

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Bowers	:	
	:	
v.	:	C-2023-3043713
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Chad L. Allensworth
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of a customer without a hearing because a hearing is not necessary in the public interest. The customer filed a Formal Complaint against a utility for an account that was not initially in her name and the customer subsequently 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 the customer failed to appear for a prehearing conference to clarify necessary issues related to the matter.

HISTORY OF THE PROCEEDING

On October 23, 2023, Nicole Keppol filed a Formal Complaint (“complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“Respondent” or “PECO”) for an electricity account under the name of William Bowers at the address of 2806 Nice Street, Newportville, PA 19056 (“service property”).¹ (Complaint ¶¶ 1-3). The complaint stated that Respondent was threatening to shut off or already

¹ The signature on the complaint was Nicole Keppol, but the named complainant was William Bowers. (Complaint ¶ 11).

had shut off service and requested a payment arrangement (“PAR”). (Complaint ¶ 5). The complaint further asserted that Ms. Keppol used to live with the account holder, but she had moved, and the utility was switched to her name. (Complaint ¶ 5). As relief, Ms. Keppol requested that the bill be switched out of her name and that the account holder be offered a PAR. (Complaint ¶ 5).

On November 8, 2023, Respondent filed its “Answer of Respondent PECO Energy Company” (“answer”) wherein it admitted and denied various averments of the complaint. Respondent admitted to providing electric service to the service property and admitted to issuing a ten-day termination notice for a past due balance; however, Respondent denied that Mr. Bowers was the complainant. (Answer ¶¶ 1-4). Respondent further asserted that Mr. Bowers was deceased according to its records, that Ms. Keppol agreed to be placed on the account as the primary account holder and Ms. Keppol accepted responsibility for the outstanding balance due to being the beneficiary of the service. (Answer ¶ 4).

Also, on November 8, 2023, Respondent filed its “Preliminary Objection of Respondent PECO Energy Company” (“PO”) asserting lack of capacity to sue based on its averment that Mr. Bowers is deceased. The PO included a notice to plead.

Nicole Keppol did not file a response to the PO.

On December 15, 2023, the matter was assigned to me as a motion judge. By order dated December 18, 2023, I denied the PO and directed that the matter be scheduled for a prehearing conference to address who is the account holder and the status of William Bowers.

Also, on December 18, 2023, a Telephonic Prehearing Conference Notice (“conference notice”) was issued scheduling a telephonic prehearing conference on February 12, 2024, at 10:00 a.m. The conference notice provided the telephone number to call as well as the PIN number to enter and participate in the conference.

Additionally, on December 18, 2023, a prehearing order was issued which, *inter alia*, reminded the parties of the date and time of the prehearing conference, the telephone

number to call, and the PIN number to enter and participate in the conference. The prehearing conference order also provided how to request a change of the prehearing conference date, if necessary, and the consequences of failing to appear at the conference.

The conference notice and prehearing order were electronically served (“eServed”) to: Nicole Keppol, William Bowers and counsel for Respondent at the email addresses they registered with the Commission.² Neither the conference notice nor the prehearing conference order were returned to the Commission as undeliverable.

On February 12, 2024 at 10:00 a.m., the prehearing conference convened as scheduled. Attorney Khadijah Scott appeared on behalf of Respondent ready to proceed and William Bowers III appeared on his own behalf. Ms. Keppol did not appear for the prehearing conference, despite delaying the conference for approximately 15 minutes. As such, the prehearing conference proceeded in her absence. At the conference, William Bowers, III stated that he owns the service property, he did not file the complaint and he was not seeking any action against Respondent. Thereafter, Attorney Scott made a motion to dismiss the complaint for lack of capacity to sue and failure to prosecute. The motion was taken under advisement.

On February 14, 2024, I issued a rule to show cause why the formal complaint should not be dismissed (“rule to show cause”) directing Ms. Keppol to respond by March 6, 2024, by 4:00 p.m. The rule to show cause was eServed to Ms. Keppol at the email address she registered with the Commission. Ms. Keppol failed to file a timely response to the rule to show cause.

The record closed on March 6, 2024, upon Ms. Keppol failing to respond to the rule to show cause. For the reasons stated below, the complaint will be dismissed.

² In the complaint, Ms. Keppol selected the option to receive all communications from the Commission via First-Class Mail . (Complaint ¶ 9). Notwithstanding the method of service selection on the Formal Complaint form, both Ms. Keppol and Mr. Bowers also selected and registered for the Commission’s eService program. Consequently, in addition to electronic service, the conference notice and prehearing order were also served on Mr. Bowers by First-Class mail.

FINDINGS OF FACT

1. On October 23, 2023, Nicole Keppol filed the complaint at issue regarding electric service at 2806 Nice Street, Newportville, PA 19056. (Complaint ¶ 11).
2. Ms. Keppol selected the option to receive documents by First-Class Mail in the complaint, but she also registered for eService.
3. The listed account holder for the service property is William Bowers. (Complaint ¶ 1).
4. Respondent is PECO Energy Company West Penn Power Company, who provides electric service to the service property. (Complaint ¶¶ 2-3).
5. On December 18, 2023, a prehearing conference notice was eServed to Nicole Keppol, William Bowers and PECO scheduling a prehearing conference on February 12, 2024 at 10:00 a.m.
6. On December 18, 2023, a prehearing conference order was eServed to Nicole Keppol, William Bowers and PECO reminding the parties of the date and time of the scheduled hearing.
7. Both the conference notice and prehearing conference order provided information on how to call into the conference.
8. The prehearing conference order also advised how to request a change of the prehearing conference date and the consequences of failing to appear, which included waiver of any objections to motions or arguments raised.
9. Neither the conference notice nor the prehearing order were returned to the Commission as undeliverable.

10. On February 12, 2024, Ms. Keppol failed to appear and participate in the scheduled prehearing conference.

11. Ms. Keppol failed to contact the undersigned or the Office of Administrative Law Judge to request a change of date or explain why her failure to appear at the prehearing conference was unavoidable.

12. At the February 12, 2024 prehearing conference, William Bower III advised that he was the owner of the service property, the PECO account holder, and that he was not pursuing a complaint against PECO. (Tr. 6-7).

13. PECO made an oral motion to dismiss the complaint at the February 12, 2024 prehearing conference.³ (Tr. 8-9).

14. On February 14, 2024, a rule to show cause why the Formal Complaint should not be dismissed was eServed to Nicole Keppol directing her to respond by March 6, 2024.

15. The rule to show cause was not returned as undelivered.

16. Ms. Keppol failed to respond to the rule to show cause.

DISCUSSION

Legal Standards

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

³ Respondent's motion to dismiss was made without specifying whether dismissal was sought with or without prejudice.

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 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).

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 5.222 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. *See also*, 66 Pa.C.S. § 331(d)(4), (6), (7), (providing that the administrative law judge 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. C20055032 (Opinion and Order entered July 31, 2006) (“*Snyderville*”).

Disposition

Ms. Keppol failed to comply with the February 14, 2024 order directing her to show cause why the complaint should not be dismissed. Therefore, the issue in this proceeding is whether Ms. Keppol’s failure to comply with the February 14, 2024 order warrants dismissal of the complaint without a hearing. I find that dismissal without a hearing is warranted.

Overall, there has been a lack of participation by Ms. Keppol since filing the complaint. First, Ms. Keppol did not respond to PECO’s PO. Following denial of the PO, a prehearing conference was scheduled to address necessary issues before proceeding to a hearing, which were who was the account holder and the status of Mr. Bowers. As such, a prehearing conference was scheduled for February 12, 2024. Ms. Keppol failed to attend the scheduled

prehearing conference. Mr. Bowers, however, did attend the prehearing conference and indicated that, as the account holder, he did not wish to pursue the claims set forth in the complaint.

On February 14, 2024, in light of Ms. Keppol's failure to appear for the prehearing conference, I issued a rule to show cause why the complaint should not be dismissed. This order was issued pursuant to 52 Pa. Code § 5.483. The rule to show cause directed Ms. Keppol to respond to why the complaint should not be dismissed. The order also directed Ms. Keppol that her response was due on or before 4:00 p.m. on March 6, 2024. Further, the order stated that failure to timely respond would result in dismissal of the complaint.

The rule to show cause was eServed to Ms. Keppol on February 14, 2024, at the email address she registered with the Commission. Accordingly, it must be presumed that the rule to show cause sent to Ms. Keppol was received. *Hu v. PECO 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. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017). To date, Ms. Keppol has not responded to the rule to show cause nor has she provided any explanation of her absence from the prehearing conference held on February 12, 2024.

Therefore, in light of Ms. Keppol's failure to respond to the February 14, 2024 order, I find that scheduling a hearing would be an inefficient and unnecessary use of Commission resources, which is contrary to public interest. As such, the complaint will be dismissed without a hearing.

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:

[w]e 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.

Id. at 18 (citations omitted).

In the instant case, for the reasons discussed above, I conclude that Ms. Keppol's failure to comply with the February 14, 2024 order warrants dismissal of the complaint without a hearing. Further, in light of the disposition of this case, PECO's motion to dismiss for lack of capacity to sue and failure to prosecute will be dismissed 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 and 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. Documents eServed or emailed to a party with no notification that service failed is presumed received. *Hu v. PECO 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. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

5. 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).

6. 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.

7. 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).

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. C2008-2065498 (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. Nicole Keppol failed to comply with the February 14, 2024 Rule to Show Cause Why the Formal Complaint Should Not Be Dismissed.

11. A hearing is not necessary or 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 filed by Nicole Keppol in William Bowers v. PECO Energy Company at Docket No. C-2023-3043713 is dismissed without prejudice.

2. That PECO Energy Company's motion to dismiss in William Bowers v. PECO Energy Company at Docket No. C-2023-3043713 is dismissed as moot.

3. That the matter at Docket No. C-2023-3043713 be marked closed.

Date: March 14, 2024

/s/
Chad L. Allensworth
Administrative Law Judge