

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lynn Ray	:	
	:	
v.	:	C-2023-3043218
	:	
Aqua Pennsylvania, Inc.	:	

**INTERIM ORDER DENYING MOTION FOR SANCTIONS
AND DISMISSAL OF COMPLAINT**

On November 22, 2023, Lynn Ray (Complainant) filed a Formal Complaint against Aqua Pennsylvania, Inc. (Respondent or Aqua) with the Pennsylvania Public Utility Commission (Commission) regarding service to 408 Cheswold Court, Chesterbrook, Pennsylvania (Service Location). On October 16, 2023, Aqua filed its Answer denying the material allegations therein.

On March 8, 2024, Aqua propounded Interrogatories and Request for Production of Documents (Discovery Request), which were served on the Complainant via electronic mail. In its Discovery Request, Aqua sought information regarding the allegations and statements made in the Formal Complaint. Objections to the Discovery Request were due on or before March 18, 2024, and responses to the Discovery Request were due on or before March 28, 2024.

The Complainant did not timely file any objection nor did she provide any response to Aqua’s Discovery Requests by the March 28, 2024 deadline. On April 2, 2024, Aqua filed a Motion to Compel seeking an order compelling the Complainant to provide full and complete answers to Discovery Requests within five (5) days after entry of said order.

By Order, dated April 9, 2024, I granted Aqua’s Motion, in part, and directed Complainant to provide the information and documentation described in the Discovery

Request by April 16, 2024, at 4:00 p.m.

The Complainant did not file a response to the April 9, 2024 Order.

On April 17, 2024, Respondent filed a Motion for Sanctions in which it requested that the Formal Complaint filed by the Complainant in this matter be dismissed in its entirety pursuant to the Commission's regulation on sanctions found at 52 Pa. Code § 5.371. Motion for Sanctions at 3.

Legal Standards

Commission preliminary motion practice is similar to Pennsylvania civil practice regarding the filing of preliminary objections.¹ The Commission's regulation at 52 Pa. Code § 5.372 provides that the presiding officer may impose appropriate sanctions upon a party found to be found in violation of the obligations set forth in the Commission's Regulations.

In the Motion for Sanctions, Respondent argues that “[d]ue process requires that Aqua be advised of the allegations raised in the Formal Complaint so it can adequately prepare for and present a defense at hearing,” citing *Schneider v. Pa. P.U.C.*, 479 A.2d 10 (Pa. Cmwlth. 1984). Motion for Sanctions ¶ 10. In addition, Aqua argues that it is “is well settled and supports dismissal of the Formal Complaint with prejudice for failure to comply with Judge Ashton's Order.” In support of this argument, Respondent cites *Weisenberger, et al v PECO*, Docket No. C-2010-2182281, (Final Order entered December 22, 2011); *Francisco Valez v. Verizon Select Services, Inc.*, Docket No. C-2008-2060020 (Order entered November 20, 2009) (Complaint dismissed due to Complainant's failure to comply with Order directing the provision of discovery responses). Motion for Sanctions ¶ 13.

¹ *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

Disposition

In the Motion for Sanctions, Respondent argues that the Complaint should be dismissed in its entirety because the Complainant did not comply with the terms of my April 9, 2024 Order.

I have repeatedly checked my email and the docket for this case and have found no evidence that the Complainant filed a response to the Discovery Request as directed in my April 9, 2024 Order. Nevertheless, for the reasons discussed below, the Motion must be denied.

Aqua is correct that Commission regulations permit the imposition of sanctions for a participant's failure to comply with the Commission's discovery regulations. 52 Pa. Code § 5.371. A careful reading of the regulation reveals that although it *permits* the imposition of sanctions under the circumstances presented here, it *does not require* the imposition of sanctions under such circumstances.

In addition, I am mindful that the Complainant is self-represented. In *Carlock v. The United Telephone Company of Pennsylvania*,² the Commission held that, in the normal course, the Commission would not dismiss a complaint of a self-represented person without first providing a hearing during which the self-represented complainant could further explain their position and the factual basis for their complaint. The Commission expressed the concern that, in general, complainants may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe their basic issue and supporting facts.

Further, the Commission recently rejected Respondent's argument in support of its Motion for Sanctions in a similar context i.e., a consumer case involving claims of incorrect charges and high billing. See *Anthony Venini v. PPL Electric Utilities Corporation*, Docket No. C-2018-3006469 (Opinion and Order entered January 29, 2020 (*Venini v. PPL*)).

² Docket No. F 00163617 (Order entered July 14, 1993),

In *Venini v. PPL*, the Administrative Law Judge (ALJ) issued an Initial Decision and granting PPL's Motion to Dismiss the Complaint based on the Complainant's failure to respond in any way to discovery requests served by the Respondent. *Venini v. PPL* at 11. Upon review of the ALJ's Initial Decision to dismiss the complaint, the Commission agreed with the dismissal as to "complex claims" included in the complaint but disagreed with the dismissal as to the complainant's allegations regarding incorrect charges and high billing. *Venini v. PPL* at 12. Remanding the case to the ALJ for a hearing on those claims, the Commission stated:

the Commission **does not dismiss high billing complaints for failure to respond to discovery** or to provide a witness list in advance. In fact, rarely is there a justification for serving discovery on a *pro se* complainant in a high billing complaint. While we cannot say that it would never be justified to dismiss a high billing complaint for a customer's failure to respond to discovery, it would need to be under very specific circumstances. (*Emphasis added.*)

Venini v. PPL at 12-13.

The limited record in this matter reflects no facts or circumstances that lead me to believe that an outcome other than that obtained in *Venini v. PPL* is warranted here. Accordingly, the Respondent's Motion for Sanctions will be denied and the evidentiary hearing scheduled for this matter on Thursday, May 16, 2024 at 10:00 a.m. will proceed as scheduled.

The Complainant is reminded that the Notice of Hearing dated January 23, 2024 and the Prehearing Order issued in this matter warn of the severe consequences of failing to appear at the May 16, 2024 hearing. As indicated in paragraph 2 of the December 4, 2023 Prehearing Order:

FAILURE TO APPEAR: You must attend the hearing and present evidence on the issues raised in the pleadings. You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed "with prejudice" which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

THEREFORE,

IT IS ORDERED:

1. That the Motion for Sanctions filed by Aqua Pennsylvania, Inc. is denied.
2. That the and the evidentiary hearing scheduled for this matter on Thursday, May 16, 2024 at 10:00 a.m. will proceed as scheduled.

Date: April 25, 2024

/s/
Arlene Ashton
Administrative Law Judge

C-2023-3043218 - LYNN RAY v. AQUA PENNSYLVANIA, INC.

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