

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robin M. Woods	:	
	:	
v.	:	C-2019-3009165
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

This initial decision dismisses the complaint with prejudice for failure to appear and prosecute. As the customer has abused the Commission’s administrative process by filing nine informal and two formal complaints with the Commission within a four-year period to avoid termination and unnecessarily prolong proceedings, the customer will be barred from filing further informal or formal complaints until she pays her arrearage amount of \$7,900 due to the electric distribution company.

HISTORY OF THE PROCEEDING

On April 1, 2019, Robin M. Woods (Complainant or Ms. Woods) filed a complaint seeking a credit on her electric account of \$7,400.80. She averred that she does not need a payment plan as her bills average \$85 per month. Complaint at 3. The Complaint was served upon Duquesne Light Company (Respondent or Duquesne Light) on April 15, 2019.

On May 3, 2019, Respondent filed an Answer and New Matter denying the material averments in the Complaint and averring that Complainant filed nine complaints with the Commission within a two-year period and is abusing the Commission’s administrative

process. Complainant did not file a response to Respondent's New Matter. On May 29, 2019, a Notice of Hearing was issued scheduling a call-in telephonic hearing on July 22, 2019. A Prehearing Order was issued on June 3, 2019. The Prehearing Order advised the parties with respect to Commission procedure, requests for continuances, required numbers and marking of proposed exhibits, the need for attorney representation, subpoena procedures, discovery, the responsibility of providing a telephone number for the Hearing, and the Commission's policy favoring settlement. The Prehearing Order reminded the parties of the date and time of the scheduled Hearing as well as the phone number to call into the hearing.

On June 17, 2019, Duquesne Light filed a Motion for Judgment on the Pleadings. Complainant did not file a response. On July 11, 2019, Respondent served its pre-marked exhibits upon the presiding officer and Complainant. On July 17, 2019, an Order Denying the Motion for Judgment On the Pleadings was issued. The hearing was held as scheduled on July 22, 2019.

Appearing for Duquesne Light was Emily M. Farah, Esquire, with one witness, Roxanne Morris. An attempt to contact the complainant at the telephone number provided to me by Complainant at 10:00 a.m. resulted in reaching a recorded message. I left a message that I would wait until 10:15 a.m. for her to call into the toll-free conference number. Complainant failed to call into the conference by 10:15 a.m. At 10:16 a.m., Respondent's counsel made an oral motion to dismiss complaint with prejudice and requested Complainant be barred from filing complaints due to abuse of process. I told counsel that I would address the motion to dismiss through a written initial decision regarding the case. The record was closed on July 22, 2019. The Motion to Dismiss is ripe for a decision.

FINDINGS OF FACT

1. Complainant is Robin M. Woods.
2. Respondent is Duquesne Light Company, an electric distribution company operating in the Commonwealth of Pennsylvania.

3. By Telephonic Hearing Notice dated May 29, 2019, a Call-In Telephonic Hearing was scheduled for 10:00 a.m. on July 22, 2019.

4. A prehearing order had been issued on June 3, 2019, in this case.

5. The Telephone Hearing Notice and the Prehearing Order were both mailed to the Complainant at 557 Idlewood Road, Pittsburgh, PA 15235.

6. The Telephone Hearing Notice and Prehearing Order were not returned by the United States Postal Service.

7. The address at 557 Idlewood Road, Pittsburgh, PA 15235 is the same address Complainant listed as her mailing address on the Complaint form.

8. The Initial Telephonic Hearing convened at 10:00 a.m., as scheduled, on July 22, 2019.

9. Respondent appeared at the scheduled time represented by legal counsel with one potential witness and was prepared to proceed.

10. When called at her home number provided on the complaint, the Complainant's answering machine responded.

11. The presiding officer waited until 10:15 a.m. for the Complainant to appear at the hearing.

12. Respondent's counsel made a motion to dismiss the Complaint with prejudice for failure to prosecute and requested Complainant be barred from filing future complaints because Complainant had abused the Commission's administrative process.

13. Complainant did not appear for the scheduled Initial Telephonic Hearing.

14. Since 2014, Complainant filed eight informal complaints and one formal complaint prior to filing the instant complaint.

15. Complainant has had nine payment arrangements (PARs) since March 25, 2015. New Matter Exhibit B.

16. Complainant has a poor payment history and frequently filed informal complaints when she received notices of termination. New Matter Exhibits A, B and C.

17. Complainant was advised of the date and time of the scheduled Initial Telephonic Hearing by the Telephone Hearing Notice, and the Prehearing Order.

18. Complainant was advised of the procedures for requesting a continuance of a scheduled hearing by the Prehearing Order.

19. Complainant was advised that “[y]ou may lose this case if you do not take part in the hearing and present evidence on the issues raised” by the Prehearing Order.

20. Complainant neither settled nor withdrew the Complaint nor asked for a continuance prior to the scheduled Telephonic Hearing on July 22, 2019.

DISCUSSION

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984). As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public utility is responsible or accountable for the problem described in the

Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 134 Pa.Cmwlth. 218, 221-222, 578 A.2d 600, 602 (1990), *app. denied*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 67 Pa.Cmwlth. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 154 Pa.Cmwlth. 21, 623 A.2d 6 (1993), 2 Pa.C.S. § 704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd.*, 531 Pa. 287, 612 A.2d 434 (1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

By not appearing for the scheduled Telephone Hearing, Complainant failed to bear the burden of proof. Consequently, the Complaint must be dismissed. Due to the waste of both the Commission's and the respondent's time, money, and energy occasioned by Complainant's failure to appear at a hearing of which Complainant had notice¹, the dismissal will be with prejudice. *Martin W. Jefferson v. UGI Utilities, Inc.*, Docket Number Z-00269892, Opinion and Order adopted October 26, 1995, entered December 26, 1995; *Maurice Jones v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket Number C-20054885, Opinion and Order adopted January 12, 2006, entered February 14, 2006.

¹ Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Auth. v. Allegheny Cty. Bd. of Property Assessment Appeals and Review*, 165 Pa.Cmwlth. 671, 645 A.2d 944 (1994), *app. denied*, 539 Pa. 696, 653 A.2d 1234 (1994); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *John D. Stewart, Jr. v. Columbia Gas of Pennsylvania, Inc.*, Docket Number C-00957041, (Opinion and Order entered May 10, 1996). Mere assertion that the document was not received, without corroboration, is insufficient to overcome the presumption of receipt. *Donegal Mutual Ins. Co. v. Insurance Dep't*, 719 A.2d 825 (Pa.Cmwlth. 1998); *Geise v. Nationwide Life and Annuity Co.*, 939 A.2d 409 (Pa.Super. 2007).

Furthermore, however, the Respondent has argued that Complainant is abusing the Commission's process to avoid termination. The Commission has found an abuse of administrative due process in other cases. In *Grossman v. Bell Telephone Company of Pennsylvania*, 67 Pa. PUC 714, 717 (1988), the Commission stated that abuse of administrative process is an exploitation of due process. The *Grossman* case involved a *pro se* litigant who abused the regulatory practice by frequently requesting continuances of hearings without showing good cause, and then not appearing for his scheduled hearings and not honoring a settlement with the utility. *Id.* Abuse of administrative process cases often involve complainants filing consecutive pleadings, complaints and motions for continuance of hearings in order to avoid payment and termination of services. In *Jurena v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00003736 (Final Order entered December 22, 2000), the Complainant sought to enjoin Bell Atlantic-Pennsylvania, Inc. (Bell) from violating her right to privacy and from double-billing her account. Bell filed an answer to the complaint and a motion to dismiss because the matter had previously been litigated in Bell's favor. The Administrative Law Judge (ALJ) granted Bell's motion to dismiss and recommended the Commission reject future complaints filed by Complainant relating to the matters addressed in the previous proceeding to prevent the Complainant from repeatedly filing the same complaint to avoid payment and termination of services.

In *Manu v. The Bell Telephone Company of Pennsylvania*, Docket No. F-09029141 (Final Order entered May 9, 1994), the Complainants filed several formal and informal complaints regarding utility service. The ALJ in that case determined that a scheme of an apparently ongoing nature was operating from Complainants' address for the purpose of obtaining utility services without payment. A pattern existed wherein a complaint was filed, hearing notices were mailed by certified mail and returned marked as unclaimed, and requests for continuances were made. The Commission found an abuse of process had occurred and it precluded Complainants from filing further complaints, formal or informal, until their arrearages were paid in full.

There is ample Commission precedent to support the preclusion of a party from filing further informal or formal complaints when the party has been an abuser of the system.

See, *Seidenstricker v. Metropolitan Edison Co.*, Docket No. F-2008-2019388 (Final Order entered July 28, 2009) (*Seidenstricker*). In *Seidenstricker*, the Commission precluded the filing of further complaints pertaining to the same account until the arrearage was paid in full after finding that Complainant had abused the system by using the Commission's provisions to prevent termination of service while receiving utility service and accruing a large outstanding amount. See also, *Thomas v. The Peoples Natural Gas Co.* Docket No. C-2009-2102194 (Opinion and Order entered June 17, 2010); *Argento's Pizza v. Philadelphia Gas Works*, Docket No. C-2009-2138055 (Final Order entered October 1, 2010. The factors to be considered as put forth in the *Argento's Pizza* case include the following: 1) the number and nature of complaints; 2) the number of defaulted payments; 3) the use of tactics to avoid payments and service terminations that became due; and 4) the history of payments. Similarly, in *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered April 23, 2014), the Commission ultimately found an abuse of process and precluded the filing of future complaints until the arrearage on the account was satisfied.

In the instant case, since 2014, Complainant has filed nine informal complaints² and two formal complaints. The formal complaints were filed at Docket No. F-2018-3003831 on August 3, 2018, which resulted in a certificate of satisfaction filed on October 23, 2018, and the present complaint at Docket No. C-2019-3009165 filed on April 1, 2019, involving an account balance of \$7,971.06, respectively. Eight informal complaints have been filed within the past two years. Complainant has had nine defaulted payment arrangements since 2015. These complaints all relate, in some way or another, to a steadily growing outstanding arrearage currently over \$7,900. These complaints request a Commission-ordered PAR and/or challenge termination notices. New Matter Exhibits A, B and C; *See*, 52 Pa. Code § 5.63(b) (providing that the 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).

Complainant is abusing the administrative due process to avoid payment and to delay the termination of her service due to non-payment. Complainant has shown a pattern of

² BCS Case Nos. 3268386, 7/28/14; 3409253, 1/12/16; 3485403, 10/17/16; 3527607, 5/17/17; 3570550, 10/16/17; 3589643, 2/22/18; 3624130, 6/14/18; 3625685, 6/19/18; and 3645282, 8/23/18.

defaulting on Commission-ordered and Company-given PARs, has a poor payment history, and has essentially refiled the same complaint several times in an attempt to receive a favorable outcome and avoid termination. Complainant fails to make complete and timely payment for the utility services she receives. As a result, the Company has been unable to obtain payment of such services due to applicable laws requiring it to provide a stay of termination while a dispute/complaint is pending before the Commission. As a result, Complainant's account balance for the Service Location has amassed a balance in excess of \$7,900.00.

Customers have an obligation to pay for utility service. Otherwise, customer's unpaid bills are included in the utility's uncollectibles expense and ultimately paid by the remaining customers. Cf., *Bolt v. Duquesne Light Co.*, 66 Pa. PUC 463 (1988), *Thomas P. O'Toole v. The Bell Telephone Co. of Pennsylvania*, Docket No. C-923964 (Final Order entered August 20, 1992). Payment arrangements are designed to assist the low-income customer in making payments; however, there is no right to more than one Commission-ordered payment arrangement unless a change in circumstances warrants a reduction. See, 66 Pa.C.S. § 1405(d). Payment arrangements are contractual arrangements between the customer and company and should be honored by the customer, not used to avoid payment altogether. The record in this case highlights a disturbing trend in Complainant's use of the Commission's informal and formal proceedings to avoid paying her electric bills while evading the Company's termination procedures.

To refrain from expending additional Commission resources, the Complaint will be dismissed for failure to appear and Ms. Woods will be barred from re-filing further informal and formal complaints pertaining to her electric account until such time as the outstanding balance of \$7,971.06 on her account is paid in full.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon the complainant.

3. Notice properly mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Auth. v. Allegheny Cty. Bd. of Property Assessment Appeals and Review*, 165 Pa.Cmwlth. 671, 645 A.2d 944 (1994), *app. denied*, 539 Pa. 696, 653 A.2d 1234 (1994); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *John D. Stewart, Jr. v. Columbia Gas of Pennsylvania, Inc.*, Docket Number C-00957041 (Opinion and Order entered May 10, 1996).

4. By failing to appear at the scheduled telephonic hearing, complainant has failed to satisfy the burden of proof. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

5. Failure by a complainant to appear for a scheduled hearing of which the complainant had notice warrants dismissal of the Complaint with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket Number Z-00269892 (Opinion and Order entered December 26, 1995); *Jones v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket Number C-20054885 (Opinion and Order entered February 14, 2006).

6. There is ample Commission precedent to support the preclusion of a party from filing further informal or formal complaints when the party has been an abuser of the system. *Seidenstricker v. Metropolitan Edison Co.*, Docket No. F-2008-2019388 (Final Order entered July 28, 2009). See also, *Thomas v. The Peoples Natural Gas Co.* Docket No. C-2009-2102194, (Opinion and Order entered June 17, 2010; *Argento's Pizza v. Philadelphia Gas Works*, Docket Nos. C-2009-2138055 and C-2010-2167822 (Final Order entered October 1, 2010).

7. Complainant has abused the administrative due process by filing multiple similar complaints in an attempt to avoid termination and payment for services.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Duquesne Light Company to dismiss the complaint of Robin M. Woods with prejudice at Docket No. C-2019-3009165 and bar complainant from filing further complaints concerning her account with Duquesne Light Company with the Pennsylvania Public Utility Commission is granted.

1. That the Complaint of Robin M. Woods against Duquesne Light Company at Docket No. C-2019-3009165 is dismissed, with prejudice.

2. That Robin M. Woods be, and is hereby, precluded from filing further complaints with the Pennsylvania Public Utility Commission, whether of an informal or formal nature, regarding the arrearages on Account Number 2183310000 for electric service rendered by Duquesne Light Company regarding the service address of 557 Idlewood Road, Pittsburgh, PA 15235, until such time as the current outstanding arrearage of \$7,971.06 is 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.

3. That Commission staff (including but not limited to the Bureau of Consumer Services and the Secretary's Bureau) shall reject any formal or informal complaints that Robin Woods, or any member of her family, or any other person, may attempt to file with

