

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Estate of Elsa Von Eckartsberg	:	
	:	
v.	:	F-2022-3034257
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This decision dismisses the formal complaint of an electric service customer without a hearing because a hearing is not necessary in the public interest. The customer, an estate, has failed to comply with the presiding officer’s order to show cause why the formal complaint should not be dismissed. This order was issued after no one appeared on behalf of the estate for a prehearing conference to discuss certain procedural matters raised in the complaint, including, *inter alia*, what accommodation the administrator/counsel for the estate is seeking in order to participate in the Commission’s administrative complaint process.

HISTORY OF THE PROCEEDING

On July 28, 2022, Ms. Uta Von Eckartsberg filed a Formal Complaint (“Complaint”)¹ on behalf of her mother’s estate, the Estate of Elsa Von Eckartsberg (“Complainant” or “Estate”), with the Pennsylvania Public Utility Commission (“Commission”)

¹ The Complaint is a timely appeal from the determination of the Complainant’s informal complaint by the Commission’s Bureau of Consumer Services (BCS) at BCS No. 3827586, dated June 6, 2022. A timely appeal from a BCS determination is reviewed *de novo*. See, 52 Pa. Code §§ 56.173(a), 56.403(a).

against Duquesne Light Company (“Respondent” or “DLC”). Ms. Von Eckartsberg signed the Complaint in her capacity as the Administrator of her mother’s Estate. However, she also noted under the “Legal Representation” section on the Complaint that she is an attorney and states: “I am a lawyer albeit retired due to disability. I will be representing the Estate in my professional capacity as Administrator.” (Complaint ¶ 8, p. 10).

Although Ms. Von Eckartsberg stated she is a retired attorney, public records available by the Supreme Court of Pennsylvania reveal that Ms. Von Eckartsberg maintains an active Pennsylvania license.² Pursuant to 52 Pa. Code §§ 1.21-1.22, an estate must be represented by an attorney. Therefore, for purposes of this decision, Ms. Von Eckartsberg will be referred to as Complainant’s attorney, as well as Complainant’s Administrator. However, as will be discussed further below, the Complainant’s representation was intended to be clarified at the prehearing conference, at which no one appeared on behalf of the Estate, including Ms. Von Eckartsberg.³

The Estate alleges various disputes including, but not limited to, that the utility is threatening to shut off service or has already shut off service; that there are incorrect charges on the bill; that there is a reliability, safety or quality problem with the utility service; that DLC has obstructed Complainant’s ability to obtain electronic billing statements; that the service location is not up to building code and is a safety and fire hazard; and that DLC and the Commission have violated the American Disabilities Act (ADA). (Complaint ¶ 4).

Complainant requested several forms of relief including, but not limited to, that someone conduct an investigation of the physical and financial wellbeing of all the seniors and disabled occupants of the building of the service address; that there be a complete accounting of all DLC charges from 2008 to present; that the Commission self-report to the Department of Justice whether it is obligated to comply with the ADA; that DLC turn over a certain drawing of

² See, <https://www.padisciplinaryboard.org> (last visited 4/3/2023).

³ See, e.g., *Estate of Elliot Vessel v. PPL Elec. Utils. Corp.*, No. C-2018-3006130 (Final Order Aug. 29, 2019) (prosecution of formal complaint permitted where complaint was filed by Ms. Vessel, the executor of her father’s estate, who was also an active, licensed, Pennsylvania attorney).

the building so Complainant can determine the building's actual owner; and that DLC be investigated for harassment, all shut-down threats, and billing. (Complaint ¶ 5).

The Complaint also included a statement that the Complaint does not include all of the Estate's claims and requested forms of relief because, due to an unspecified disability, Ms. Von Eckartsberg could not obtain an ADA accommodation and thus, could not go into more detail at the time of filing the Complaint, but would provide more details later. (Complaint ¶ 5; *also see*, Complaint ¶ 4, last paragraph).

On August 24, 2022, DLC timely filed an Answer and New Matter, as well as Preliminary Objections, both endorsed with a notice to plead. In its Answer, DLC denied any wrongdoing, denied all material allegations in the Complaint, and averred that it acted in accordance with the Public Utility Code ("Code"), Commission Regulations and Orders. In its New Matter, DLC averred, *inter alia*, that in response to billing issues raised by Complainant, DLC tested the meter serving the service address and conducted a foreign wiring investigation. DLC averred that the meter met the Commission's standards of accuracy and it found no foreign wiring. (New Matter ¶¶ 29, 30). DLC also averred that as of August 12, 2022, Complainant's unpaid balance was \$2,830.38. (*Id.* at 30).

In its Preliminary Objections, DLC averred that the Complaint contained numerous immaterial, impertinent and/or scandalous references and requests for relief that are not relevant to the utility billing and utility service termination dispute, are not within the Commission's jurisdiction, are not sufficiently specific and/or are not legally sufficient. As relief, DLC requested that the redundant, immaterial, impertinent, or scandalous matter from the Complaint be stricken and the claims related to the stricken material be dismissed.

Complainant's response to the New Matter was due on September 13, 2022,⁴ and its response to the Preliminary Objections was due on September 5, 2022.⁵ To date, no responsive pleading to the New Matter or Preliminary Objections has been filed by Complainant. Thereafter, this matter was assigned to me as the presiding officer. I held the Preliminary Objections in abeyance.

On October 13, 2022, an Initial Call-in Telephonic Prehearing Conference Notice was eServed on the parties scheduling a prehearing conference on December 13, 2022, at 10:00 a.m. By letter to Ms. Von Eckartsberg dated and eServed on November 9, 2022 (*November 2022 Letter*), I acknowledged counsel's request for an accommodation under the ADA and stated that the Commission is committed to engaging in an appropriate interactive process regarding suitable access for any litigant appearing before the Commission's Administrative Law Judges. Next, I directed Ms. Von Eckartsberg to provide the undersigned with the specific accommodation she is seeking to participate as a litigant on behalf of the Complainant, including at the prehearing conference, if necessary. I also directed that counsel's response was due one week prior to the prehearing conference—i.e., by December 6, 2022. I also provided my email address to which counsel was directed to respond.

Complainant has not responded to the *November 2022 Letter*.

On December 13, 2022, at 10:00 a.m., the prehearing conference commenced, as scheduled. The Respondent appeared and was represented by Michael A. Gruin, Esquire, and Donald Wagner, Esquire. No one appeared on behalf of Complainant. I recessed the hearing and convened it again approximately fifteen minutes later to allow time for Complainant to appear. Since Complainant did not appear after this recess, the prehearing conference proceeded in Complainant's absence. During the prehearing conference, Respondent indicated that it had not had any communication with Complainant about the Complaint since it was filed.

⁴ See, 52 Pa. Code § 5.63 (providing that replies to new matter shall be filed with the Commission and served within 20 days after date of service, and failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted).

⁵ See, 52 Pa. Code § 5.61(2) (providing that answers to preliminary objections shall be filed within the 10 days provided by § 5.101 (relating to preliminary objections)).

On December 20, 2022, in light of the Estate’s failure to appear at the prehearing conference, failure to respond to Respondent’s New Matter and Preliminary Objections, and failure to respond to the undersigned’s *November 2022 Letter*, I issued a Rule to Show Cause Why the Formal Complainant Should Not be Dismissed (“*Rule to Show Cause*,” “*December 2022 Order*” or “*Order*”). This *Order* was issued pursuant to 52 Pa. Code § 5.483 (relating to the authority of the presiding officer). The *Rule to Show Cause* directed Complainant to respond as to why the Estate’s Complaint should not be dismissed. The *Order* also directed that Complainant’s response was due on or before 4:00 p.m., January 10, 2023. Further, the *Order* stated that failure to timely respond to the *Rule to Show Cause* would result in dismissal of the Complaint. (*See*, Ordering Paragraph No. 3, *December 2022 Order*).

The *Rule to Show Cause* was eServed on the parties on December 20, 2022. To date, Complainant has not responded to the *Rule to Show Cause*. Further, no communication has been received by the undersigned or the Office of Administrative Law Judge (“OALJ”) regarding Complainant’s absence at the prehearing conference. Further, no communication has been received by the undersigned or OALJ regarding any accommodation request by Ms. Von Eckartsberg so that she may participate as a litigant on behalf of Complainant in the Commission’s complaint process.

The record closed on January 11, 2023, after the time expired for Complainant to file a response to the *Rule to Show Cause*.

For the reasons discussed below, the Complaint will be dismissed without a hearing.

FINDINGS OF FACT

1. The Complainant is the Estate of Elsa Von Eckartsberg.
2. On July 28, 2022, the Formal Complaint was filed on behalf of

Complainant by Ms. Uta Von Eckartsberg, as the administrator of her mother's estate; Ms. Von Eckartsberg also stated in the Complaint that she is an attorney. (Complaint ¶ 8).

3. It was represented in the Formal Complaint that the Complaint did not include all of the Estate's claims and requested forms of relief because, due to an unspecified disability, counsel could not obtain an ADA accommodation and thus, could not go into more detail at the time of filing, but would provide more details later. (Complaint ¶ 5; *see also*, Complaint ¶ 4, last paragraph).

4. The Respondent is Duquesne Light Company.

5. On August 24, 2022, Respondent timely filed an Answer and New Matter, endorsed with a notice to plead.

6. On August 24, 2022, Respondent timely filed Preliminary Objections, endorsed with a notice to plead.

7. Complainant's response to the New Matter was due on September 13, 2022,⁶ and its response to the Preliminary Objections was due on September 5, 2022.⁷

8. To date, no response to the New Matter or Preliminary Objections has been filed, and the time has expired for timely filing such.

9. The Preliminary Objections were held in abeyance.

⁶ *See*, 52 Pa. Code § 5.63 (providing that replies to new matter shall be filed with the Commission and served within 20 days after date of service, and failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted).

⁷ *See*, 52 Pa. Code § 5.61(2) (providing that answers to preliminary objections shall be filed within the 10 days provided by § 5.101 (relating to preliminary objections)).

10. On October 13, 2022, an Initial Call-In Telephonic Prehearing Conference Notice (Hearing Notice) was eServed on both parties scheduling a prehearing conference on December 13, 2022, at 10:00 a.m.

11. By letter to Complainant's counsel dated November 9, 2022, the undersigned presiding officer acknowledged counsel's request for an accommodation under the ADA and stated that the Commission was committed to engaging in an appropriate interactive process regarding suitable access for any litigant appearing before the Commission's Administrative Law Judges. (*November 2022 Letter*).

12. The *November 2022 Letter* directed Complainant's counsel to provide the undersigned with the specific request as to what ADA accommodation she is seeking to participate as a litigant on behalf of the Complainant, including the prehearing conference, if necessary, by December 6, 2022. (*November 2022 Letter*).

13. On November 9, 2022, the *November 2022 Letter* was eServed on the parties.

14. On December 13, 2022, Complainant failed to appear and participate in the prehearing conference.

15. On December 20, 2022, the parties were eServed a Rule to Show Cause Why the Formal Complaint Should Not be Dismissed, which directed that Complainant's response was due on or before 4:00 p.m., January 10, 2023.

16. The *Rule to Show Cause* stated that Complainant's failure to respond would result in dismissal of the Complaint. (Ordering Paragraph No. 3, *December 2022 Order*).

17. Neither the Hearing Notice, the *November 2022 letter*, nor the *Rule to Show Cause* were returned to the Commission as undeliverable.

18. Complainant has failed to respond to the *Rule to Show Cause*.

DISCUSSION

Legal Standards

A complainant, as the party seeking affirmative relief from the Commission, has the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Id.* at 15. The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See* 66 Pa.C.S. § 703(a)-(b).

However, the Code provides that “[t]he Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.” 66 Pa.C.S. § 703(b). Similarly, the Commission’s Regulations likewise provide that “the filing of a formal complaint entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.” 52 Pa. Code § 5.21(d).

The Commission Regulations grant the presiding officer the authority to regulate the course of the proceeding. *See*, 52 Pa. Code § 5.483 (authority of presiding officer). Included in this authority is the specific authority to direct that a prehearing conference be held and the parties to the proceeding appear to consider various matters. Specifically, Section 5.22 provides, in relevant part:

§ 5.222. Initiation of prehearing conferences in nonrate proceedings.

(a) To make possible a more effective use of hearing time in formal proceedings, other than rate proceedings . . . to otherwise expedite the orderly conduct and disposition of the proceedings and to serve the ends of justice and the public interest, it is the policy of the Commission to arrange for conferences between parties to the proceedings prior to the commencement of hearings.

(b) The Commission, or the presiding officer may direct that a prehearing conference be held, and direct the parties to the proceeding to appear to consider the matters enumerated in subsection (c). Notice of the time and place of the conference shall be given to all parties to the proceeding.

(c) The following matters shall be considered at prehearing conference:

* * *

(4) Other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice[.]

52 Pa. Code § 5.222. *Also see*, 66 Pa.C.S. § 331(d)(4), (6), and (7), which provides that the ALJ shall have the authority to regulate the course of the hearing, hold conferences for the simplification of the issues; and dispose of procedural requests or similar matters.

Further, the Commission has previously found that the failure to comply with an order issued by a presiding officer warrants dismissal of a complaint. *See e.g., Kibler v. Metro. Edison Co.*, Docket No. C-2018-3003158 (Opinion and Order entered July 16, 2020) (*Kibler*); *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006) (*Snyderville*).

Disposition

Complainant has failed to comply with the *December 2022 Order* directing Complainant to show cause why the Estate's Complaint should not be dismissed. Therefore, the issue in this proceeding is whether the Complainant's failure to comply with the *December 2022 Order* warrants dismissal of the Complaint without a hearing. I find that dismissal without a hearing is warranted under all the circumstances of this proceeding.

Initially, I note that there has been a lack of participation by the Complainant since the filing of the Complaint. Complainant has not responded to Respondent's New Matter or Preliminary Objections. However, I took notice in the Complaint that it was represented that the Complaint did not include all of the Estate's claims and requested forms of relief because, due to an unspecified disability, the administrator/counsel who signed the Complaint stated she could not obtain an ADA accommodation and thus, could not go into more detail at the time of filing, but would provide more details later. (Complaint ¶ 5; *see also*, Complaint ¶ 4, last paragraph).

Therefore, in recognizing that the Complaint was represented to be incomplete as to all of the Estate's claims and forms of relief sought, and that Complainant's counsel was requesting some kind of disability accommodation to participate in the Commission's complaint process fully and meaningfully, pursuant to 52 Pa. Code § 5.222, I scheduled a prehearing conference to discuss certain matters. These matters were explained in the undersigned's *November 2022 Letter*. This letter acknowledged counsel's request for an accommodation under the ADA and stated that the Commission is committed to engaging in an appropriate interactive process regarding suitable access for any litigant appearing before the Commission's Administrative Law Judges.

Next, in an effort to begin the process to determine whether and what suitable access could be provided for counsel to participate on behalf of Complainant in the Commission's formal complaint process, I directed counsel to provide, prior to the prehearing conference, the specific accommodation she is seeking. Thus, the purpose of the prehearing

conference was to determine the appropriate procedure to use to conduct this matter to a disposition that respected both parties' due process rights while moving the case forward in an effective and efficient manner.⁸

Nonetheless, despite not responding to the *November 2022 Letter* and not appearing for the prehearing conference without explanation, in another effort to serve the ends of justice and the public interest, on December 20, 2022, I issued a Rule to Show Cause Why the Formal Complainant Should Not be Dismissed pursuant to 52 Pa. Code § 5.483 (relating to the authority granted to presiding officers to regulate the course of the proceeding). The *Rule to Show Cause* directed Complainant to respond with the reason(s) why the Estate's Complaint should not be dismissed. The *Order* directed Complainant to respond on or before 4:00 p.m., January 10, 2023. Further, the *December 2022 Order* stated that failure to respond to the *Rule to Show Cause* would result in dismissal of the Complaint. (Ordering Paragraph No. 3, *December 2022 Order*).

Therefore, in light of Complainant's lack of response to the *December 2022 Order*, I find that scheduling a hearing would be an inefficient and unnecessary use of Commission resources, which is contrary to the public interest. The Complainant clearly stated in the Complaint that the Estate's allegations and requested forms of relief were not complete. Complainant's counsel clearly stated in the Complaint that she needed an accommodation to fully participate in the Commission's litigation process. While Ms. Von Eckartsberg asked for an ADA accommodation, she did not specify what accommodation she seeks despite given the opportunity to do so by the *November 2022 Letter* and at the prehearing conference.

I also find that Respondent would be prejudiced by having to prepare for a hearing with incomplete allegations against it, or for a hearing that may not proceed, depending on the specific accommodation requested. Further, it is also doubtful Complainant

⁸ As noted above, the prehearing conference would also address the Commission's Regulation which requires an estate to be represented by counsel and whether Ms. Von Eckartberg was also representing the Estate as counsel. *See*, 52 Pa. Code §§ 1.21-1.22. Ms. Von Eckartsberg is an attorney; however, she signed the Complaint as the Administrator of the Estate.

would even appear given the lack of participation in the litigation process since the filing of the Complaint.

Thus, I find it is not in the public interest to hold a hearing which is not procedurally or substantively ready to be heard.

I find support in dismissing the Complaint without a hearing in the instant case in other Commission decisions. For example, in *Schugardt v. Ironton Telephone Co.*, Docket No. C-2008-2035236 (Final Order entered July 13, 2012), the Commission held that a hearing was not in the public interest where complainant's counsel failed to comply with presiding officer's order to serve an indispensable party or indicate that the complainant was no longer interested in pursuing the complaint. In the case of *Lowry v. Equitable Gas Co.*, Docket No. C-2012-2305042 (Final Order entered Jan. 4, 2013), after the complainant did not appear for a prehearing conference to discuss the impact of the complainant's bankruptcy filing after the Commission complaint filing, the Commission held that dismissal of the complaint without a hearing was warranted for the failure of the complainant to appear at the prehearing conference.

More recently, in *Kibler*, the Commission dismissed a complaint without a hearing for the failure of that complainant to comply with prehearing orders. In doing so, the Commission explained the significance of complying with prehearing orders and the effect of failing to comply by stating:

We concur with the ALJ's analysis that although the Complainant had repeatedly reaffirmed his desire for an evidentiary hearing, he failed to participate in the prehearing procedures that, if followed, would result in the hearing he desired and would avoid the wasteful use of the agency's and the Respondent's time and resources, which has occurred in this matter. As the ALJ noted, we have previously found that failure to comply with an order issued by a presiding officer warrants dismissal of a complaint. *See I.D. at 14 (citing Snyderville).*

Id. at 18 (other citations omitted).

In the instant case, for the reasons discussed above, I conclude based on the totality of the circumstances in this proceeding, that the Estate's failure to comply with the *December 2022 Order* warrants dismissal of the Complaint without a hearing. However, the dismissal will be without prejudice since I conclude on balance, that the interests of justice warrant such dismissal. Further, in light of the disposition of this case, the Respondent's Preliminary Objections will be dismissed without prejudice as moot.

CONCLUSIONS OF LAW

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

2. As the proponent of a rule or order by the Commission, a complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

3. The Commission is required to provide due process to the parties appearing before them; this due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

4. The Commission Regulations grant the presiding officer the authority to regulate the course of the proceeding. 52 Pa. Code § 5.483; 66 Pa.C.S. § 331(d)(4).

5. The presiding officer may direct that a prehearing conference be held and the parties to the proceeding to appear to consider various matters. 52 Pa. Code § 5.483.

6. The presiding officer shall have the authority to hold conferences for the simplification of the issues; and dispose of procedural requests or similar matters. 66 Pa.C.S. § 331(d)(6), (7).

7. After being notified, a party who fails to be represented at a scheduled conference shall be deemed to have waived the opportunity to participate in the conference, not be permitted thereafter to reopen the disposition of the matter accomplished at the conference, and not be permitted to recall excused witnesses. 52 Pa. Code § 5.245(a).

8. The failure to comply with an order issued by a presiding officer warrants dismissal of a complaint. *Kibler v. Metro. Edison Co.*, Docket No. C-2018-3003158 (Opinion and Order entered July 16, 2020); *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

9. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d).

10. Complainant failed to comply with the Rule to Show Cause Why the Formal Complaint Should Not Be Dismissed issued on December 20, 2022.

11. A hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of the Estate of Elsa Von Eckartsberg, filed against Duquesne Light Company, at Docket No. F-2022-3034257, is dismissed without prejudice.

2. That the Preliminary Objections filed by Duquesne Light Company, at Docket No. F-2022-3034257, are dismissed without prejudice as moot.

3. That the docket at Docket No. F-2022-3034257 be marked closed.

Date: April 4, 2023

/s/
Gail M. Chiodo
Administrative Law Judge