

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Patora	:	
	:	
v.	:	C-2018-3003485
	:	
UGI Penn Natural Gas, Inc.	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants a motion for judgment on the pleadings filed by a natural gas distribution company in response to a complaint filed by a customer seeking a payment arrangement and to have her meter tested. Even when accepting as true all well pleaded facts by the customer, and only using those facts admitted by her against her, the record shows that no facts are at issue, that the law is so clear that a trial would be a fruitless exercise and the company is entitled to judgment as a matter of law. This decision also finds that the complainant has abused the Commission's processes and therefore prohibits the complainant from filing any further complaints with the Commission until the current balance owed to the company is paid in full.

HISTORY OF THE PROCEEDING

On July 13, 2018, Jennifer Patora v UGI Penn Natural Gas, Inc. (UGI), docket number C-2018-3003485. In her complaint, Ms. Patora checked the boxes indicating that UGI is threatening to terminate her service or has already terminated her service and that she would like

a payment agreement. Ms. Potora added “I do not agree with the usage amount and am requesting that my meter be tested when I can be there.” Ms. Potora also added: “I want an arrangement as I have lost child support payments and I want the meter tested while I can be there.”

On August 7, 2018, UGI filed an answer and new matter in response to Ms. Potora’s filing. In its answer, UGI admitted that it sent Ms. Potora a termination notice due to her repeated and persistent failure to pay monthly bills in full and on a timely basis. UGI also admitted that Ms. Potora requested another payment agreement. UGI added that Ms. Potora has been provided a payment arrangement from both the company and the Commission and a settlement in response to a prior complaint, all of which she has failed to honor. UGI added that Ms. Potora’s meter was tested prior to its installation on May 1, 2017 and that the company will schedule another meter test, at Ms. Potora’s expense, with Ms. Potora present provided that Ms. Potora cooperates with the company in scheduling the meter test date.

In its new matter, which was accompanied by a notice to plead, UGI averred that Ms. Potora had filed another complaint that is substantively identical on February 21, 2018 at docket number C-2018-3000028. UGI added that the prior complaint was dismissed for failure to appear and that had Ms. Potora appeared for the hearing in that case, the company would have shown that Ms. Potora’s newly installed meter was properly tested in accordance with the Commission’s guidelines. UGI also added that this additional complaint is an obvious attempt by Ms. Potora to delay regulatory action to require the payment of monthly bills.

On August 16, 2018, UGI filed a motion for judgment on the pleadings. In its motion, which was also accompanied by a notice to plead, UGI argued Ms. Potora’s complaint should be dismissed because it is legally insufficient, based on res judicata. UGI reiterated that Ms. Potora’s complaint is substantively identical when compared to an earlier complaint filed on or about February 21, 2018 by Ms. Potora at docket number C-2018-3000028. UGI attached a copy of relevant portions of the decision arising from that complaint. UGI argued that Ms. Potora’s complaint should be dismissed as being barred under the doctrine of res judicata because Ms. Potora’s allegations regarding a payment arrangement and charges for natural gas

service have already been adjudicated. UGI argued that “the dilatory tactics employed by Ms. Potora are an obvious attempt to delay regulatory action to require the payment of monthly bills for natural gas service.” UGI also requested that a decision on the motion be issued before the implementation of the 2018/2019 winter moratorium.

Ms. Potora’s answer to UGI’s new matter was due no later than August 30, 2018. Ms. Potora’s answer to UGI’s motion was due no later than September 10, 2018. Ms. Potora did not file an answer to either UGI’s new matter or its motion.

On September 13, 2018, a motion judge assignment notice was issued informing the parties that I would be responsible for any matters which may arise during the preliminary phase of this proceeding. The record in this case closed on September 13, 2018, the date the motion judge assignment notice was issued.

UGI’s motion for judgment on the pleadings is ready for disposition. For the reasons discussed below, UGI’s motion will be granted and Ms. Potora’s complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this case is Jennifer Potora.
2. The Respondent in this case is UGI Penn Natural Gas, Inc.
3. The service address is 53 Academy Street, Plymouth, PA.
4. On July 13, 2018, Ms. Potora filed a complaint against UGI averring that UGI is threatening to terminate her service or has already terminated her service and that she would like a payment agreement.

5. On August 7, 2018, UGI filed an answer and new matter in response to Ms. Potora's complaint affirming or denying the various averments made by Ms. Potora.

6. On August 16, 2018, UGI filed a motion for judgment on the pleadings arguing that Ms. Potora's complaint should be dismissed because it is legally insufficient, based on res judicata.

7. Ms. Potora did not file an answer to either UGI's new matter or to its motion.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Chapters 1, 3 and 5, provide for the filing of motions for judgment on the pleadings. In particular, Section 5.102 of the Commission's Rules provides in relevant part:

§ 5.102 Motions for summary judgment and judgment on the pleadings.

(a) *Generally.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

* * *

(d) *Decisions on motions.*

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

52 Pa.Code §§ 5.102(a), (d)(1). For a court to grant a motion for judgment on the pleadings, the record must show that no facts are at issue and that the law is so clear that a trial would be a fruitless exercise. All of the opposing party's well-pleaded allegations are viewed as true but only those facts admitted by him may be considered against him. Beardell v. Western Wayne School District, 91 Pa.Cmwlth. 348, 496 A.2d 1373 (1985).

In this case, UGI has argued that Ms. Patora's complaint should be dismissed because it is barred by the doctrine of res judicata and therefore legally insufficient. The doctrine of res judicata is designed to promote certainty, finality and judicial economy. It reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court or agency of competent jurisdiction. The courts have repeatedly stated that a final valid judgment on the merits by a court of competent jurisdiction bars any future suit between the same parties on the same cause of action. Township of McCandless v. McCarthy, 7 Pa.Cmwlth. 611, 300 A.2d 815 (1973); Martin v. Poole, 232 Pa.Super. 263, 336 A.2d 363 (1975). Under res judicata, when a court of competent jurisdiction enters a final judgment on the merits of a cause of action, the parties to that case and their privies are thereafter bound "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." Commissioner v. Sunnen, 333 U.S. 591, 597, 68 S.Ct. 715, 719 (1948) (quoting Cromwell v. County of Sac, 94 U.S. 351, 352 (1876)); Jones v. Costlow, 354 Pa. 245, 47 A.2d 259 (1946).

For the doctrine to prevail, four conditions must be met: (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality and capacity of the parties suing or sued. Safeguard Mutual Insurance Co. v. Williams, 463 Pa. 567, 345 A.2d 664 (1975) and Day v. Volkswagenwerk Aktiengesellschaft, 318 Pa.Super. 225, 464 A.2d 1313 (1983); Northwestern Lehigh School District v. Agricultural Lands Condemnation Approval Board, 134 Pa.Cmwlth. 291, 578 A.2d 614 (1990). The Commonwealth Court stated that, "for purposes of res judicata, there is identity of causes of action when in both the old and new proceedings the subject matter and the ultimate issues are the same." Howard v. Department of Public Welfare, 529 A.2d 1231, 1233 (Pa.Cmwlth. 1987) (quoting McCandless, 300 A.2d at 820 (Pa. Cmwlth. 1973)).

UGI's argument that Ms. Patora's complaint is barred by the doctrine of res judicata will be denied. Ms. Patora has stated in her complaint that she would like a payment arrangement as she has "lost child support payments." Her averment that she lost child support payments when viewed as true, as is required when disposing of motions for judgment on the pleadings, raises a fact that was not previously raised in Ms. Patora's complaints and, therefore, there is no identity of issues, as is required for a finding of res judicata. As such, Ms. Patora's complaint will not be dismissed on the basis of res judicata. *See also, Lorrie Reynolds v. PPL Electric Utilities Corp.*, Docket Number C-2011-2255268 (Opinion and Order entered Jan. 5, 2012).

Ms. Patora's complaint will be dismissed, however, because it constitutes an abuse of process.

As UGI noted in its motion, Ms. Patora's complaint is substantively identical when compared to an earlier complaint filed on or about February 21, 2018 at docket number C-2018-3000028 that was dismissed due to Ms. Patora's failure to appear for the hearing. In discussing that complaint, UGI noted that Ms. Patora had already been given one continuance in that proceeding. UGI also presented evidence that Ms. Patora had requested multiple continuances in other formal and informal proceedings at the Commission. UGI argued that Ms. Patora had been abusing the proceeding to avoid termination. UGI then noted that, after failing to provide an explanation for her absence from the continued hearing, Ms. Patora's complaint was denied for failure to appear.

UGI further argued in its motion:

The dilatory tactics employed by complainant are an obvious attempt to delay regulatory action to require the payment of monthly bills for natural gas service. This additional duplicative complaint is consistent with the demonstrated pattern of the complainant to file informal and formal complaints for the obvious purpose of delaying action by Penn Natural to force complainant to pay monthly bills for natural gas service in full and on a timely

basis. If complainant is successful in delaying enforcement action before the implementation of the 2018/2019 winter moratorium on termination of service to residential customers, complainant will have achieved almost another year of not having to pay bills for gas service. This is a clear abuse of the regulatory process that contributes to the creation of a larger arrearage that may never be able to be collected from complainant. Complainant should not be allowed to engage in such conduct to the detriment of customers who pay their bills on a regular basis.

UGI concluded its motion by stating that the complaint should be summarily dismissed as UGI is entitled to judgment as a matter of law.

I agree. Ms. Patora's complaint constitutes an abuse of process and will be dismissed. Ms. Patora will be prohibited from filing any further complaints against UGI with the Commission until her current balance owed to UGI is paid in full.

The Commission has found abuse of administrative process in a host of cases. One of the leading cases is Grossman v. Bell Telephone Company of Pennsylvania, 67 Pa. PUC 714 (1988) (Grossman). In Grossman, the Commission specifically used the language of an abuse of the regulatory process or right to due process as a duplicate of an abuse of the administrative process. The Commission found that the complainant had abused the regulatory process or his right to due process by frequently requesting continuances of hearings and then not appearing and by not honoring his part of a settlement.

In the most often cited case, Manu v. The Bell Telephone Company of Pennsylvania, Docket No. F-09029141 (Order entered May 4, 1994) (Manu), the Commission consolidated the Manu case with other cases filed by Ms. Manu and other persons against not only Bell but also AT&T and PECO Energy Company (C-00935014, C-00934970, C-00913621 and C-00924554) and used the exact language of abusing administrative process to preclude the complainant from filing further complaints, formal or informal, until all the arrearages were paid in full. The Commission found that the findings of the abuse of administrative process in the Initial Decision On Remand were well documented. A constant pattern existed: A complaint is

filed, hearing notices are mailed by certified mail and returned and marked as unclaimed, and requests for continuances are made.

In subsequent abuse of process cases, the Commission extended the identifying criteria to include such factors as the number and the nature of complaints, the number of defaulted payments, the use of tactics to avoid payments and service terminations, and the history of payments. DiFilippo v. PECO Energy Company, Docket No. C-20027116 (Initial Decision dated August 8, 2002; Final Order dated October 3, 2002) (DiFilippo) (complainant had abused the Commission's complaint process by filing three previous complaints which were all dismissed with prejudice and by filing a fourth complaint which contained impertinent or scandalous matters); Seidenstricker v. Metropolitan Edison Company, Docket No. F-2008-2019388 (Opinion and Order entered July 28, 2009) (Seidenstricker) (complainant was an abuser of the system by defaulting on four Bureau of Consumer Services and four Met-Ed payment plans, by using a variety of means to avoid terminations such as filing a bankruptcy proceeding and attempting to transfer her account to mother and sister, and by invoking the provisions of 66 Pa. C.S. §§ 1521-1533 on 18 occasions); and Thomas v. The Peoples Natural Gas Company, Docket No. 2009-2102194 (Opinion and Order dated June 17, 2010) (Thomas) (the Commission found the complainant had abused the system by filing three informal complaints which were all dismissed because he had defaulted on a Commission-issued payment arrangement and a formal complaint which was also dismissed for the same reason and the complainant had a very poor history of payments (six payments in 52 months)).

Here, Ms. Potora's complaint will be dismissed because she has abused the process. Section 5.63(b) of the Commission's regulations provides that "failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted." 52 Pa.Code § 5.63(b). As such, UGI's averments in its new matter regarding Ms. Potora's prior complaint are admitted as true because Ms. Potora did not rebut them. Furthermore, a simple search of the Commission's case management system reveals that Ms. Potora has filed approximately ten formal complaints at the Commission in the past two years. Undoubtedly, these cases are the "multiple continuances in other formal and informal

proceedings at the Commission” that UGI references in its motion. Ms. Potora did not rebut that averment and, therefore, it is accepted as true.

It is clear that Ms. Potora’s behavior is sufficiently similar to the facts of the case precedent cited in Grossman, Manu, DiFilippo, Seidenstricker and Thomas where the Commission has found an abuse of process. Ten formal complaints filed over a two-year period, with multiple continuances requested and failing to appear, constitutes an abuse of process.

By law, a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982); *see also*, Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Pub. Util. Comm’n, 447 A.2d 1100 (Pa. Cmwlth. 1982). UGI has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. §1303. Neal v. Philadelphia Gas Works, Docket No. Z-00971874 (Order entered January 4, 2002); Angie’s Bar v. Duquesne Light Co., 72 Pa. PUC 213 (1990). All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility’s uncollectible expenses, which all of its remaining customers must pay. Bolt v. Duquesne Light Co., Docket No. Z-8712758 (Order entered April 8, 1988). Ms. Potora should not be allowed to avoid her obligation to pay for her utility usage by filing formal complaints.

Finally, as noted above, Ms. Potora stated in her complaint that she “lost child support payments.” Under most circumstances, this would constitute a well-pleaded material fact that warrants denying UGI’s motion and conducting a hearing. Even when viewing this averment as true in this case, however, it is unconvincing to overcome Ms. Potora’s sustained pattern of abusing the process. It is clear that Ms. Potora’s long history of abusing the process trumps any need for a hearing. To allow otherwise would enable Ms. Potora to have a hearing and avoid termination simply by modifying her complaint slightly each time. Such a practice should not be countenanced.

As a result, UGI’s motion for judgment on the pleadings will be granted with regard to its request to dismiss Ms. Potora’s complaint based on an abuse of process. UGI is entitled to judgment as a matter of law. Even when viewing all of Ms. Potora’s well-pleaded

allegations as true, and only using those facts admitted by her against her, it is clear that there are no facts at issue and that the law is so clear that a trial would be a fruitless exercise. Ms. Potora's complaint will be dismissed. Furthermore, Ms. Potora will be prohibited from filing any further complaints with the Commission until her balance with UGI is paid in full.

CONCLUSIONS OF LAW

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

2. After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. 52 Pa.Code § 5.102(a).

3. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law. 52 Pa.Code § 5.102(d)(1).

4. For a court to grant a motion for judgment on the pleadings, the record must show that no facts are at issue and that the law is so clear that a trial would be a fruitless exercise. All of the opposing party's well-pleaded allegations are viewed as true but only those facts admitted by him may be considered against him. Beardell v. Western Wayne School District, 91 Pa.Cmwlth. 348, 496 A.2d 1373 (1985).

5. A final valid judgment on the merits by a court of competent jurisdiction bars any future suit between the same parties on the same cause of action. Township of McCandless v. McCarthy, 7 Pa.Cmwlth. 611, 300 A.2d 815 (1973).

6. For the doctrine of res judicata to prevail, four conditions must be met: (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action,

and (4) identity of the quality and capacity of the parties suing or sued. Safeguard Mutual Insurance Co. v. Williams, 463 Pa. 567, 345 A.2d 664 (1975).

7. In Grossman v. Bell Telephone Company of Pennsylvania, 67 Pa. PUC 714 (1988), the Commission found that the complainant had abused the regulatory process or his right to due process by frequently requesting continuances of hearings and then not appearing and by not honoring his part of a settlement.

8. In Manu v. The Bell Telephone Company of Pennsylvania, Docket No. F-09029141 (Order entered May 4, 1994), the Commission found that the findings of the abuse of administrative process in the Initial Decision On Remand were well documented where a constant pattern existed: A complaint is filed, hearing notices are mailed by certified mail and returned and marked as unclaimed, and requests for continuances are made.

9. The Commission has extended the identifying criteria of an abuse of process to include such factors as the number and the nature of complaints, the number of defaulted payments, the use of tactics to avoid payments and service terminations, and the history of payments. DiFilippo v. PECO Energy Company, Docket No. C-20027116 (Initial Decision dated August 8, 2002; Final Order dated October 3, 2002); *see also*, Seidenstricker v. Metropolitan Edison Company, Docket No. F-2008-2019388 (Opinion and Order entered July 28, 2009) and Thomas v. The Peoples Natural Gas Company, Docket No. 2009-2102194 (Opinion and Order dated June 17, 2010).

10. Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted. 52 Pa.Code § 5.63(b).

11. By law, a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982).

12. UGI has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. §1303. Neal v. Philadelphia Gas Works, Docket No. Z-00971874 (Order entered January 4, 2002); Angie's Bar v. Duquesne Light Co., 72 Pa. PUC 213 (1990).

13. All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. Bolt v. Duquesne Light Co., Docket No. Z-8712758 (Order entered April 8, 1988).

14. Even when accepting as true all well pleaded facts by Ms. Patora, and only using those facts admitted by her against her, the record shows that no facts are at issue, that the law is so clear that a trial would be a fruitless exercise and UGI is entitled to judgment as a matter of law.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion for judgment on the pleadings filed by UGI Penn Natural Gas, Inc. on August 16, 2018 at docket number C-2018-3003485 is hereby granted.

2. That the formal complaint filed by Jennifer Patora on July 13, 2018 against UGI Penn Natural Gas, Inc. at docket number C-2018-3003485 is hereby dismissed.

3. That Jennifer Patora is precluded from filing further complaints with the Pennsylvania Public Utility Commission, whether of an informal or formal nature, regarding the arrearages on her account for gas service rendered by UGI Penn Natural Gas, Inc. until all arrearages are paid in full and that the filing of any complaint pertaining to such arrearages shall be dismissed without further proceedings.

