to the COVID-19 pandemic.¹
9. The Complainant did not file an Amended Complaint.

¹ The Commission issued an Order on March 20, 2020, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. *See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262, at 4 (March 20, 2020).

10. On May 3, 2021, the Respondent filed a Motion to Dismiss, alleging that the Complainant failed to file an amended Complaint as directed by the Interim Order and requested that the Complaint be dismissed.

11. The Motion contained a Notice to Plead that the Complainant had 20 days to file a response to the Motion. The Complainant's response to the Motion to Dismiss was due by Monday, May 24, 2021.

12. The Complainant did not file a response to the Motion to Dismiss.

DISCUSSION

It is well established that the party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Lansberry, Inc. v. Pa. Publ. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth.1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). The formal complaint must set forth “the act or thing done or omitted to be done” by a public utility “in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa.C.S. § 701; 52 Pa.Code § 5.22(a)(4). The Commission's regulations require that a complaint contain a clear statement of the relief sought. 52 Pa.Code § 5.22(a)(5).

A presiding officer's orders must be complied with, and a lack of compliance presents a sufficient basis to dismiss a complaint. *Treffinger v. PPL Elec. Utils. Corp.*, Docket No. C-20027978 (Order entered March 3, 2003); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Order entered July 31, 2006); *Application of Black Diamond Cab Co.*, Docket No. A-00122566 (Order entered December 1, 1966). Further, Commission precedent is well settled and supports dismissal of the Complaint with prejudice for failure to

comply with a presiding officer's order. *Weisenberger v. PECO Energy Co.*, Docket No. C-2010-2182281 (Final Order entered December 22, 2011).

During this period of the Governor's Disaster Emergency Declaration in response to the COVID-19 pandemic, the Commission directed service to be electronic. Here, email was the method of delivery of notice for the April 15, 2021 Interim Order, which directed the Complainant to file an Amended Complaint by April 26, 2021. Service was made pursuant to the Commission's Order issued on March 20, 2020, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. *See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262, at 4 (March 20, 2020). Notice electronically served to a party with no notification that service failed is presumed received. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*); and *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019).

The email sent by the Commission to the Complainant with the Interim Order was not returned as being undeliverable. It is therefore deemed that the Complainant had notice that he was to file an Amended Complaint by April 26, 2021. *Zirkel; Morella*. The Complainant failed to file an Amended Complaint with the Secretary's Bureau. On May 3, 2021, the Respondent filed a Motion to Dismiss due to the Complainant's failure to comply with the Interim Order. The Complainant had until May 24, 2021 to file a response and also failed to do so. Based on the above, it is clear that the Complainant has failed to comply with the Interim Order dated April 15, 2021. Thus, it is proper for the Complaint to be dismissed in this case.

CONCLUSIONS OF LAW

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

2. It is well established that the party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a).

3. The formal complaint must set forth “the act or thing done or omitted to be done” by a public utility “in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa.C.S. § 701; 52 Pa.Code § 5.22(a)(4).

4. The Commission's regulations require that a complaint contain a clear statement of the relief sought. 52 Pa.Code § 5.22(a)(5).

5. A presiding officer's orders must be complied with, and a lack of compliance presents a sufficient basis to dismiss a complaint. *Treffinger v. PPL Elec. Utils. Corp.*, Docket No. C-20027978 (Order entered March 3, 2003); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Order entered July 31, 2006); *Application of Black Diamond Cab Co.*, Docket No. A-00122566 (Order entered December 1, 1966).

6. Commission precedent is well settled and supports dismissal of the Complaint with prejudice for failure to comply with a presiding officer’s order. *Weisenberger v. PECO Energy Co.*, Docket No. C-2010-2182281 (Final Order entered December 22, 2011).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Aqua Pennsylvania, Inc. to dismiss the Complaint filed by Kevin C. Spearing at Docket No. C-2021-3023999 is granted.

2. That the Complaint of Kevin C. Spearing against Aqua Pennsylvania, Inc. at Docket No C-2021-3023999 is dismissed.

3. That Docket No. C-2021-3023999 be marked closed.

Date: June 21, 2021

/s/
Marta Guhl
Administrative Law Judge