Exelon Business Services Company
Legal Department
2301 Market Street/S23-1
Philadelphia, PA 19103
215 568 3389 Fax
www.exeloncorp.com

Direct Dial: 215.841.6841

June 3, 2013

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

RE: Steve Atuahene v. PECO Energy Company
PUC Docket No.: C-2012-2299868

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents in the matter referenced above.

—	Answer
—	Answer & New Matter
—	Motion Objecting to Continuance Request
—	Motion for Judgment on the Pleadings
—	Motion for Continuance
—	Preliminary Objection
—	Exceptions
X	**Reply Exceptions**
—	Main Brief
—	Reply Petition

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

Shawane Lee
Counsel for PECO Energy Company
SL/lo

cc: Steve Atuahene (via regular mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

STEVE ATUAHENE	:	
	:	
COMPLAINANT	:	
	:	
v.	:	**Docket Nos. C-2012-2299868**
	:	
PECO ENERGY COMPANY,	:	
	:	
RESPONDENT	:	
	:	

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

Shawane L. Lee, Esquire
2301 Market Street
Philadelphia, PA 19103
215.841.6841
Shawane.Lee@exeloncorp.com
Counsel for PECO Energy Company

DATE: June 3, 2013

REPLY EXCEPTIONS

PECO Energy Company ("PECO Energy") hereby replies to the Exceptions filed by Steve Atuahene ("Complainant") in the above-referenced matter on May 13, 2013. On August 19, 2011, the Complainant filed a formal complaint against PECO Energy. In his formal complaint, the Complainant claims that he has a faulty meter, causing his electricity bills to be too high; that his electric service was terminated without proper notice; and he had a power reliability issue at his home marked by frequent outages. Respondent, PECO Energy filed an Answer to Complainant's formal complaint on May 2, 2012, denying the allegations.

Additionally, PECO Energy filed a Motion to Dismiss on May 17, 2012, arguing, inter alia, that Mr. Atuahene was prohibited from filing this formal complaint with the Pennsylvania Public Utility Commission, pursuant to the decision issued in Agnes Magnu vs. AT& T Communications of PA Inc. 1194 Pa. PUC LEXIS 25, May 4, 1994). In that decision, the Commission reviewed the Initial Decision of Chief Administrative Law Judge Turner of August 19, 1993, wherein she precluded Complainant "from filing additional complaints, absent a threat to health and/or safety." By way of background, Complainant filed several PUC complaints against Bell Telephone with general allegations regarding disputed telephone service. Chief ALJ Turner determined that "a scheme of an apparently ongoing nature" was operating from the Complainants' address (7000 Woodbine Avenue, Philadelphia, PA) for the purpose of obtaining utility services without payment. Chief ALJ Turner urged the Commission to preclude the Complainant from filing any additional complaints because of "the serious abuse of the Commission's process." See Agnes Magnu, attached hereto as Exhibit "1".

Administrative Law Judge Vero ("ALJ Vero") dismissed PECO Energy's Motion to Dismiss. An in-person hearing was scheduled to take place on July 2, 2013. However, the case

did not proceed to hearing until September 26, 2012, due to the Complainant requesting two continuances.

On September 26, 2012, an in person hearing convened before ALJ Vero. Complainant represented himself pro se at the hearing. PECO Energy offered the testimony of two witnesses and submitted ten (10) exhibits into the record. PECO Energy also submitted four late filed exhibits at the request of ALJ Vero. On February 22, 2013, ALJ Vero issued an Initial Decision in Steve Atuahene v. PECO Energy Company, C-2012-2299868 (Feb. 22. 2013) ("Initial Decision"), wherein she held, inter alia:

> Complainant has failed to carry his burden of proving that PECO has improperly billed him for service during this period of time. In addition, the Complainant has failed to carry his burden of proving that his PECO bills post-2010 were abnormally higher than his electricity bills pre-2010.

See Initial Decision, p. 20.

With regard to the notice issues, concerning termination of Complainant's electric service, ALJ Vero held that the Complainant failed to carry his burden of proving that PECO Energy terminated his electric service without proper notice. See Initial Decision, p. 24. Finally, concerning Complainant's power outage allegations, ALJ Vero held "I find that the Company has provided reasonable and adequate service to the Complainant by striving to address the problems and improve service." See Initial Decision, p. 28.

The Commission should sustain the initial decision of ALJ Vero. Complainant alleges in his exceptions that ALJ Vero made errors of law and abused her discretion. However, his allegations have no support. Specifically, in his exceptions the Complainant disputes ALJ Vero's discussion, concerning whether the Complainant was recovering from a medical condition at the time PECO Energy satisfied a 72 hour termination notice requirement. Despite

the Complainant's contentions, his allegation does not demonstrate that ALJ Vero erred in her finding that PECO Energy properly complied with the 72 hour termination notice requirement. Indeed, in her Initial Decision, ALJ Vero points to the fact that PECO Energy's business records support the fact the company complied with the 72 hour notice requirement. ALJ Vero concluded:

> PECO's first attempt to contact the Complainant with the 72-hour termination notice was completed at 8:07 p.m., on October 11, 2011, when PECO's automated system contacted the Complainant at his home telephone number and left a message on his answering machine. PECO completed the second attempt at contacting the Complainant with the 72 hour termination notice at 2:30 p.m. on October 12, 2011. PECO's automated system contacted the Complainant at his home telephone number and left a second message on his answering machine. On October 18, 2011, PECO terminated Complainant's service at the meter.

See Initial Decision, p. 22.

* * * * * * * * *

> 66 Pa.C.S.A. § 1406(b)(1)(ii) only requires that PECO attempt to reach the customer at the telephone number on file for him by calling him on two different days and at two different times. Once PECO completed the second call to Complainant on October 12, 2011, it satisfied the required for phone contact pursuant to 66 Pa.C.S.A. § 1406(b)(1)(ii).

See Initial Decision, p. 23.

The Complainant also claims that ALJ Vero made an error in her Findings of Fact, concerning his high bill allegations. ALJ Vero's well-written opinion analyzed the Complainant's electricity usage from September 2008 to August 2012. ALJ Vero noted that PECO Energy had conducted a high bill field investigation that demonstrated there were no issues with the meter. Additionally, the investigation determined that the Complainant had the potential to use an average of 683 killowat hours per month based on the number and type of appliances he has in his residence. ALJ Vero's analysis of the bills from September 2008 to August 2012 revealed that the Complainant's consumption in the majority of months during this

period had not come close to 683 killowat hours. In fact, the kilowatt hour usage and billed amount had declined over the years, showing that there could not be a high bill or meter issue. As ALJ Vero astutely concluded in her opinion:

> Despite Mr. Atuahene's Account Activity Statement clearly showing a decrease in electricity usage after 2010 – instead of the normal increase claimed by Mr. Atuahene – the Complainant took the additional step of performing a high bill field investigation at Complainant's residence on October 2, 2012. The results of the investigation, which was conducted in front of the Complainant and/or his spouse, indicate that the Complainant has the potential for using the amount of electricity for which he has been charged from January 2010 to present. The investigation also confirmed that there was no meter confusion or foreign wiring at the Service Address, and that the meter serving Mr. Atuahene's residence was reading and reporting electric accurately.

See Initial Decision, p. 20.

Finally, in his exceptions, Complainant alleges that ALJ Vero made an error of law in her discussion, concerning whether Complainant received a ten day termination notice from PECO Energy. During the hearing, Complainant emphatically claimed that he had not received any ten day termination notices. However, on cross-examination, PECO Energy presented a copy of Complainant's formal complaint, in which he had attached a ten-day termination notice. ALJ Vero correctly determined that this raised a credibility issue with Complainant's testimony. ALJ Vero stated:

> Mr. Atuahene was emphatic in his position that PECO had not mailed the ten-day termination notice to him on October 4, 2011. Tr. 138-40. He went on to deny having received three of the four ten-day termination notices that PECO issued on October 4, 2011, February 20, 2012, April 9, 2012 and July 6, 2012, respectively. Tr. 169-71. His credibility on this issue was undermined by the fact that one of the ten-day termination notices that Mr. Atuahene denied receiving was attached to his Complaint. Tr. 189-92.

See Initial Decision, p. 22.

Complainant claims that ALJ Vero made an error of law by not citing to the "alleged document that undermined the Complainant's credibility on the issue". However, the document

at issue is attached to the formal complaint the Complainant filed with the Commission. Accordingly, all Complainant has to do is look to his own formal complaint filing to see the document he submitted himself.

The remaining issues raised in Complainant's exceptions do not raise any errors of law or an abuse of discretion. Instead, Complainant excepts to the Initial Decision issued by ALJ Vero, because he simply disagrees with the ALJ's decision and believes he submitted adequate proof to the ALJ to support his position. Specifically, Complainant disputes ALJ Vero's findings, concerning the Complainant's allegations of "service interruption and disruption". Complainant claims in his exceptions that PECO Energy's "own admission established that Atuahene service was top priority circuit." Complainant continues to argue that PECO Energy's policy guidelines regarding service interruptions violate the mandate of 66 Pa. C.S.A. § 1501.

In her Initial Decision, ALJ Vero listed the Findings of Fact taken from the testimony of PECO Energy's reliability engineer and the documentary evidence submitted into the record. The testimony and record reflects that the Complainant lives in a heavily wooded area and the Complainant's service is on a "top priority circuit." As such, PECO Energy conducts remedial work on the circuit within five months. In addition, there has been tree trimming and vine removal in the area. However, many of the outages complained of have been caused by tree growth in a section owned by Fairmount Park. The company cannot remove any trees within the Fairmount Park grounds without specific approval from the Fairmount Park Commission. Nevertheless, the company took additional steps to divide a 1,500 foot long spur in the area to address service issues. As ALJ Vero correctly stated in her Initial Decision:

> Although the Complainant has experienced a high number of service interruptions from 2010 to present, the Respondent showed that it has taken several measures to address the situation. The record in this matter shows that PECO has carefully tracked each instance of service interruption, has identified the circuit serving the Complainant as a

> problematic and "top priority" circuit, and has progressively intensified its efforts to ensure service reliability.

See Initial Decision, p. 27.

In summary, ALJ Vero properly concluded, that the Complainant has not met his burden of proof in this matter pursuant to 66 Pa. C.S. § 332(a). Accordingly, ALJ Vero's decision should be upheld. For the reasons set forth above, PECO respectfully requests that the Commission deny the Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,

Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841
Fax: 215.568.3389

STEVE ATUAHENE	:	
COMPLAINANT	:	
v.	:	**Docket Nos. C-2012-2299868**
PECO ENERGY COMPANY,	:	
RESPONDENT	:	

VERIFICATION

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

Date: June 3, 2013

Shawane L. Lee

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

STEVE ATUAHENE	:	
	:	
COMPLAINANT	:	
	:	
v.	:	**Docket Nos. C-2012-2299868**
	:	
PECO ENERGY COMPANY,	:	
	:	
RESPONDENT	:	
	:	

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a true copy of the foregoing Reply Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Steve Atuahene
7000 Woodbine Avenue
Philadelphia, PA 19151

Dated at Philadelphia, Pennsylvania, June 3, 2013

Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841;
Fax: 215.568.3389

EXHIBIT "1"

Agnes Manu, Stephen Atuahene a/k/a Stephen Frempong, Stephen Atuahene-Frempong, Benjamin Atuahene a/k/a Benjamin Atuahene-Frempong et. al, d/b/a F.A. Investment Group, Inc. vs. AT&T Communications of Pennsylvania, Inc.; the Bell Telephone Company of Pennsylvania, Inc.; & Philadelphia Electric Company, Inc.

Docket Nos. F-09029141; C-00935014; C-00934970; C-009113621; C-00924554

PENNSYLVANIA PUBLIC UTILITY COMMISSION

1994 Pa. PUC LEXIS 25

May 4, 1994

PANEL: [*1]

Commissioners Present:

David W. Rolka, Chairman; Joseph Rhodes, Jr. Vice Chairman; John M. Quain; Lisa Crutchfield; John Hanger

OPINION: OPINION AND ORDER

Before the Commission for consideration are the consolidated complaints of three family members ("Complainants"), n1 filed on behalf of themselves and their corporate alter ego, F.A. Investment, Inc. ("FAI"). As will be set forth below, the Complaints pertain to disputes over utility services delivered to FAI by AT&T Communications of Pennsylvania, Inc., the Bell Telephone Company of Pennsylvania, Inc., and Philadelphia Electric Company ("Respondents").

n1 The three Complainants are Agnes Manu, Stephen Atuahene and Benjamin Atuahene.

Brief History of the Proceeding

1. On July 24, 1990, Agnes Manu was dispatched a copy of an informal decision of the Public Utility Commission's ("Commission") Bureau of Consumer Services ("BCS") concerning a Complaint for utility services delivered to 7000 Woodbine Street in the City of Philadelphia under Account (215) 877-0618 for FAI.

2. On August 7, 1990, the Commission's staff dispatched correspondence confirming that Complainant had filed a formal Request for Appeal ("Appeal") from the [*2] earlier BCS decision.

3. On August 24, 1990, the Commission's staff granted Complainant an extension, until September 10, 1990, in which to file a Formal Complaint.

4. On September 10, 1990, Complainant filed a Formal Complaint with the Public Utility Commission. Complainant alleged that about $ 1,750 of a total $ 5,000 bill for AT&T services ("AT&T") was inaccurate due to equipment failures and erroneous readings. Complainant requested that the Commission require both AT&T and the Bell Telephone Company of Pennsylvania ("Bell") to verify the functionality of their equipment.

5. On September 14, 1990, the Commission provided notice to AT&T and Bell that Complainant's Formal Complaint had been filed with the Commission.

6. On October 1, 1990, AT&T filed a Motion for A More Specific Pleading ("October pleading") with the Commission in response to the September 10, 1990 Complaint. In the October pleading, AT&T requested a more specific pleading based on the fact that Complainant's claims concerning a $ 1,750 billing dispute were not specific. AT&T averred that its equipment was functioning in accordance with Commission requirements.

7. On October 5, 1990, Bell filed a Formal [*3] Answer ("Answer") to the Complaint. Bell alleged, inter alia that there were no equipment failures, and that no payments on the account had been received since November 1989.

8. On October 23, 1990, Administrative Law Judge ("ALJ") Schnierle issued an Initial Decision (the "October I.D."). In the October I.D., ALJ Schnierle noted that no answer had been filed to AT&T's October pleading and that the state of Complainant's pleadings justified granting the request for a more specific pleading. See October I.D. at 2-4. ALJ Schnierle also provided that the Complaint would be dismissed, with prejudice, unless Complainant filed an amended complaint within a 20 day period (October I.D. at 2-4).

9. On December 5, 1990, ALJ Schnierle issued another I.D. (the "December I.D.") dismissing the Complaint because of Complainant's failure to file an Amended Complaint within the 20 day period.

10. On December 14, 1990, the Office of Administrative Law Judge ("OALJ") mailed copies of the December I.D. to all parties.

11. On January 3, 1991, Complainant filed exceptions to the October I.D. ("January Exceptions"). In the January Exceptions, Complainant alleged that travel out of the [*4] country precluded filing a response within the required time period (January Exceptions at 1-2). Complainant also alleged that the Commission was fully aware of Complainant's absence and, notwithstanding that knowledge, failed to dismiss the proceeding without prejudice (January Exceptions at 2-3). Complainant further alleged that the October I.D. violated the constitutional guarantees of due process and equal protection under state and federal law (January Exceptions at 2-3).

12. On January 8, 1991, OALJ informed the Complainant that the January Exceptions would not be considered because they were not timely filed as required by Section 5.33, 52 Pa. Code § 5.333, of our rules of practice and procedure.

13. On January 22, 1991, the October I.D. became a final order ("January 1991 Order") of the Commission based on the absence of timely filed exceptions or requests for review from the Commission. See *66 Pa.C.S. § 332(h).*

14. On January 28, 1991, the Commission received another correspondence from Complainant, dated January 10, 1991, concerning the January 1991 Order (the "January 1991 Plea"). In the January 1991 Plea, Complainant claimed that its January Exceptions were timely [*5] filed and enclosed a receipt of the monies paid to the U.S. postal service as proof of timely filing (January 1991 Plea at 1-2). Complainant stated that "we" wanted to file an appeal based on denial of equal protection and due process of law. Complainant further stated that both Complainant and Complainant's spouse was willing to file affidavits to establish the facts (January 1991 Plea at 2).

15. On February 7, 1991, the Commission notified Complainant that the January 1991 Order had been rescinded because the January Exceptions were timely filed by Complainant. In mid-February 1991, both AT&T and Bell informed the Commission that the failure to receive copies of the January Exceptions precluded a response.

16. On February 25, 1991, Complainant notified the Commission that additional copies of the January Exceptions had been provided to Bell and AT&T. Complainant further claimed that copies of the January xceptions had been provided earlier to all parties by first class mail.

17. On May 16, 1991, the Commission rescinded the January 1991 Order. From May 1991 until September 1993, Complainant took no further action on this case.

18. By Order adopted March 23, 1993, the [*6] Commission issued another Opinion and Order (the "March 1993 Order"). In the March 1993 Order, the Commission reiterated their belief that the ALJ's dismissal of the Complaint with prejudice was appropriate (March 1993 Order at 5). However, the Commission went on to provide that Complainant would be given an additional 20 day period in which to file an Amended Complaint in light of the extenuating circumstances and the fact that Complainant's January Exceptions had been timely filed (March 1993 Order at 5).

19. On March 31, 1993, Complainant was provided notice of the March 1993 Order. Complainant was provided additional notice by registered mail on April 28, 1993.

20. On May 20, 1993, the OALJ provided a copy of the March 1993 Order to Complainants by First Class mail (the "May 1993 Notice"). In the May 1993 Notice, Complainant was advised that failure to comply the March 1993 Order within 10 days could result in dismissal of the case (May 1993 *Notice at 1).*

21. On June 17, 1993, Bell submitted a letter on the matter (the "Bell motion"). Bell sought dismissal with prejudice because Complainants provided no response to the May 1993 Notice.

22. On June 25, 1993, the Commission [*7] received a signed letter from one Atuahe (the "June motion"). Atuahe alleged that Complainant's absence from Philadelphia warranted dismissal without prejudice.

23. On August 19, 1993, Chief Administrative Law Judge Allison K. Turner issued an Initial Decision on Remand (the "August 1993 I.D."). In the August 1993 I.D., Chief ALJ Turner denied the June motion, granted the Bell motion and further precluded Agnes Manu from filing additional complaints, absent a threat to health and/or safety, until all accumulated arrearage were fully paid.

24. On September 9, 1993, the Commission declined to review the August 1993 I.D.

25. On September 15, 1993, Agnes Manu submitted extensive objections to the August 1993 I.D. ("September 1993 Objections"). Both the August 1993 I.D. and the September 1993 Objections are before us today.

Discussion

After review of the September 1993 Exceptions and the facts and history of this case, we hereby affirm Chief ALJ Turner's August 1993 I.D.

1. Administrative Notice of Certain Facts

We shall, pursuant to *66 Pa.C.S. § 332(e)* and *52 Pa.Code 5.408*, take administrative notice and official review of the following facts:

1. Agnes Manu, Stephen [*8] Atuahene, and Benjamin Atuahene are corporate officials of FAI. These three persons have filed a total of at least five Formal Complaints over the past five years pertaining to utility services provided by Respondents to FAI. The Formal Complaints are docketed at P.U.C. Docket Nos. F-09029141 (the instant proceeding); C-00935014; C-009034970; C-00913621 and C 00924554. On consideration of this matter, we direct the following:

2. Docket No. F-09029141 concerns the complaint of Agnes Manu on Account 215-877-0681 for utility services delivered by Respondents Bell and AT&T to FAI at 7000 Woodbine Street in the City of Philadelphia. As of the close of business on January 28, 1994, the arrearage on this account was $ 25,775.61.

3. Docket No. C-00935014 concerns the complaint of Stephen Atuahene on Account 215-879-1790 for utility services delivered to FAI at 7000 Woodbine Street in the City of Philadelphia. As of the close of business on January 28, 1994, the arrearage on this account was $ 1337.04.

4. Docket No. C-00934970 concerns the complaint of Benjamin Atuahene on Account 215-879-8428 for telephone services delivered to FAI at 7000 Woodbine Street in the City of Philadelphia. [*9] As of the close of business on January 28, 1994, the arrearage on this account was $ 13,484.

5. Docket No. C-00913621 concerns the complaint of Stephen Atuahene-Frempong i.e., Stephen Atuahene, on Account 26-14-12-400812 for electric utility service delivered to FAI at 16 Roselyn Street in the City of Philadephia. As of January 28, 1994, the arrearage on this commercial account was $ 21,645.20.

6. Docket No. C-00924554 concerns the complaint of Stephen Atuahene-Frempong i.e., Stephen Atuahene, on Account 25-09-51-07-8816 for electrical service delivered by Respondents to FAI at 242 South 49th Street in the City of Philadelphia. As of January 28, 1994, the arrearage on the commercial account was $ 24,124.21.

7. Pleadings filed by Agnes Manu at Docket No. F-09029141 have been provided on FAI stationery listing at least one corporate address for FAI as being 1650 Roselyn Street, Philadelphia.

8. In Docket No. C-00924554, telephone utility service account 215-877-0681 is listed as the corporate account of FAI.

9. In Docket No. F-09029141, utility service account 215-877-0681 is listed as the corporate account of FAI.

10. Stephen Atuahene a/k/a Stephen Frempong, Stephen [*10] Atuahene-Frempong is the spouse of Agnes Manu. See August, I.D. Furthermore, Benjamin Atuahene is the son of Stephen Atuahene and Agnes Manu. All three individuals reside at 7000 Woodbine Street in the City of Philadelphia.

11. F.A. Investment Group, Inc. obtains utility services from Respondents through the Atuahene-Manu residence at 7000 Woodbine Street in the City of Philadelphia.

2. The August 1993 I.D.

After providing a brief history of the proceeding, the August I.D. made several determinations in this matter (August I.D. at 1-4).

a. The Complaint and an Ongoing Scheme to Defraud.

The first determination concerns the specific Complainant in this case. The facts indicate that Complainants, acting jointly, have filed several formal and informal Complaints regarding utility service from, and concerning, the same address as that listed for FAI and, alternately, each other. In one proceeding, i.e., Atuahene v. Bell, P.U.C. Docket No. C-00934970, the record indicates that hearing notices by certified mail have been returned as unclaimed although first class notices have not been returned (*August 1993 I.D. at 4-5).* In yet another proceeding i.e., F.A. [*11] Investment Group v. Bell, P.U.C. Docket C-00935014, Bell indicates that similar facts are at issue and that the arrearage on that account as of the August 1993 I.D. was $ 955.70. In yet another proceeding i.e., Stephen Frempong v. Bell Telephone Company of Pennsylvania, P.U.C. Docket No. C-00881729, (Order entered March 2, 1989), there was a finding that Stephen Atuahene and Stephen Frempong-Atuahene are the same person, that this person's spouse had the same name as the lead-Complainant in this case, and that this Complainant had a relative named Catherine Manu. See *August 1993 I.D. at pp. 4-7.*

As a consequence, Chief ALJ Turner determined that a "scheme" of an "apparently ongoing" nature was operating from Complainants' address for the purpose of obtaining utility services without payment (March 1993 Order at 4-7). Chief ALJ Turner concluded that Complainant "should be precluded from filing any additional complaints" because of the "serious abuse of the Commission's process" that has taken place in this case. (March 1993 Order at 4-7).

b. The Substantive Relief.

Chief ALJ Turner urges us to dismiss this case with prejudice and to prohibit Complainants from [*12] filing additional formal or informal Complaints against Bell Telephone for services. Chief ALJ Turner made seven findings of facts in this case (*August 1993 I.D. at 7-8).* Those findings we incorporate by reference. Chief ALJ Turner then made two conclusions of law that we set forth below:

Conclusions of Law

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. A party can be precluded from filing additional formal or informal Complaints with the Commission if there appears to be an abuse of the administrative process. *Schibelli v. Metropolitan Edison Company, 68 Pa.P.U.C. 286 (1988).*

Thereafter, Chief Chief ALJ Turner ordered as follows:

1. That the request made by Agnes Manu to withdraw her complaint, without prejudice, is hereby denied;

2. That the Complaint filed by Agnes Manu against the Bell Telephone Company of Pennsylvania, docketed at F-09029141, is hereby dismissed with prejudice.

3. That any complaints filed by Agnes Manu against the Bell Telephone Company of Pennsylvania shall not be accepted by the Secretary's Bureau absent an allegation of an immediate threat to health and/or safety.

4. That the Bell [*13] Telephone Company of Pennsylvania shall not provide any telephone service to Agnes Manu until all arrearage accumulated by Agnes Manu have been paid in full.

5. That this case be marked closed.

3. Analysis of the Case

The August 1993 I.D.

After review, we shall affirm the August 1993 I.D. Additionally, we shall consolidate all other proceedings for utility services delivered to FAI through or on behalf of Agnes Manu, Stephen Atuahene and/or Benjamin Atuahene.

The September 1993 Objections.

We conclude that Complainant's September 1993 Exceptions are without merit. Our determination is based on our consideration of certain Preliminary Issues, Complainants' substantive allegations, and Complainant's Conclusions of Law which follow.

a. Preliminary Issues. The preliminary issues concern (1) Stephen Atuahene's standing to file the June motion, (2) Defective Notice, (3) Consolidation, (4) Wrongful Termination of service, (5) Wrongful Dismissal, and (6) Deprivation of due process and equal protection rights.

1. Stephen Atuahene's Representation

This issue concerns the standing of Stephen Atuahene to make the June motion on Complainants' behalf. Our determinations [*14] in such matters are governed by Section 1.21, *52 Pa.Code § 1.21* et seq., of our rules. Our rules provide, in relevant part, as follows:

§ 1.21 Appearance in person.

(a) An individual may appear in his own behalf in a proceeding.

§ 1.22 Appearance by attorney.

(a) A person may be represented in a proceeding by an attorney at law admitted to practice before the Supreme Court of Pennsylvania, or, if a public utility regulatory agency of another jurisdiction accords like privileges to members of the bar of this Commonwealth, the highest court of the other jurisdiction.

§ 1.23 Other representation prohibited at hearings.

(a) A person may not be represented at a hearing before the Commission or a presiding officer except:

(1) As stated in §§ 1.21 or 1.22 (relating to appearance in person; and appearance by attorney),

(2) As otherwise permitted by the Commission in a specific case.

We generally require that a non-lawyer Complainant-representative appearing before this Commission be authorized to act in that capacity by the Commission or a presiding officer. Sid Smith v. GTE North, P.U.C. Docket No. C-00923867, (Order entered January 10, 1994), Slip op. [*15] at 20-22. However, equitable considerations and Section 1.2(a) of our rules permit us to dispense with that requirement in exceptional circumstances.

We also note that our regulations at Sections 1.21(a) and 1.23(a) generally prohibit any person other than an attorney from appearing in a representative capacity unless we specifically rule authorize such an appearance by waiver under Section 1.23(a)(2). Because Mr. Atuahene never received that waiver nor are there equitable considerations sufficient to justify considering Mr. Atuahene to be acting in that capacity, we consider his actions to be those of a self-appointed "Complainant-Representative" when filing the June motion and that such action contravened our regulations. Therefore, we conclude that the June motion is meritless.

Our conclusion would be no different if, arguendo, Mr. Atuahene's actions were those of a business representative under Section 1.21(a) or that of a spouse. That is because, if the June motion was the pleading of a business representative under Section 1.21(a), the Complainant had actual notice of the March 1993 Order as early as March 1993 or as late as May 1993. Consequently, the purported explanation [*16] for Complainant's lack of response until September 1993 to the March 1993 Order, as set forth in the June motion and the September 1993 Objections, still remains subject to our fact finding authority under *AT&T Communications of Pennsylvania vs. Pennsylvania Public Utility Commission, 130 Pa. Commonwealth Ct. 595, 568 A.2d 1362, 1364 (1990).* Based on that authority, we would be inclined to find that Complainant's meritless given the facts and evidence.

Furthermore, if the June motion were considered the pleading of a spouse, we note that Agnes Manu had actual, if not constructive, notice of the March 1993 Order as early as March 1993 and as late as June 1993. Thus, Complainant had notice at least three months before Complainant filed the September 1993 Objections. In such circumstances, we are inclined to find those exceptions dilatory, at best.

Therefore, we conclude that the June Motion is nothing more than an attempt to continue the fraudulent scheme.

2. Defective Notice.

This issue issue concerns a general claim that defective notice precluded the filing of an amended complaint. Complainant supports this position by claiming that one cannot rely on the postal [*17] service to provide notice (September 1993 Objections at 1-16). We have heard this allegation in other proceedings. In this case, as in some of those cases, we find the notice allegation to be unconvincing and contrary to the facts as well as common experience.

We make this determination cognizant that, as a regulatory authority, we are agents of the Commonwealth and that, as such, we are expected to be guided by good faith, fidelity and integrity because we stand in a fiduciary relationship to the public. *Schwartz v. Urban Redevelopment Authority of Pittsburgh, 192 A.2d 371, 374 (1963).* Also, a regulatory agency, when acting in an adjudicatory nature involving substantial property rights, is bound by due process. *Soja v. Pennsylvania State Police, 455 A.2d 613, 615 (1982).* Although due process has never been precisely defined by the courts, the desiderata of administrative due process in Pennsylvania are notice, an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case before the tribunal. *Conestoga National Bank v. Patterson, 275 A.2d 6, 9 (1971).* Of these, the most basic requirement is notice. See Pa. Coal [*18] *Mining Assn v. Insurance Dept., 370 A.2d 685, 692 (1977).* We also know that failure to provide adequate notice invalidates any administrative action on the matter but that inadequate notice may be cured by actual notice. *Clark v. Department of Public Welfare, 427 A.2d 712, 713 (1981).*

In light of these considerations, we generally accord pro se litigants a certain degree of latitude in our proceedings. Sid Smith, P.U.C. Docket No. C-00923867, slip op. at 20; Sentner v. Bell Telephone Company of Pennsylvania, P.U.C. Docket No. F-00161106, (Order entered October 25, 1993), slip op. at 12-13 ("Sentner"). However, this latitude does not prevent us from holding that a party's subsequent absence from a properly noticed hearing was unjustified and dismissing the case. Sentner at 12-13. Also, we can issue a reprimand in some circumstances. Sid Smith at 20-23.

In this case, as in Sentner, the Complainant was provided with notices by registered, certified and first class mail. As in Sentner, we voided an initial determination in order to provide this pro se litigant with another opportunity to plead their case. Furthermore, as in Sentner, [*19] the initial certified notice was followed with a notice by first class mail. Unlike Sentner, however, this particular Complainant received several additional rounds of notices and never acted on those notices.

After due consideration of these facts and precedent, we find that Complainant had timely and actual notice of the March 1993 Order. We also find that Complainant knew, or should have known, that Complainant was required to file an amended complaint. Our conclusion, that Complainant's claim is meritless, accords with Pennsylvania law. *Berkowitz v. Mayflower Securities, Inc., 455 Pa. 532, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Judge v. Celina Mutual Insurance Co., 303 Pa. Superior Ct. 221, 444 A.2d 658 (1982); Shafer v. AITS, Inc., 285 Pa. Superior Ct. 490, 428 A.2d 152 (1981); Christie v. Open Pantry Foodmarts, Inc. of Delaware Valley, 237 Pa. Superior Ct. 243, 352 A.2d 165 (1975).* n2

n2 We have, recently, expressed a desire to afford all individual complainants an opportunity to receive a hearing without being prejudiced by technical motions lodged against them by resondent-utilities. Those considerations are voided by the expressed lack of good faith on Complainants' part. See *52 Pa. Code § 64.1.* [*20]

3. The Scheme To Defraud and Consolidation.

Our third matter concerns the alleged scheme to defraud Respondents (*August 1993 I.D. at 4-7;* September 1993 Objections at 1-13). Complainant alleges that the finding of a scheme in the August 1993 I.D. violated Complainant's due process rights by wrongfully concluding, without giving Complainant an opportunity to respond, that a scheme exists in regard to obtaining utility services (September 1993 Objections at 1).

Chief ALJ Turner's August 1993 I.D. made an initial determination, based upon the administrative notice authority of the Commission under *52 Pa. Code § 5.408*, that the Complaint was part of an overall pattern, indicating a scheme, involving the filing of Complaints and abuse of administrative process. Chief ALJ Turner supported that conclusion with a panoply of facts and evidence.

We believe that the allegations concerning due process are contradicted by Complainant's detailed response to the August 1993 I.D. Furthermore, Complainant's own detailed response in the September 1993 Objections contradict this claim. Also, the alleged violations of constitutional rights claimed in the September 1993 Exceptions are not [*21] detailed nor do they provide evidence to sustain that allegation. Additionally, the Complainant is silent on whether payment for any undisputed services has been tendered to the relevant utility as required by *52 Pa. Code § 56.141.*

The facts and behavior by these particular Complainants lead us to conclude that Complainant has not complied with Sections 56.181 and 64.171 of our rules. These facts and behavior further convince us that the case is merely an attempt to avoid responsibility for utility services rendered.

In sum, we find that Complainant's allegations are meritless. We further conclude that Complainant's actions are part of a scheme to obtain utility service from the respondent utilities without reasonable efforts to pay for the same.

Given this conclusion and our concern for both the due process rights of Complainants and Respondents and our regulatory obligation to Pennsylvania's ratepayers and utilities, we further order consolidation, pursuant to Section 5.81(a) of our rules, to resolve all matters pertaining to that scheme. Rierdon v. Bell Telephone Company of Pennsylvania, P.U.C. Docket No. C-881874, (Order entered November 15, 1993), slip op. at [*22] 15-19 ("Commission may balance due process rights against other rights such as privacy"); Pennsylvania Public Utility Commission vs. Dauphin Consolidated Water Supply Company & General Waterworks of Pennsylvania, P.U.C. Docket No. R-00932604, (Order entered July 8, 1993), slip op. at 5-13, ("Consolidation authority of Commission guided by Pennsylvania's Rules of Civil Procedure and Commission regulations").

Consolidation allows us to efficiently and conclusively determine the amounts due and prevent abuse of administrative process. n3

n3 We agree with Chief ALJ Turner that a party may be precluded from filing additional formal or informal complaints with the Commission if there is an abuse of the administrative process. See August 1993 Order citing *Schibelli v. Metropolitan Edison Company, 68 Pa.P.U.C. 286 (1988);* also see Arthur Lilly v. William H. Smith, Retired Chairman, Pennsylvania Public Utility Commission, Docket No. C-00913773 (Order entered April 9, 1993), wherein we directed that further filings raising the same issues addressed in a matter shall be dismissed without further proceeding.

4. Wrongful Credit Report of Respondent and Termination of [*23] Service.

Our fourth matter concerns two allegations. The first allegation is that Bell's wrongful reporting of Complainant's credit status caused irreparable harmto Complainant's business and that, because we lack authority to remedy that harm, this matter was beyond our jurisdiction (September 1993 Objections at 4-5; Conclusion of Law 1). The second allegation is that Respondent has wrongfully terminated service at some unidentified time in the past.

Complainant correctly states that we lack jurisdictional authority over certain actions that sound in contract or damages. *Feingold v. Bell of Pennsylvania, 477 Pa. 1, 383 A.2d 791, 793,* (1977) ("Commission has no power to award damages for breach of contract"); *DiSanto v. Dauphin Consolidated Water Supply Company, 291 Pa. Superior Ct. 440, 436 A.2d 197, 201-202,* (1981) ("Commission has no authority over tort law or contractual obligations"); *West Penn Power Company v. Pennsylvania Public Utility Commission, 104 Pa. Commonwealth Ct. 21, 521 A.2d 75, 79 (1987).* We have long refused to entertain actions that go to such matters. *Turtzo v. Bangor Water Company, 28 Pa.P.U.C. 404, 405 (1950).* Therefore, we recognize [*24] that our jurisdictional authority in certain areas must necessarily be concurrent with that of the general courts of the Commonwealth. n4

n4 See Sentner for a more extensive discussion of agency jurisdiction.

In addition, Complainants' claim that our limited jurisdiction precludes the Commission from hearing this case mistakenly assumes that shared jurisdiction voids jurisdiction. There are several instances in which the courts concluded that concurrent jurisdiction, as opposed to the court's general jurisdiction, is warranted given our expertise and enabling statute. See, Sentner at 6-7.

Furthermore, Complainant's allegations contradict the alleged lack of jurisdiction. Complainant cannot invoke our jurisdiction over an allegedly wrongful termination of service on the one hand, while, on the other hand, claim that the wrongful termination of service is a matter beyond our jurisdiction because we cannot compensate for the damages occasioned by that wrongful termination. Compare September 1993 Objections at 6-8 with *52 Pa.Code 64.63* and *64.122.* Therefore, we conclude that this allegation is meritless.

The second allegation concerns the alleged wrongful termination [*25] of service. We note that this allegation raises an issue not previously raised in the Complaint in 1990. Because this issue is being raised for the first time, we need not consider it further.

5. Wrongful Dismissal of Complaint with Prejudice.

This matter concerns Complainant's allegation that Chief ALJ Turner wrongfully dismissed the Complaint as it pertained to both Bell and AT&T. Chief ALJ Turner's action, in light of the facts of this case, is not a wrongful action given that the delayed consideration was largely the result of Complainant's failure to file an amended complaint.

6. Violation of Complainant's Due Process and Equal Protection Rights Under State and Federal Law.

a. Due Process.

We find this allegation as meritless as the prior allegations for several reasons. First, it was the Complainant, and not the Commission, that failed to file any amended complaint. Also, the Commission, and not the Complainant, has waited since our determination in December 1990 for Complainant to cure the pleading defects. In addition, the Commission, and not the Complainant, has waited for several years for an amended complaint to be filed although this Complainant |*26| knew, or should have known, as early as 1990 or as late as 1993, that an amended complaint was required.

Complainant's failure to act largely contributed to any adverse impact on Complainant's due process rights. Also, the failure to act operated to the prejudice of Respondents. Consequently, we consider this allegation meritless.

b. Equal Protection.

We also consider this allegation without merit. Complainant fails to specify exactly how she was denied equal protection of the law in this matter. Consequently, we fail to discern any violation of such rights.

We have previously set aside previous orders in this case so that this pro se Complainant could refine their case. However, this Complainant took no action. Further, we find the explanation for that inaction to be inadequate.

Therefore, we conclude that Complainant's fails to establish any irrationality in our approach. On the contrary, the indulgent accommodation given these Complainants may have encouraged the arrearage.

4. Complainant's Substantive Allegations.

Complainant's substantive allegations concern (1) Judicial Discretion, (2) Constitutional Violations, (3) Lack of Jurisdiction and (4) Abuse [*27] of Discretion. We consider each of these matters seriatim.

a. Judicial Discretion.

Complainant alleges that Chief ALJ Turner abused judicial discretion in several ways. Complainant first alleges that Chief ALJ Turner abused discretion by wrongfully concluding that Complainant is related to other parties in several other proceedings arising from utility services delivered to these Complainants at 7000 Woodbine Street in the City of Philadelphia.

This allegation is contradicted by several facts. These Complainants all are using Complainant's address at 7000 Woodbine Street as the locus for receipt of utility service. FAI, the business entity, has filed complaints from this aforementioned residential address. Agnes Manu alleges unspecified harm to an unidentified business reputation, as a result of Respondents' behavior, although the record in this proceeding shows that the only business with which Manu is associated is FAI -- and Manu claims they are separate entities. Further, Agnes Manu has filed complaints using FAI's stationery. Finally, the record in P.U.C. Docket No. C-00881729 and these consolidated cases collectively demonstrate that Agnes Manu, Stephen Atuahene [*28] and Benjamin Atuahene are related, and that all three persons bear a relationship to FAI. Consequently, these facts do not establish any abuse of judicial discretion.

However, notwithstanding the Chief ALJ's determination of a familial relationship, we would reach the same result and affirm the holdings of the ALJ if the the improper scheme were perpetrated by strangers or non-familial persons. Therefore, the existence or lack of existence of a family relationship is not essential to our conclusion that Agnes Manu, Stephen Atuahene, and Benjamin Atauhene are acting in concert.

The second and third allegations, that Chief ALJ Turner abuses judicial discretion by permitting Respondent to use their "monopoly position" to intimidate customers and that Chief ALJ Turner wrongfully extended this action to include both Bell and AT&T, are undercut by the facts. The record is devoid of any factual basis for concluding that Respondents have intimidated this Complainant. If anything, we are concerned by the fact that Respondents took so little action against the Complainant in light of the events in this case. But most importantly, Complainant's own allegations specifically named both [*29] Bell and AT&T as parties with whom Complainants have a billing dispute. Compare September 1990 Complaint at 1 with September 1993 Objections. This allegation, therefore, is meritless.

The fourth allegation is that Chief ALJ Turner has abused judicial discretion by finding that Complainant and F.A. Investment, Inc. were related entities. This allegation is undercut by the facts. Although we recognize that these Complainants and FAI may separate entities for other legal purposes, we deem the contrary to be true for the limited purpose of this proceeding based on Pennsylvania law.

We do so, in part, because of the extensive intermingling of FAI's corporate form with these Complainants' personal affairs. For example, most of the pleadings in these consolidated cases have been filed from, and concern utility services delivered to, Complainants' personal residence on behalf of, or in the name of, FAI. Furthermore, Complainants have used FAI stationery and FAI's corporate form to secure utility services that benefitted Complainants' personal interests while attempting to insulate themselves from personal responsibility for those services.

For example, the Complaint by Agnes [*30] Manu in Docket No. F-0929141 implies that the Complaint concerns personal residential service which, to an extent, is true although the account at issue also concerns Agnes Manu's business. Such facts, in addition to those set forth more fully above and below, sustain our affirmation of Chief ALJ Turner's finding of a close, proximate and intertwining relationship concerning utility services.

However, Pennsylvania law does not hold that such a close, proximate and intertwining relationship, standing alone, is sufficient to justify disregarding the corporate form for the purposes of holding others personally liable for a corporation's obligations. Other considerations, such as unusual circumstances, fraud, prevention of harm, and protection of the public interest, must be shown before such a relationship will sustain a disregarding of the corporate form. On this vexatious matter, Justice Cardozo once opined that although the entire issue "is still enveloped in the mists of metaphor," the appropriate tests are "honesty and justice." *Berkey v. Third Avenue Ry. Co., 244 N.Y. 84, 155 N.E. 58 (N.Y. 1926).*

Fortunately, Pennsylvania's law is well developed on matters pertaining [*31] to this issue. And, the law holds that corporate form will be disregarded whenever justice or public policy demands and when the rights of innocent third parties are not prejudiced nor the theory of the corporate veil rendered useless. See *Sams v. Redevelopment Authority of City of New Kensington, 431 Pa. 240, 244 A.2d 779, 781 (1968)* ("Sams")("Corporate form will be disregarded when the entity is used to defeat public convenience, justify wrong, protect fraud or defend crime"); *Great Oaks Building & Loan Ass'n v. Rosenheim, 341 Pa. 132, 19 A.2d 95, 97,* (1941) ("Great Oaks") ("Pennsylvania's courts will not hesitate to treat person and corporation as identical whenever justice and public policy demand and when rights of innocent third parties are not prejudiced thereby nor theory of corporate entity made useless"); *Pasos v. Ferber, 263 F.Supp 877,* (D.C.M.D.Pa.) affirmed *386 F.2d 452,* (1967) ("Pasos") ("Corporate form can be disregarded if corporate purpose is to continue in business without responsibility to one's creditors"); *Reverse Vending Associates v. Tomra Systems US, Inc., 655 F.Supp. 1122 (E.D. Pa. 1987)* ("Reverse Vending") ("Limited liability [*32] inherent in a corporation's separate existence will be disregarded when such existence is misused as a means or intermediary for perpetration of fraud, illegality or injustice"); *Wicks v. Milzoco Builders, Inc., 503 Pa. 614, 470 A.2d 86, 89-90,* (1983)("Corporate form can be disregarded when corporation is not a bona fide independent entity").

These substantive principles of law also extend to the adjudications of administrative bodies at both the federal level and within Pennsylvania. *U.S. v. Sutton, 796 F.2d 1040, 1060 (1986)*("Federal agencies may pierce corporate form for violations of federal regulations"); *Kaites v. Commonwealth of Pennsylvania, Department of Environmental Resources, 108 Pa. Commonwealth Ct. 267, 529 A.2d 1148, 1150-1152,* (1987)("Pennsylvania agency record may support piercing of corporate veil although such action was not a primary ground for this case nor warranted by the facts") ("Kaites"); *Commonwealth of Pennsylania, Department of Environmental Resources vs. Peggs Run Coal Co., 55 Pa. Commonwealth Ct. 312, 423 A.2d 765, 766, 768-769 (1980)* ("Demurrer denied when agency allegations of material facts sufficient to justify basis for imposing [*33] legal liability on individuals by disregarding corporate form") ("Peggs Run").

The factors typically weighed when considering whether to disregard a corporate form in Pennsylvania include inter alia undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs, and use of corporate and personal affairs, and use of corporate form to perptrate a fraud. *Commonwealth by Preate v. Events Intern, Inc., 137 Pa. Commonwealth Ct. 271, 585 A.2d 1146, 1150,* (1991) ("Events Intern, Inc."); *Kaites, 108 Pa. Commonwealth Ct. 267, 529 A.2d at 1151.*

In this case, the persistent and ongoing refusal of FAI to pay Respondents for delivered utility services, coupled with use of our administrative process to prolong consideration of the party responsible for payment for those services, is indicative of undercapitalization.

In addition, the record is replete with persistent failures to adhere to corporate formalities. For example, Agnes Manu's complaint in Docket No. F-09029141 concerning Account 215-877-0618 provides no indication, as does the Complaint in Docket No. C00924554, that Account 215-877-0618 is the corporate [*34] account of FAI. In fact, the reader is mislead as to the actual entity served by, and arguably responsible for, the Account. In another example, the Complaint filed by Stephen Atuahene on behalf of FAI suggests that the residence of FAI's officer and the corporation's residence are identical. In fact, FAI's residence is at 7000 Woodbine Street according to the Complaint filed in Docket No. C-00935014.

Complainant's failure to adhere to corporate formalities is also evident in the Complaints. In Docket C-901621, Stephen Atuahene indicates that his personal residence and FAI's corporate residence are identical. In the complaint filed at Docket F-09029141 filed in 1990, Agnes Manu's Complaint indicates that her personal telephone service account is identical to that of FAI according to page 2 of the Complaint filed on behalf of FAI at Docket C-00924554 in 1992.

Further, the Complainants' use of the corporate form to perpetrate their fraud in regard to utility services, and abuse of our administrative process to further that scheme, is evident in other respects. Complainants have used the corporate cover of FAI to obtain services for FAI at 7000 Woodbine [*35] Street, 1650 Roselyn Street, and 242 South 49th Street in the City of Philadelphia in, respectively, Docket Nos. F-9029141, C-90013621 and C-00924454.

Complainants, after accruing large arrearage, typically file formal and informal Complaints to delay termination of service. Complainants have failed to appear at subsequently scheduled hearings and suffered orders to be entered against them by default. Complainants filed tardy exceptions to default orders aimed at setting aside the default. After setting aside the default, Complainants have, again, failed to appear or file timely pleadings. Usually, such failure is then followed by a request that the case be dismissed without prejudice. See e.g., P.U.C. Docket Nos. F-09029141, C-00935014, C-00934710, C-00913621 and C00924554; *August 1993 I.D. at 4-7.*

The unusual abuse of administrative process has been well documented by Chief ALJ Turner in the August 1993 I.D. Based upon this practice over the past five years or so, Complainants have managed to accrue a substantial arrearage on several accounts.

Therefore, our decision to disregard the corporate form, as permitted under Ashley, is amply supported. Our conclusion [*36] in this case is only intended to prevent these specific Complainants from continued abuse of administrative process aimed at securing the benefits of utility service without shouldering the burden of payment for those same services.

b. Constitutional Violations.

Complainants allege that Respondents' service termination and reporting of the arrearage to an unidentified credit agency violated their constitutional rights. Based on our limited authority to pass on constitutional claims, we conclude that these claims are meritless.

The harm to constitutional rights, occasioned by an unspecified yet wrongful termination of service, is a novel allegation which Complainants have never raised in this case. Consequently, we disregard this allegation consistent with the requirements of due process because Respondents have not had a chance to respond to that allegation. However, if we were to consider this allegation, we would be inclined to consider the allegation meritless because neither the pleadings nor the evidence are sufficient to sustain such a finding. Complainant fails to specify exactly what violation of Sections 56.71 et seq., 56.81 et seq., 64.61 et seq., or 64.121 [*37] et seq. occurred in this case and how constitutional rights were harmed by such action.

The harm to constitutional rights, occasioned by a wrongful report to an unidentified credit agency, is also a novel allegation which Complainants have not raised previously in this case. Consequently, we will disregard this allegation consistent with the requirements of Respondents' due process rights. However, if we were to consider this allegation, we would be inclined to consider the allegation meritless because neither the pleadings nor the evidence are sufficient to sustain such a finding. Complainant fails to specify exactly what violation of Sections 56.71 et seq., 56.81 et seq., 64.61 et seq., or 64.121 et seq. occurred in this case and how constitutional rights were harmed by such a violation.

The harm to constitutional rights, occasioned by a wrongful harm to a business interest, is yet another allegation raised for the first time in the September exceptions. Consistent with considerations of due process, we refuse to consider that allegation. However, if we were to consider this allegation, we would be inclined to consider the allegation

meritless because neither the business [*38] interest nor the alleged violation are identified with sufficient specificity so as to enable us to reach a conclusion.

We also hold that the allegation, concerning deprivation of a right to a trial by jury, is meritless. Complainant fails to explain exactly how the August 1993 I.D. vitiated the right to a jury trial granted by *66 Pa.C.S. § 901*.

The final claims regarding a lack of jurisdiction and abuse of discretion have been addressed and need not be repeated herein. However, we will briefly address the allegation concerning lack of notice under Chapter 56 and 64. We conclude that Complainant's allegation, that termination of service withoutnotice is a violation of due process, is contradicted by our rules. For example, Sections 56.98 and 64.75 permit a utility to terminate without notice in some limited circumstances. Because neither party has raised this point, we will not consider it further except to note that this vague allegation ignores that circumstance.

e. Complainant's Conclusions of Law.

Our last matter concerns Complainant's conclusions of law. Complainant makes five conclusions of law tha we repeat verbatim:

1. The Commission has no jurisdiction over [*39] the parties and the subject matter of this proceeding. For:

a. Bell terminated the complainants service even though the case was pending before the Commission without any notification and in violation of complainant's "due process" rights under the amendment to the U.S. Constitution.

b. Bell sent adverse material, information, data to the Credit Bureau and other financial institution resulting in denial of credit to complainant in violation of the law which automatically removes jurisdiction to court of general jurisdiction.

2. The complainants rights under the equal protection and due process clause of the 14th amendment to the U.S. Constitution had been violated in view of a) the termination of service of complainants phone service while this case is pending[;] b) and subsequent Bell's action of sending information to various entities that complainant owes it $ 25,000 while the actual toll resulting to Bell is less than $ 2,000 and while said bill was before this Commission as a disputed account.

3. The complainant's right under the 7th amendment to the U.S. Constitution could not be protected sufficiently enough under the Commission's procedure and adjudication especially [*40] with reference to complainant's right to TRIAL BY JURY.

4. The Judges initial decision was a gross abuse of judicial discretion and violates complainants rights of equal protection under the law.

5. This case should be withdrawn by Complainant without prejudice.

The first conclusion concerning jurisdiction is undercut by Complainant's request that we invoke our jurisdiction to remedy the allegedly wrongful termination of service. This conclusion is further undercut by the fact that the Commission shares concurrent jurisdiction with the general courts of the Commonwealth on many of the issues raised in this Complaint.

The second conclusion, concerning violations of constitutional rights, is undercut by Complainant's failure to utilize the several opportunities, provided by the Commission, to amend, raise, refine and argue their position in an amended complaint. A party cannot, after being provided ample opportunity to amend the vague allegations of a badly worded Complaint, be heard to complain that a Commission's determination based on that faulty complaint, in the face of a party's failure to timely amend, violates constitutional rights.

The third conclusion, concerning [*41] denial of the right to a jury trial, is undercut by Complainants' failure to specify how our decision undercuts that *66 Pa.C.S. § 901* right.

The fourth conclusion, concerning an alleged abuse of discretion, is undercut by the facts, evidence and procedural history of this case. These matters, taken collectively, fail to establish any substantial instance where, upon reaching a conclusion of law, the Commission has overridden or misapplied the law. *Mary K. Cashdollar v. Commonwealth of Pennsylvania, State Horse Racing Commission, 143 Pa. Commonwealth Ct. 640, 600 A.2d 646, 650 (1991).*

The fifth conclusion, concerning dismissal of the case without prejudice, is undercut by the facts. The Commission has provided ample opportunity to amend the complaint, refine the allegations, and otherwise detail any alleged harm.

However, Complainants have failed to do so to their detriment. Complainant cannot be permitted to complain of harm to constitutional rights, occasioned by Complainant's own tardiness, in order to prevent the Commission from implementing a final order that might be adverse to their fraudulent scheme.

Although tardiness might normally justify dismissing a case with [*42] or without prejudice, we underscore our belief that this proceeding is not a normal case. We will not dismiss a case when, as here, dismissal only furthers a fraudulent scheme, or precludes us from making a final determination on the total arrearage, or would otherwise prevent an appropriate allocation of responsibility for an arrearage.

CONCLUSION

Based on the foregoing, we shall adopt in all material respects the decision of Chief Justice Turner. We only modify her recommendation concerning the filing of complaints against the Respondents to hold that such filings, to the extent they pertain to the arrearages which are the subject of the instant proceeding, shall be dismissed without further proceeding. See Arthur Lilly v. P.U.C., supra.; THEREFORE,

IT IS ORDERED:

1. That the Motions to Dismiss with or without prejudice be, and hereby are, denied.

2. That the Complainants in the following proceedings be, and hereby are, consolidated with the instant proceeding: Docket Nos. C-00935014, C-00934970, C-00913621 and C-00924554.

3. That the failure of Complainants in the consolidated proceedings to pay all arrearages on the accounts identified in this consolidated [*43] proceeding be, and hereby is, deemed to be grounds for termination of service in accord with Chapters 56 and 64 of the Commission's rules of administrative practice and procedure.

4. That Complainants be, and hereby are, precluded from filing further complaints, whether of a formal or informal nature, for the arrearages for utility services which are the subject of these consolidated proceedings until all arrearages governed by this case are paid in full and that, further, the filing of any complaint pertaining to the arrearages which are the subject of this proceeding shall be dismissed without further proceedings.

5. That the filing of any other pleading in these consolidated cases, concerning the same subject matter be, and hereby is, deemed not to stay implementation of this Opinion and Order.

Legal Topics:

For related research and practice materials, see the following legal topics:
Communications LawU.S. Federal Communications CommissionJurisdictionEnergy & Utilities LawTransportation & PipelinesElectricity TransmissionEnergy & Utilities LawUtility CompaniesService Terminations

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