

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Heather Miller	:	
	:	
v.	:	C-2019-3009073
	:	
Pennsylvania Electric Company	:	

**INITIAL DECISION**

Before  
Gail M. Chiodo  
Special Agent

**INTRODUCTION**

This decision grants a motion to dismiss the complaint of an electric service customer for the failure of the Complainant to appear for the hearing and prosecute the complaint. This decision denies as moot a motion to dismiss the complaint for abuse of process. The decision grants the request to direct that the Commission reject or dismiss any formal or informal complaint filed by the Complainant without further proceedings concerning the arrearage on her account until all arrearages are paid in full.

**HISTORY OF THE PROCEEDING**

On April 10, 2019, Heather Miller (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Penelec or Respondent) averring that Penelec is threatening to shut off her service or already has shut off her service. As relief, the Complainant seeks a payment arrangement.

On April 30, 2019, Respondent filed an answer in which it admitted that it had provided notice of intent to terminate Complainant's service for a past due balance but that it was

holding termination in abeyance pending resolution of the complaint. Respondent also averred that Complainant is not entitled to a payment arrangement because of her poor payment history including that the Complainant has made one successful payment in the past twenty-four months and that her outstanding balance was \$17,700.51. Respondent also averred that Complainant has broken a prior Commission-issued payment arrangement and two company-issued payment arrangements and failed to appear for a hearing scheduled in a prior formal complaint docketed at C-2018-3002097. Respondent requested that the complaint be dismissed.

On May 8, 2019, a Call-In Telephonic Hearing Notice was served on the parties scheduling an initial telephonic hearing for June 20, 2019 and the case was assigned to me pursuant to 52 Pa. Code § 56.174.<sup>1</sup> Of note, the Hearing Notice stated the following: “*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in original).

On June 7, 2019, a Prehearing Order was served on the parties which reminded the parties of the date and time of the hearing and addressed, *inter alia*, the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them. Furthermore, the Prehearing Order stated that Complainant's case would be dismissed if she did not participate in the hearing and present evidence on the issues raised.

Both the Hearing Notice and Prehearing Order were sent to the Complainant at the address provided on her complaint. Neither document was returned as undeliverable.

On June 20, 2019, the hearing convened as scheduled. John L. Munsch, Esquire, appeared on behalf of Respondent. Complainant did not appear at the hearing. In abundance of caution, I called the Complainant at the cell phone number provided on her complaint; however, no one answered the phone and I was unable to leave a voicemail. After waiting for approximately fifteen minutes for Complainant to appear, the hearing proceeded in Complainant's absence.

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<sup>1</sup> 52 Pa. Code § 56.174 provides for review by a special agent of any case in which the issue is solely the ability to pay.

Attorney Munsch presented the testimony of Laurie Parker, Advanced Customer Services Compliance Specialist. Ms. Parker sponsored the following eight exhibits, which were all admitted into the record:<sup>2</sup>

- Exhibit No. 1 – Updated Account Statement
- Exhibit No. 2 – Payment Arrangement History
- Exhibit No. 4 – BCS Case No. 3594420
- Exhibit No. 5 – BCS Case No. 3559191
- Exhibit No. 6 – Settlement Letter in Formal Complaint No. C-2016-2552800
- Exhibit No. 7 – Contact History
- Exhibit No. 8 – Chronicles Summary
- Exhibit No. 9 – Termination History

Respondent also requested that judicial notice be taken of a formal complaint filed by the Complainant against Respondent at docket number C-2018-3002097 in which the Complainant requested a payment arrangement. By decision dated August 1, 2018, Ms. Miller's complainant in that case was dismissed for the failure of Ms. Miller to appear for a hearing scheduled for July 27, 2018; a final Order was entered September 7, 2018. Judicial notice was taken of this Final Order.

At the conclusion of the hearing, counsel for Respondent moved to dismiss the complaint with prejudice for the failure of Complainant to appear and prosecute her complaint. In the alternative, Respondent moved to dismiss the complaint with prejudice for Complainant's abuse of the administrative process. Respondent also requested that the Commission issue an order directing that the Commission's Secretary's Bureau and the Bureau of Consumer Services reject or dismiss any formal or informal complaint filed by Complainant without further proceedings concerning the arrearage on her account until Complainant's arrearage is at least below \$10,000. Respondent argued that the Complainant is abusing the administrative process to avoid collection activity, thereby running up her outstanding balance to \$18,096.04 at the time of the hearing. I took these motions under advisement.

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<sup>2</sup> Exhibit No. 3 was withdrawn by Respondent.

The record closed on June 20, 2019 following the close of the hearing.<sup>3</sup> As of the date of this decision, neither the Office of Administrative Law Judge (OALJ) nor the undersigned has received any further communication from Ms. Miller explaining her absence from the hearing.

For the reasons discussed below, this decision grants the Respondent's motion to dismiss the complaint for failure of the Complainant to appear and prosecute her complaint, denies as moot Respondent's motion to dismiss the complaint for abuse of process, and grants Respondent's request to direct that the Commission reject or dismiss any formal or informal complaint filed by the Complainant without further proceedings concerning the arrearages on her account until the complainant's arrearages are paid in full.

#### FINDINGS OF FACT

1. Complainant is Heather Miller, who resides at 40 Miller Lane, Osceola Mills, Pennsylvania (service address).

2. Respondent is Pennsylvania Electric Company, which provides electric service to Complainant at the service address.

3. On May 8, 2019, a Call-In Telephonic Hearing Notice was served on the parties scheduling an initial telephonic hearing for June 20, 2019 at 10:00 a.m.

4. The May 8, 2019 Hearing Notice stated the following: "*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*" (emphasis in original).

5. On June 7, 2019, a Prehearing Order was served on the parties which reminded the parties of the date and time of the hearing and addressed, *inter alia*, the method by which a party could request a change of the scheduled hearing date if the date was not

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<sup>3</sup> Pursuant to 52 Pa. Code § 56.174(3), the hearing was tape recorded. No court reporter was present.

convenient for them and stated that Complainant's case would be dismissed if she did not participate in the hearing and present evidence on the issues raised.

6. Both the Hearing Notice and Prehearing Order were served on Complainant by first-class mail to the address provided in the complaint.

7. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission as being undeliverable.

8. The Complainant did not appear and participate in the telephonic hearing when it convened on June 20, 2019.

9. In the past 24 months preceding the hearing, Complainant made one payment in the amount of \$252.00 on September 28, 2018. Exhibit No 1.

10. In the past 24 months preceding the hearing, the Complainant made two payments by check which were both returned for nonsufficient funds; one made on August 10, 2018 for \$252.00 and one on August 25, 2018 for \$252.00. Exhibit No. 1.

11. On April 9, 2008, Complainant entered into Respondent's Pennsylvania Customer Assistance Program (PCAP) and was removed from PCAP on May 13, 2013 for the failure to re-verify. Exhibit No. 2.

12. On August 19, 2013, the Company entered into a payment agreement with Complainant for an arrearage of \$2,448.83; the Complainant defaulted on this agreement. Exhibit No 2.

13. On May 1, 2015, the Company entered into a payment agreement with Complainant for an arrearage of \$7,732.99; the Complainant defaulted on this agreement. Exhibit No 2.

14. On October 24, 2017, the Commission's Bureau of Consumer Services in BCS Case No. 3559191 granted Complainant a level one<sup>4</sup> payment arrangement for a balance of \$12,367.89; the Complainant defaulted on this agreement. Exhibit No. 2.

15. On March 26, 2018, the Complainant filed an informal complaint with BCS seeking a payment arrangement in BCS No. 3594420; this complaint was dismissed on May 10, 2018. Exhibit No. 4.

16. On May 22, 2018, Complainant filed a formal complaint docketed at C-2018-3002097, which was dismissed for the failure of Complainant to appear at the hearing. *Heather Miller v. Pennsylvania Electric Company*, No. C-2018-3002097 (Final Order entered September 7, 2018).

17. Exhibit No 9 is a Termination History which shows that Respondent issued Ms. Miller ten 10-day termination notices from May 3, 2017 to April 1, 2019. (Exhibit No. 9).

18. From May 3, 2017 to April 1, 2019, Complainant filed three informal complaints and two formal complaints. (Exhibit No. 9).

19. At the time of the hearing, Complainant's account balance was \$18,096.04. (Exhibit No. 1).

## DISCUSSION

### Dismissal of complaint for failure to appear

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

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<sup>4</sup> A level one customer is defined as a customer with a gross monthly household income level not exceeding 150% of the Federal poverty level and is provided with a repayment period of not more than 60 months. 66 Pa.C.S. § 1405(b)(1).

(Pa.Cmwlth. 1984). This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Id.*

The record shows that Complainant was provided notice and the opportunity to be heard. First, on May 8, 2019, Complainant was served a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. Second, on June 7, 2019, Complainant was served a Prehearing Order which reminded the parties of the date and time of the hearing and addressed, *inter alia*, how to request a continuance prior to the hearing, and that failure to appear for the hearing and present evidence on the issues raised in the complaint would result in dismissal of the complaint. Both documents were served separately and by regular, first-class mail to the address provided on the complaint. Neither document was returned as being undeliverable. Thus, it must be presumed that these documents were 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).

Both the Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f) and 52 Pa.Code § 5.245(a) respectively. However, these provisions in the Code and in the regulations do not apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination. 66 Pa.C.S. § 332(f) and 52 Pa.Code § 5.245(a).

The Complainant failed to appear for the hearing despite being given two written notices. Further, once the hearing began, the undersigned waited an additional fifteen minutes to allow Complainant time to appear. To date, no communication has been received by me or the OALJ by, or on behalf of, Complainant regarding whether Complainant's absence was unavoidable. Consequently, Complainant waived the opportunity to participate in a hearing on the matters raised in the complaint and Complainant's absence was not unavoidable.

As the proponent of any request for relief, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). By failing to participate and proffer any evidence to support the complaint, the Complainant has failed to meet this burden. Thus, it is appropriate to dismiss the Complaint with prejudice. *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered March 14, 2019), *citing, inter alia, Jefferson v. UGI Utilities*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995). Accordingly, the merits of the Complaint will not be addressed and Respondent's motion to dismiss with prejudice for failure to appear will be granted.

#### Dismissal of complaint for abuse of process

In the alternative, Respondent moved to dismiss the complaint with prejudice for Complainant's abuse of the administrative process. This motion is denied as moot in light of the above determination which grants Respondent's motion to dismiss for failure to appear and prosecute the complaint.

#### Abuse of process allegation

Finally, Respondent also requests that the Commission issue an order directing that the Commission's Secretary's Bureau and the Bureau of Consumer Services reject or dismiss any formal or informal complaint filed by Complainant without further proceedings concerning the arrearage on her account until Complainant's arrearage is at least below \$10,000. Respondent argued that the Complainant is abusing the administrative process to avoid collection activity, thereby running up her outstanding balance to \$18,096.04 at the time of the hearing.

In support of its position, Respondent points to all the following: that Complainant has a large balance of over \$18,000; that over the past two years, Complainant has made only one payment in the amount of \$252.00; that over the past two years two checks were returned for non-sufficient funds; that Penelec has issued ten 10-day shut-off notices and on each occasion the complainant has called to receive her dispute rights, filed a complaint or entered a payment agreement but did not keep it; that Complainant failed to appear for a hearing last year

on July 27, 2018 in which she sought a payment arrangement and the complaint was dismissed by Final Order entered on September 27, 2018; and that Complainant failed to appear for the hearing scheduled in the instant complaint.

Using the Commission's 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 in order to protect the interests of other ratepayers. *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered April 23, 2014).

Consequently, the Commission has found an abuse of its processes where a complainant frequently requests continuances of hearings and then does not appear. *See, e.g., Grossman v. Bell Telephone Company of Pa.*, 67 Pa PUC 714 (1988) and cases cited therein. The Commission may also consider such factors as the number and nature of the 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 Co.*, Docket No. C-20027116 (Final Order entered October 3, 2002); *Seidenstricker v. Metropolitan Edison Co.*, Docket No. F-2008-2019388 (Opinion and Order entered July 28, 2009); and *Thomas v. Peoples Natural Gas Co.*, Docket No. C-2009-2102194 (Opinion and Order entered June 17, 2010).

Respondent is correct that a consumer complainant's pattern of activities to simply avoid or delay termination of a utility service can rise to the level of such abuse. Of particular concern in the instant case is Ms. Miller's large outstanding balance of \$18,096.04 at the time of the hearing, her poor payment history of only one payment of \$252 over the past two years, her failure to honor the terms of two prior Company agreements and one Commission-issued agreement; and her failure to appear for a prior hearing in 2018 on a complaint in which she sought a new payment arrangement. The undersigned agrees with the Respondent's attorney that this customer should be barred from bringing any further informal or formal complaints regarding the arrearage until the arrearage is at least \$10,000 but finds that this preclusion should be until the Complainant's arrearages are paid in full. *Compare, Vaughan v. Metropolitan Edison Company*, Docket No. C-2013-23815282 (Final Order entered May 28, 2014) (precluding

the customers from filing any additional complaints related to the customers' \$16,438.03 arrearage, poor payment history, and multiple broken payment arrangements until the arrearages are paid in full).

By law, a public utility is entitled to receive payment for the service it provides and the Complainant must pay the Respondent for the service he consumes. *Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (1982); *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). The Respondent has the right to bill and receive payment for the utility service actually supplied. *Neal v. Philadelphia Gas Works*, Docket No. Z-00971874 (Final Order entered January 4, 2002). 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-8721758 (Opinion and Order entered April 8, 1988).

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The Commission is required to provide due process to the parties appearing before them; this due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).
3. After being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f) and 52 Pa.Code § 5.245(a).
4. If the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitted the reopening or further examination, the presiding officer may find that a party did

not waive the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f) and 52 Pa.Code § 5.245(a).

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

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

7. By failing to participate in the hearing and proffer any evidence to support the complaint, the Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

8. Using the Commission's processes to avoid termination and avoid paying for utility service is an abuse of the Commission's processes and will not be countenanced; and the Commission has previously barred consumer complainants from filing further complaints in order to protect the interests of other ratepayers. *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered April 23, 2014).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Pennsylvania Electric Company to dismiss with prejudice the formal Complaint of Heather Miller at Docket No. C-2019-3009073 for the failure to appear and prosecute her complaint is granted.

