

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**INITIAL DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

This Decision dismisses the Formal Complaint of Lynn Ray for failure to appear for the scheduled hearing and prosecute her Complaint despite having notice and an opportunity to be heard.

**HISTORY OF THE PROCEEDING**

On September 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.<sup>1</sup>

On November 16, 2023, an Initial Call-In Telephonic Hearing Notice (Hearing Notice) was served on the parties scheduling a call-in telephonic evidentiary hearing on January 4, 2024, at 1:30 p.m., and assigning me as the presiding officer. The Hearing Notice included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing. In addition, the Hearing Notice included the following warning:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) 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.

On December 4, 2023, a Cancelled/Rescheduled Initial Call-In Telephonic Hearing Notice (Hearing Notice) was served on the parties cancelling the January 4, 2024 scheduled hearing and rescheduling the call-in telephonic evidentiary hearing to January 17, 2024, at 1:30 p.m.<sup>2</sup>

On December 12, 2023, my Prehearing Order was served on both parties which, *inter alia*, reminded the parties of the hearing date and time, and the telephone

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<sup>1</sup> The Formal Complaint was served on Aqua on September 25, 2023.

<sup>2</sup> On November 22, 2023, Respondent submitted a request for continuance of the hearing scheduled for January 4, 2024, due to counsel’s unavailability on January 4, 2024. On November 30, 2023, Complainant sent an email to the presiding requesting that any continuance of the hearing scheduled for January 4, 2024, be scheduled “after 1:00 PM due to a diagnosed medical condition.” The Complainant’s request was not sent to the Respondent, nor did it specify the nature or duration of the health condition that served as the basis for her request.

number to call, and the passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

On January 16, 2024, Respondent's counsel informed me that the parties had engaged in discussions to amicably resolve this matter and that jointly, they wished to request a continuance to allow the Complainant 30 days to address certain plumbing issues and a further 90 days to allow the parties to monitor the Complainant's water usage during the 90 days after the work is completed. The request also indicated that the parties would "further discuss the usage after the 90-day period in a good faith effort to resolve the matter." The parties' joint request for a continuance was granted.

On January 16, 2024, a Cancelled Initial Call-In Telephonic Hearing Notice was served on the parties cancelling the January 17, 2024, scheduled hearing.

By Hearing Notice dated January 23, 2024, the initial hearing for this matter was rescheduled for May 16, 2024, at 10:00 a.m.,

On March 8, 2024, Respondent filed a Certificate of Service indicating that it had served the Complainant with Interrogatories and Request for Documents (Discovery Request 1). The cover letter used to transmit Discovery Request 1 to the Complainant informed Ms. Ray that any objections were due on or before March 18, 2024, and answers to them were due on or before March 28, 2024. The Complainant did not file any responses or objections to Discovery Request 1.

On April 2, 2024, Aqua filed a Motion to Compel Discovery Responses (Motion to Compel), stating that Ms. Ray had failed to file any objection to or respond to

Discovery Request 1. The Motion to Compel was accompanied by a Notice to Plead advising Ms. Ray that if she failed to file a response to the Motion to Compel within five days of the date of service, the facts set forth in the motion could be deemed to be true. In the Motion to Compel, Aqua requested that the Complaint be dismissed if Ms. Ray failed to respond to the Discovery Request. Complainant filed neither a discovery response nor an answer to the Motion to Compel.

On April 9, 2024, I issued an Order granting the Motion to Compel and directing Ms. Ray to respond to the Discovery Request on or before April 17, 2024 but denying dismissal of the Complaint.

On April 17, 2024, Aqua filed a Motion for Sanctions (Motion for Sanctions), in which Aqua requested that the Complaint be dismissed due to Ms. Ray's failure to comply with the April 9, 2024 Order. The Motion for Sanctions was accompanied by a Notice to Plead advising Ms. Ray that if she failed to file a response to the Motion for Sanctions within five days of the date of service, the facts set forth in the motion could be deemed to be true.

On April 25, 2024, I issued an Order Denying Aqua's Motion for Sanctions.

On Wednesday, May 15, 2024, the Complainant sent an email to my office and the Respondent's counsel. No text was included in the email; however, an attachment labeled "Document" included a request for a further continuance of the hearing scheduled for the following day. The Complainant provided the following explanation for the request "I have idiopathic hypersomnia and therefore cannot attend a court time of 10 AM." Respondent did not raise any objection to the Complainant's request.

On May 15, 2024, an Order was issued granting the Complainant's continuance request and a Cancelled/Rescheduled Initial Call-In Telephonic Hearing Notice was served on the parties cancelling the May 16, 2024, scheduled hearing.

On May 16, 2024, an Initial Call-In Telephonic Hearing Notice was served on the parties scheduling a call-in telephonic evidentiary hearing on June 11, 2024, at 1:30 p.m.

None of the documents served on the Complainant by OALJ were returned to the Commission as undeliverable.

On June 11, 2024, the hearing convened as scheduled. Margaret Morris, Esquire, appeared on behalf of Aqua, along with a witness and an observer, and the Company was prepared to proceed. A court reporter was also present. The Complainant did not appear. I recessed the hearing and reconvened approximately 15 minutes later to allow additional time for Complainant to appear. The Complainant did not appear after the recess and the hearing proceeded in her absence. No testimony was taken, and no exhibits were introduced for the record.

During the hearing, the Company moved to dismiss the Complaint with prejudice. for failure of Complainant to appear and prosecute the Complaint. Tr. 10. In support of Aqua's request for dismissal of the Complaint with prejudice, counsel noted Ms. Ray's failure to comply with two Orders issued in this matter and the Complainant's failure to contact Aqua at any time after January 16, 2024, to discuss the plumbing repairs being conducted at her home. Tr. 9-10. Additionally, Ms. Morris observed that after her initial discussion with the Complaint on January 16, 2024, she had endeavored to contact Ms. Ray via telephone and email on at least eight separate occasions to discuss the status of the plumbing issues at the Complainant's home, without ever receiving a response from the Complainant. Tr. 8-9. Summarizing Aqua's argument for dismissal

with prejudice, counsel noted the Commission’s reluctance to dismiss complaints with prejudice but observed that it was warranted in this case, where “[a]ll [the Complainant] has done is file . . . a complaint and then has not engaged in the process at all and has at every corner thwarted the Company's opportunity to be prepared for this hearing.” Tr. 10.

The record closed on June 27, 2024, upon receipt of the transcript for the hearing. To date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding Complainant’s absence from the June 11, 2024 hearing. This Decision grants Aqua’s Motion to Dismiss the Complaint.

#### FINDINGS OF FACT

1. The Complainant is Lynn Ray.
2. The Respondent is Aqua Pennsylvania, Inc.
3. Respondent provides water service to Complainant.
4. On September 22, 2023, Ms. Ray filed a Formal Complaint against Respondent.
5. On October 16, 2023, Respondent timely filed an Answer to the Complaint.
6. On November 16, 2023, an Initial Call-In Telephonic Hearing Notice was served on the parties scheduling a call-in telephonic evidentiary hearing on January 4, 2024, at 1:30 p.m., and assigning me as the presiding officer.

7. On December 4, 2023, a Cancelled/Rescheduled Initial Call-In Telephonic Hearing Notice was served on the Complainant cancelling the January 4, 2024, scheduled hearing and rescheduling the call-in telephonic evidentiary hearing to January 17, 2024, at 1:30 p.m.

8. On December 12, 2023, a Prehearing Order was served on the Complainant via eService which, *inter alia*, reminded her of the date and time of the scheduled hearing and the telephone number to call, and the passcode to enter, to participate in the hearing.

9. On January 16, 2024, a Cancelled Hearing Notice was served on the parties cancelling the January 17, 2024, scheduled hearing.

10. On January 23, 2024, a Hearing Notice was served on the Complainant rescheduling the initial telephonic hearing for this matter for May 16, 2024, at 10:00 a.m.,

11. On May 15, 2024, a Cancelled/Rescheduled Initial Call-In Telephonic Hearing Notice was served on the parties cancelling the May 16, 2024, scheduled hearing.

12. On May 16, 2024, an Initial Call-In Telephonic Hearing Notice was served on the parties scheduling a call-in telephonic evidentiary hearing on June 11, 2024, at 1:30 p.m.

13. Each of the Hearing Notices and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and warned of the consequences of failing to appear at the hearing and present evidence, including the dismissal of the Complaint.

14. All Hearing Notices and Prehearing Order were eServed on Complainant to the email address provided to and registered with the Commission by Complainant.

15. None of the Hearing Notices nor the Prehearing Order served on the Complainant were returned to the Commission as undeliverable.

16. On June 11, 2024, the Complainant failed to appear and participate in the scheduled hearing.

17. To date, the Complainant has not contacted the undersigned or the Office of Administrative Law Judge to explain why her failure to appear at the hearing was unavoidable.

### DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984) (*Schneider*). This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Id.* As the proponent of any request for relief, the complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, the Commission's decision must be supported by substantial evidence. 2 Pa.C.S. § 704.

The Commission is required to fix the time and place of a hearing in a complaint proceeding and serve notice thereof upon the parties in interest. 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code §

5.61(a). As the Commission explained, “[i]t is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” *Mumma v. UGI Elec. Utils. Corp.*, No. C-00014869 at 3 (Opinion and Order entered Jan. 28, 2002) (citing *Schneider*).

In this case, each Hearing Notice sent to the Complainant included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing. Further, the Prehearing Order dated December 4, 2023, served on the Complainant which, *inter alia*, reminded her of the date and time of the scheduled hearing and the telephone number to call, and the passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

The Hearing Notices and the Prehearing Order served on the Complainant were served by eService.<sup>3</sup> None of the Hearing Notices nor the Prehearing Order were returned to the Commission as undeliverable. Accordingly, it must be presumed that this electronic correspondence was received by Complainant. *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).

Both the Public Utility Code and the Commission’s regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be

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<sup>3</sup> The Complainant selected eService as her preferred method of service on her Complaint form. Complaint ¶ 2.

deemed to have waived the opportunity to participate in the hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(a). However, neither of these provisions apply if the presiding officer determines that the failure to appear was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(b).

The party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022). When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

To date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding the Complainant's absence from the hearing. Therefore, I find that the Complainant waived the opportunity to participate in a hearing on the matters raised in the Complaint and Complainant's absence was not unavoidable. By her failure to appear, Complainant did not meet her burden of proof.

Consequently, it is appropriate to dismiss Ms. Ray's Complaint. As the Commission has explained, where a complainant fails to appear for a scheduled hearing without good cause, the public interest is prejudiced by the wasteful use of the agency's

and the respondent's time and resources. *See, e.g., Elliott v. Pa. Elec. Co.*, No. F-2018-3003502 (Opinion and Order entered Feb. 6, 2020) and the cases cited therein.

Accordingly, the Respondent's Motion to dismiss the Complaint with prejudice will be granted.

### 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. 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).

3. Electronic notice sent to a party and not returned to the Commission as undeliverable 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).

4. After being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(a).

5. If the presiding officer determines that the failure to appear at the hearing was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination, the presiding officer may find that a party did not waive the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(b).

6. Complainant's due process rights have been fully protected and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. As the party seeking relief, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a), *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

8. The Complainant has failed to meet her burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Aqua Pennsylvania, Inc. to dismiss with prejudice the Formal Complaint of Lynn Ray at Docket No. C-2023-3043218 is granted.

2. That the Formal Complaint of Lynn Ray in *Lynn Ray v. Aqua Pennsylvania, Inc.* at Docket No. C-2023-3043218 is dismissed with prejudice.

3. That the docket at Docket No. C-2023-3043218 be marked closed.

Date: September 17, 2024

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/s/  
Arlene Ashton  
Administrative Law Judge