

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Patora	:	
	:	
v.	:	C-2017-2627873
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

This decision dismisses a complaint for failure of the customer to appear at the telephonic hearing and prosecute the complaint and bars the customer from filing any further complaints against the utility until she pays the outstanding balance on her account.

HISTORY OF THE PROCEEDING

On October 5, 2017, Jennifer Patora (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania-American Water Company (Respondent). The complaint alleges that the Respondent is attempting to shut off the Complainant's water service. The complaint also asserts that the Complainant's bills are too high and that the Complainant's meter is not functioning properly. The complaint requests that the Commission direct the Respondent to test the Complainant's meter.

The Respondent filed an answer on October 25, 2017. The answer admits that the Respondent provides water service to the Complainant at the address shown on the complaint.

The answer also admits that the Respondent has issued a termination notice to the Complainant for nonpayment.

The answer denies that the Complainant's meter is inaccurate and denies that the Complainant's bills are incorrect. The answer asserts that the Respondent has scheduled a test of the Complainant's meter. The answer requests that the Commission dismiss the Complainant's complaint.

By notice dated May 17, 2018, the Commission scheduled this matter for a telephonic hearing on July 3, 2018, at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated May 18, 2018, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

On June 28, 2018, the Complainant emailed me to request a continuance. The email stated that there had been a death in the Complainant's family and that the Complainant would not be available for the July 3, 2018 hearing. The Respondent did not object to the Complainant's continuance request.

Since the Respondent did not oppose the continuance request, I granted the Complainant's request and by notice dated July 2, 2018, the Commission scheduled this matter for a telephonic hearing on July 20, 2018, at 10:00 a.m.

On July 7, 2018, the Complainant emailed me to request a continuance. The email stated that the Complainant would be on a flight returning to Pennsylvania at the time of the hearing and would not have access to a telephone.

Counsel for the Respondent responded by email on July 13, 2018. Counsel pointed out that the Complainant had not made a payment on her account since August 2017.

I granted the Complainant's request and by notice dated August 10, 2018, the Commission scheduled this matter for a telephonic hearing on August 27, 2018, at 10:00 a.m.

On August 22, 2018, the Complainant emailed me to request a continuance. The email stated that the Complainant had a medical appointment scheduled for August 27, 2018, the same day as the telephonic hearing. In response, I requested that the Complainant provide a note from her doctor confirming the time and date of her appointment.

On August 24, 2018, the Complainant emailed me a copy of a note from her doctor indicating that she had an appointment on August 27, 2018 at 10:15 a.m.

I granted the Complainant's request and by notice dated August 29, 2018, the Commission scheduled this matter for a telephonic hearing on November 14, 2018, at 10:00 a.m.

At 6:00 a.m. on November 14, 2018, the Complainant emailed me stating she was sick and had no voice. Attached to the email was a note from her doctor stating that he had seen the Complainant on November 13, 2018 and that she had a sinus infection and laryngitis. N.T. 4-5. The email requested a continuance of the November 14, 2018 hearing.

I responded by email that the hearing would not be continued. Before granting a further continuance, I wished to ascertain whether the Complainant was physically unable to participate in the telephonic hearing. N.T. 5.

I conducted a telephonic hearing on November 14, 2018, at 10:00 a.m. The Complainant failed to appear for that hearing. The Complainant failed to call the conference number set forth in the August 29, 2018 hearing notice at 10:00 a.m.

I waited approximately ten minutes to allow the Complainant time to call the conference number. Upon commencement of the hearing, Michael A. Gruin, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. N.T. 6-8.

Mr. Gruin also requested that I bar the Complainant from filing any further complaints against the Respondent until she had paid her outstanding balance. N.T. 6-8. Mr.

Gruin indicated that the Complainant had made only one payment on her account since August 2017 and had broken at least six appointments the Respondent had made with her to test her meter. N.T. 7-8.

Mr. Gruin also referenced other complaints filed by the Complainant against other utilities where she had failed to appear at a hearing after receiving numerous continuances. N.T. 6-7. I advised the Respondent that I would take its motion under advisement. N.T. 8.

The record closed on November 27, 2018, the date the transcript was filed with the Secretary's Bureau. This decision grants the Respondent's motion to dismiss the complaint and bars the Respondent from filing any further complaints against the Respondent until she pays the outstanding balance on her account.

FINDINGS OF FACT

1. The Complainant in this case is Jennifer Potora.
2. The Respondent in this case is Pennsylvania-American Water Company.
3. On October 5, 2017, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on October 25, 2017.
5. By notice dated August 29, 2018, the Commission scheduled this matter for a telephonic hearing on November 14, 2018, at 10:00 a.m.
6. The Commission sent notice of the telephonic hearing in this case to the Complainant by regular first-class mail to the address stated on the complaint.
7. The Commission's hearing notice was never returned to the sender.

8. The Complainant failed to appear at the November 14, 2018 telephonic hearing.

9 The Complainant did not settle or withdraw the matter.

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). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to the Complainant on August 29, 2018, by regular first-class mail to the Complainant's address. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for OALJ in Harrisburg.

In addition, I issued a prehearing order dated May 18, 2018, which, inter alia, directed the parties to call the conference number shown on the hearing notice at the date and time of the hearing and warned that if a party failed to call the conference number, the hearing would proceed without that party. This order, which was also mailed to the Complainant at the address stated on the complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); Judge v. Celina Mutual Insurance Co., 449 A.2d 658 (Pa.Super. 1982).

The Complainant did not appear for the scheduled hearing because she did not call the conference number listed on the telephonic hearing notice. On the morning of the hearing, the Complainant requested a continuance of the hearing. Given the lateness of the Complainant's request, I refused to grant the request so that I could ascertain whether the

Complainant was physically unable to participate in the telephonic hearing. Under these circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this complaint, the Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. By failing to appear and proffer any evidence to support her complaint, the Complainant has failed to meet this burden. The Complainant's failure to appear has caused the Commission and the Respondent to waste resources. Under these circumstances, the complaint should be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); Anderson v. PECO Energy Co., Docket No. F-2017-2614241 (Opinion and Order entered July 18, 2018); Strydio v. PPL Electric Utilities Corporation, Docket No. C-2017-2633043 (Opinion and Order entered July 18, 2018); 52 Pa.Code § 5.245.

Turning to the Respondent's request to bar the Complainant from filing any further complaints against the Respondent, the Commission has determined that using its processes to avoid termination and avoid paying for utility service is an abuse of the Commission's administrative processes and will not be countenanced. The Commission has previously barred consumer complainants from filing further complaints with the Commission in order to protect the interests of other ratepayers. Seidenstricker v. Metropolitan Edison Co., Docket No. F-2008-2019388 (Order entered July 28, 2009), Thomas v. Peoples Natural Gas Co., Docket No. C-2009-2102194 (Order entered June 17, 2010), Mazza v. PECO Energy Co., Docket No. C-2012-2318472 (Order entered April 23, 2014).

Here the Complainant has requested and received three continuances. When her fourth last minute request for a continuance was denied, she failed to appear at the hearing. Her

conduct in this proceeding is similar to her conduct in other complaint proceedings concerning other utilities.

In Potora v. UGI Penn Natural Gas, Inc., Docket No. C-2016-2574107 (Final Order entered July 7, 2017); Potora v. UGI Utilities, Inc., Docket No. C-2016-2575793 (Final Order entered May 14, 2018) and Potora v. UGI Penn Natural Gas, Inc., Docket No. C-2018-3000028 (Final Order entered August 14, 2018), the Complainant failed to appear at hearings after receiving numerous continuances. This conduct indicates that the Complainant is simply filing complaints with the Commission to prevent or delay her utilities from terminating her service for non-payment.

The conclusion that the Complainant is filing complaints with the Commission to prevent or delay her utilities from terminating her service for non-payment is supported by the circumstances in this case. Counsel for the Respondent represented at the November 14, 2018 hearing that the Complainant had only made one payment on her account since August 2017. Furthermore, counsel for the Respondent represented that the Complainant had cancelled at least six appointments she had made with the Respondent to allow the Respondent to test her meter. The Complainant's conduct concerning the meter test supports the conclusion that the Complainant is acting in bad faith and using the Commission's processes for improper purposes.

Recently, in Potora v. UGI Penn Natural Gas, Inc., Docket No. C-2018-3003485 (Initial Decision served September 27, 2018), Deputy Chief Administrative Law Judge (DCALJ) Joel H. Cheskis granted the utility's motion for judgment on the pleadings and dismissed the Complainant's complaint because the Complainant's complaint constituted an abuse of the Commission's process. In addition to dismissing the Complainant's complaint, DCALJ Cheskis precluded the Complainant from filing further complaints against the utility until she paid her outstanding balance.

In dismissing the complaint and precluding the Complainant from filing further complaints against the utility, DCALJ Cheskis indicated that the Complainant's conduct in the prior complaints cited above constituted abuse of the Commission's process. In reaching this

conclusion, DCALJ Cheskis cited several previous Commission decisions where the Commission had found that similar conduct constituted abuse of administrative process. In Grossman v. Bell Telephone Company of Pennsylvania, 67 Pa. PUC 714 (1988) (Grossman), 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 Manu v. Bell Telephone Company of Pennsylvania, Docket No. F-09029141 (Opinion and 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 (Docket Nos. C-00935014, C-00934970, C-00913621 and C-00924554) and precluded the complainant from filing further complaints, formal or informal, until all the arrearages were paid in full. The Commission found that the complainant had engaged in a pattern where a complaint was filed, hearing notices were mailed by certified mail and returned and marked as unclaimed, and requests for continuances were 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 (Final Order entered 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 her mother and sister, and by invoking the provisions of 66 Pa. C.S. §§ 1521-1533 on 18 occasions); and Thomas v. 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)).

DCALJ Cheskis' analysis and conclusions in the Potora case at Docket No. C-2018-3003485 are applicable to this case. I will therefore adopt DCALJ Cheskis' analysis and conclusions and apply it to this case. The Complainant will be prohibited from filing any further complaints against the Respondent until she has paid her current outstanding balance in full.

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 due process rights of the Complainant have been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear and proffer any evidence to support her complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

4. Using Commission processes to avoid termination and avoid paying for utility service is an abuse of the Commission's administrative processes. Seidenstricker v. Metropolitan Edison Co., Docket No. F-2008-2019388 (Order entered July 28, 2009), Thomas v Peoples Natural Gas Co., Docket No. C-2009-2102194 (Order entered June 17, 2010), Mazza v. PECO Energy Co., Docket No. C-2012-2318472 (Order entered April 23, 2014).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of Pennsylvania-American Water Company to dismiss the complaint filed by Jennifer Potora at Docket No. C-2017-2627873 is granted.
2. That the complaint of Jennifer Potora against Pennsylvania-American Water Company at Docket No. C-2017-2627873 is dismissed with prejudice for failure to appear and prosecute.
3. That Jennifer Potora is precluded from filing further complaints with the Pennsylvania Public Utility Commission, either informal or formal, concerning the arrearages on her account for water service rendered by Pennsylvania-American Water Company until all arrearages are paid in full.
4. That the Pennsylvania Public Utility Commission's Secretary's Bureau and Bureau of Consumer Services shall, without further proceedings, reject or dismiss any formal or informal complaint filed by Jennifer Potora concerning the arrearages on her account for water service rendered by Pennsylvania-American Water Company until all arrearages are paid in full.
5. That the docket at Docket No. C-2017-2627873 is marked closed.

Date: November 29, 2018

/s/
David A. Salapa
Administrative Law Judge