

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Heather Nestorick	:	
	:	
v.	:	C-2019-3008476
	:	
UGI Utilities Incorporated – Gas Division	:	

INITIAL DECISION

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

This Decision dismisses a Complaint due the Complainant’s continuous abuse of the administrative process in her multiple and repeated filings with the Pennsylvania Public Utility Commission (Commission). The evidence in this case demonstrates that the Complainant repeatedly and continuously files new Complaints with the Commission as a means of postponing shutoffs of her utility service. The evidence in this case further demonstrates that the Complainant never attends or participates in any of her scheduled hearings before the Commission. Finally, the evidence in this case demonstrates that the Complainant has never made a single payment on her utility bill and has compiled an enormous account balance as a result. Accordingly, the Complaint is dismissed with prejudice and the Complainant will be barred from filing any further Complaints with the Commission until she has paid her utility account balance in full.

HISTORY OF THE PROCEEDING

On March 13, 2019, Heather Nestorick (Ms. Nestorick or Complainant) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against UGI Utilities Incorporated – Gas Division (UGI Gas), at Docket Number C-2019-3008476. In the Complaint, Ms. Nestorick asserted that UGI Gas was threatening to shut off her utility service and that she would like a payment arrangement. The Commission electronically served the Complaint on UGI Gas on March 13, 2019.¹

On April 1, 2019, UGI Gas filed an Answer to the Complaint. In its Answer, UGI Gas asserted that Ms. Nestorick had defaulted on at least five prior payment arrangements and should therefore be required to make payment in full on her account in order to avoid termination of service. UGI Gas also asserted that Ms. Nestorick was continuing her practice of filing multiple complaints with the Commission in order to avoid termination of service. UGI Gas concluded its Answer by requesting that the Commission dismiss the Complaint and bar Ms. Nestorick from filing any further Complaints until she paid her account balance in full.

By Telephonic Hearing Notice dated May 1, 2019, an Initial Telephonic Hearing was scheduled for this matter on June 5, 2019 at 10:00 a.m. and I was assigned as the Presiding Officer.² On May 23, 2019, a Prehearing Order was issued setting forth various rules governing the upcoming hearing.

The hearing convened on June 5, 2019 as scheduled. Ms. Nestorick failed to attend the hearing. Larry Crane, Esquire, appeared on behalf of UGI Gas. Mr. Crayne made a verbal on-the-record Motion to Dismiss the Complaint with prejudice due to Ms. Nestorick's non-appearance. Mr. Crayne also made a verbal Motion to bar Ms. Nestorick from filing any

¹ UGI Gas has signed a waiver of the Section 702 requirements for service of formal Complaints, 66 Pa.C.S. § 702, and has agreed to electronic service under the Commission's Waiver of 702 program.

² Ms. Nestorick also filed a Complaint against UGI Utilities Incorporated – Electric Division at Docket Number C-2019-3008389. Since both Complaints were against the same parent corporation and involved the same corporate witness and counsel, I consolidated the cases for purposes of a hearing and held both hearings together on June 5, 2019.

further complaints with the Commission until Ms. Nestorick had paid her account balance in full. I advised Mr. Crayne that he should present his client's case on the record due to the nature of the relief that he was seeking. Mr. Crayne then called his witness and presented UGI Gas' case on the record. UGI's witness sponsored five exhibits that were entered into the record, as follows:

- Exhibit R-1 - Statement of Account
- Exhibit R-2 - Payment Arrangement History
- Exhibit R-3 - Timeline Summary of UGI's Efforts to Collect Payment
- Exhibit R-4 - February 11, 2019 Letter from Mr. Crayne to Ms. Nestorick
- Exhibit R-5 - Case Closure Note for BCS Decision 3641088

The record in this case closed on July 28, 2019, when the hearing transcript totaling 30 pages was filed with the Commission.

Ms. Nestorick's Complaint is ready for disposition. For the reasons discussed below, the Complaint will be dismissed with prejudice and Ms. Nestorick will be barred from filing any further Complaints with the Commission until she has paid her UGI Gas account balance in full.

FINDINGS OF FACT

1. The Complainant in this case is Heather Nestorick.
2. The Respondent in this case is UGI Utilities Incorporated – Gas Division.
3. Exhibit R-1 is a statement of account for Ms. Nestorick's UGI Gas account.

Tr. 15.

4. The statement of account begins on April 27, 2015 and runs through May 16, 2019. Exhibit R-1.

5. Exhibit R-1 did not reflect the May 29, 2019 gas bill for Ms. Nestorick in the amount of \$34.12 which brought her total gas account balance to \$2,432.29. Tr. 15.

6. Since her most recent payment in February 2015, Ms. Nestorick has not personally made a single payment on her gas account. Tr. 15.

7. Ms. Nestorick sent a total of four checks to UGI Gas on May 11, 2016, January 22, 2018, August 10, 2018, and December 31, 2018, but all of those checks were returned for insufficient funds in Ms. Nestorick's bank account. Tr. 15, 16.

8. The only payments made on Ms. Nestorick's gas account were from LIHEAP, a low income assistance program, on April 28, 2017 and May 16, 2019. Tr. 15; Exhibit R-1.

9. Exhibit R-2 is Ms. Nestorick's payment arrangement history with UGI Gas. Tr. 16.

10. Ms. Nestorick was granted two PUC payment arrangements and three company payment arrangements. Tr. 16; Exhibit R-2.

11. Ms. Nestorick has broken all five of her payment arrangements. Tr. 16; Exhibit R-2.

12. Exhibit R-3 is a timeline summary of UGI Gas' efforts to collect payment from Ms. Nestorick. Tr. 17.

13. Ms. Nestorick was granted a payment arrangement by the Commission on July 8, 2015, in the Commission's Bureau of Consumer Services (BCS) Case Number 3362905; the Commission's decision called for Ms. Nestorick to begin making payments in August 2015. Exhibit R-3.

14. Ms. Nestorick filed for Chapter 7 bankruptcy on July 20, 2015 at Bankruptcy Court Docket Number 15-03053. Exhibit R-3.

15. Ms. Nestorick's bankruptcy filing at Docket Number 15-03053 was dismissed on September 5, 2015. Exhibit R-3.

16. Ms. Nestorick filed a second Chapter 7 Bankruptcy Petition on February 4, 2016, at Bankruptcy Court Docket Number 16-00436. Exhibit R-3.

17. Ms. Nestorick's bankruptcy filing at Docket Number 16-00436 was dismissed on March 28, 2016. Exhibit R-3.

18. UGI Gas issued a 10-day termination notice to Ms. Nestorick on May 2, 2016. Exhibit R-3.

19. Ms. Nestorick sent a payment of \$505 to UGI Gas on May 11, 2016, but that payment was returned due to insufficient funds. Exhibit R-3.

20. Due to the returned payment, UGI Gas issued a 3-day termination notice to Ms. Nestorick on May 16, 2016. Exhibit R-3.

21. Ms. Nestorick filed a Complaint with the PUC at BCS Case Number 3440488 on May 17, 2016. Exhibit R-3.

22. The Complaint at BCS Case Number 3440488 was dismissed on June 9, 2016. Exhibit R-3.

23. Ms. Nestorick filed a third Chapter 7 Bankruptcy Petition on June 27, 2016, at Bankruptcy Court Docket Number 16-02639. Exhibit R-3.

24. Ms. Nestorick's bankruptcy filing at Docket Number 16-02639 was dismissed on July 7, 2016. Exhibit R-3.

25. Ms. Nestorick filed a fourth Chapter 7 Bankruptcy Petition on July 18, 2016, at Bankruptcy Court Docket Number 16-02927. Exhibit R-3.

26. Ms. Nestorick's bankruptcy filing at Docket Number 16-02927 was dismissed with prejudice on October 13, 2016, and Ms. Nestorick was barred from filing further Petitions with the Bankruptcy Court at that time. Exhibit R-3.

27. UGI Gas issued a 10-day termination notice to Ms. Nestorick on February 28, 2017. Exhibit R-3.

28. UGI Gas issued a 10-day termination notice to Ms. Nestorick on March 30, 2017. Exhibit R-3.

29. Ms. Nestorick filed medical certificates on April 6, 2017 and May 8, 2017. Exhibit R-3.

30. UGI Gas issued a 10-day termination notice to Ms. Nestorick on June 12, 2017. Exhibit R-3.

31. UGI Gas entered into a payment arrangement with Ms. Nestorick to begin on June 25, 2017. Exhibit R-3.

32. Ms. Nestorick did not make any payments on the June 25, 2017 payment arrangement (Tr. 15) and UGI Gas then issued a 10-day termination notice on July 3, 2017. Exhibit R-3.

33. Ms. Nestorick filed a third medical certificate on July 11, 2017. Exhibit R-3.

34. UGI Gas issued a 10-day termination notice to Ms. Nestorick on February 16, 2018. Exhibit R-3.

35. Ms. Nestorick filed a Complaint with the Commission on March 2, 2018 and was granted a second payment arrangement by the Commission on August 10, 2018, in BCS Case Number 3590786. Exhibit R-3.

36. The payment arrangement in BCS Case Number 3590786 called for Ms. Nestorick to begin making payments in September 2018. Exhibit R-3.

37. Ms. Nestorick sent a payment of \$880 to UGI Gas on August 10, but that payment was returned due to insufficient funds. Exhibit R-3.

38. Ms. Nestorick filed a Complaint with the PUC at BCS Case Number 3641088 on August 9, 2018, and that Complaint was dismissed on August 10, 2018. Exhibit R-3.

39. UGI Gas issued a 10-day termination notice to Ms. Nestorick on November 13, 2018. Exhibit R-3.

40. Ms. Nestorick filed a Complaint with the Commission on November 13, 2018, at Docket Number C-2018-3006082. Exhibit R-3.

41. Ms. Nestorick agreed to payment terms with UGI Gas, and the parties filed a Certificate of Satisfaction for Docket Number C-2018-3006082 on February 11, 2019. Exhibit R-3.

42. UGI Gas sent a letter to Ms. Nestorick on February 11, 2019, memorializing the terms of the parties' payment agreement that formed the basis for filing the Certificate of Satisfaction. Exhibit R-3.

43. Ms. Nestorick did not make any payments pursuant to the February 11, 2019 payment agreement. Tr. 18.

44. UGI Gas issued a 10-day termination notice to Ms. Nestorick on March 8, 2019. Exhibit R-3.

45. Ms. Nestorick filed a formal Complaint with the Commission on March 13, 2019, at Docket Number C-2019-3008476, which is the Docket Number for this particular proceeding. Exhibit R-3.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Ms. Nestorick filed a Complaint seeking relief from UGI Gas. Ms. Nestorick, therefore, has the burden of proof in this proceeding.

If a Complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a Complainant. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

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.Cmwlt. 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 notice³, the dismissal will be with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket Number Z-00269892 (Opinion and Order adopted October 26, 1995, entered December 26, 1995); *Jones v. The Peoples Natural Gas Company*, Docket Number C-20054885 (Opinion and Order adopted January 12, 2006, entered February 14, 2006).

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

³ 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.Cmwlt. 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.Cmwlt. 1998); *Geise v. Nationwide Life and Annuity Co.*, 939 A.2d 409 (Pa.Super. 2007).

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 balance. 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 2015, Complainant has filed four informal complaints and two formal complaints. The formal complaints were filed at Docket No. C-2018-3006082 on November 13, 2018, which resulted in a certificate of satisfaction filed on February 11, 2019, and the present complaint at Docket No. C-2019-3008476 filed on March 13, 2019, involving an account balance of \$2,432.29. Complainant has defaulted on every payment arrangement since 2015, including two Commission-ordered payment arrangements and three company-approved payment arrangements. The Complainant has also filed four Bankruptcy Petitions relating to her gas account with UGI between 2015 and the date of the hearing in this case, and all four filings have been dismissed by the Bankruptcy Court. The Complainant has also filed three medical certificates in order to temporarily stave off termination of service.

The 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 defaulting on Commission-ordered and Company-given PARs, has never made a single payment with her own money towards her bill, and has essentially refiled the same complaint several times in an attempt to avoid termination. As a result, the Company has been unable to obtain payment for its gas bills due to applicable laws requiring it to provide a stay of termination while a dispute/complaint is pending before the Commission. 52 Pa. Code § 5.63(b). As a result, Complainant's account balance has, and will, continue to grow.

Customers have an obligation to pay for utility service. Otherwise, customer's unpaid bills are included in the utility's uncollectible 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 gas 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. Nestorick will be barred from re-filing further informal and formal complaints pertaining to her UGI Gas account until such time as the outstanding balance 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 her 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 UGI Utilities Incorporated – Gas Division to dismiss the Complaint of Heather Nestorick at Docket No. C-2019-3008476 with prejudice for lack of prosecution is granted.

2. That the Complaint of Heather Nestorick against UGI Utilities Incorporated – Gas Division at Docket No. C-2019-3008476 is dismissed, with prejudice.

3. That the Motion of UGI Utilities Incorporated – Gas Division to preclude Heather Nestorick from filing further Complaints with the Pennsylvania Public Utility Commission, either informal or formal, concerning the arrearages on her account is granted.

4. That Heather Nestorick be, and hereby is, precluded from filing further Complaints with the Pennsylvania Public Utility Commission, whether of an informal or formal nature, regarding the arrearages on Account Number 411-006-6076-17 for gas service rendered by UGI Utilities Incorporated – Gas Division, until such time as the entire outstanding arrearages 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 Commission staff, including the Commission’s Bureau of Consumer Services and the Secretary’s Bureau, shall reject any formal or informal complaints that Heather Nestorick, or any person acting on her behalf, may attempt to file with the Commission, pertaining to Account Number 411-006-6076-17, until the entire outstanding arrearages are paid in full.

6. That the filing of any other pleading in this case, concerning the same subject matter be, and hereby is, deemed not to stay implementation of this Order.

7. That UGI Utilities Incorporated – Gas Division shall file a notice with the Commission, with a copy to all Parties to this proceeding, at Docket Number C-2019-3008476, within seven (7) days of the date that Ms. Nestorick’s outstanding arrearages are paid in full.

8. That the failure of Heather Nestorick to pay all arrearages on her account identified in this proceeding shall be, and hereby is, deemed to be grounds for termination of service in accordance with Chapters 56 and 64 of the Commission’s rules of administrative practice and procedure.

9. That a copy of this decision shall be served to the Commission’s Bureau of Consumer Services and the Secretary’s Bureau.

