

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alisa Stroud	:	
	:	
v.	:	C-2019-3011476
	:	
Peoples Natural Gas Company LLC – Equitable	:	
Division	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

A gas utility customer filed a Complaint alleging service termination issues, incorrect charges and a request for a payment arrangement. This decision grants Respondent’s Motion to Dismiss the Complaint for lack of prosecution. Complaint failed to appear for the hearing, thereby failing to meet her burden of proof and failing to establish she is eligible for a payment arrangement on her arrearages, the greater portion of which are customer assistance program charges, which cannot be subject to a Commission-ordered payment arrangement.

HISTORY OF THE PROCEEDING

On July 10, 2019, Alisa Stroud (Complainant or Ms. Stroud) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) at Docket No. C-2019-3011476, seeking timely review of the Commission’s Bureau of Consumer Services’ (BCS) June 27, 2019, decision denying Complainant’s informal complaint against Respondent Peoples Natural Gas Company LLC – Equitable Division (Respondent or Equitable Division) at BCS No. 3713888. Complainant alleged 1) the utility is threatening to shut off my service or has already shut off my

service; 2) I would like a payment arrangement; and 3) incorrect charges are on my bill. As relief, Complainant requests a “new payment arrangement.”

On July 31, 2019, Respondent filed an Answer, alleging that Complainant owed \$1,867.02 on her account, which included \$1,251.00 in customer assistance program (CAP) arrearages. Answer ¶4. Respondent denied there were incorrect charges on Complainant’s bill. Respondent also alleged Complainant had not made any payments on her account since it was opened on December 30, 2014. *Id.* As relief, Respondent requests payment of the outstanding CAP arrearages to allow Complainant to remain in the program, followed by timely payment of the monthly CAP bill thereafter.

By Call-In Telephone Hearing Notice (First Hearing Notice) dated August 1, 2019, the Parties were informed that the case was assigned to the undersigned Administrative Law Judge (ALJ) headquartered in Pittsburgh, pursuant to 52 Pa.Code § 56.173 for a call-in telephonic hearing on September 20, 2019, at 10:00 a.m. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing in order to participate in the telephonic hearing. The First Hearing Notice further stated, “*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 August 2, 2019, the ALJ issued a Prehearing Order reminding the Parties to call, on the date and at the time of the hearing scheduled for September 20, 2019 at 10:00 a.m., at the Toll-Free Bridge Number and to enter the PIN in order to participate in the telephonic hearing. The Prehearing Order stated as follows: “**You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**” (emphasis in original). The Prehearing Order informed the Parties about the applicable procedural rules, including the procedure to follow to request a hearing continuance.

The First Hearing Notice and Prehearing Order informing the Parties of the place, day, date and time of the hearing, were mailed in the ordinary course of the Commission’s

business to the address listed in Complainant's Complaint. The First Hearing Notice and Prehearing Order were not returned by the U.S. Postal Service as undeliverable to Complainant.

By Motion dated September 18, 2019, Respondent requested a continuance of the September 20, 2019, telephone hearing because its witness was unavailable due to the death of a family member. By facsimile dated September 16, 2019, and received on September 19, 2019, Complainant also requested a hearing continuance due to the death of a family member.

On September 19, 2019, a First Interim Order Granting Respondent's Motion for Continuance was issued to the Parties, thereby mooting Complainant's continuance request.

By Call-In Telephone Hearing Notice (Second Hearing Notice) dated September 20, 2019, the Parties were informed that the telephone hearing scheduled in this case for September 20, 2019, was cancelled and rescheduled for November 5, 2019. The Second Hearing Notice contained the same standard language as the First Hearing Notice, informing the Parties that you may lose your case if you fail to participate in the hearing. The Second Hearing Notice was mailed to Complainant at the address listed in the Complaint. The Second Hearing Notice was not returned by the U.S. Postal Service as undeliverable to Complainant.

By facsimile dated October 28, 2019, Complainant requested a continuance of the November 5, 2019, until late December or early January. As reasons for the continuance request, Complainant represented she had started a new job, and she did not wish to jeopardize her new position during her 90-day probationary period.

By email dated October 30, 2019, counsel for Respondent represented that Equitable Division did not object to Complainant's request for a continuance; however, Respondent requested that the rescheduling of the hearing be set in December 2019 because the Complaint was filed in July 2019.

On November 4, 2019, a Second Interim Order Granting Complainant's Motion for Continuance was issued to the Parties. The Second Interim Order directed the Office of

Administrative Law Judge's (OALJ) Scheduling Staff to reschedule the hearing for the next available hearing date in December 2019 and so notify the Parties in writing.

By Call-In Telephone Hearing Notice (Third Hearing Notice) dated November 4, 2019, the Parties were informed that the telephone hearing scheduled in this case for November 5, 2019, was cancelled and rescheduled for December 17, 2019, at 10:00 a.m. The Third Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN Number to dial on the morning of the hearing in order to participate in the telephonic hearing. The Third Hearing Notice again contained the same standard language as the First and Second Hearing Notices, informing the Parties that you may lose your case if you fail to participate in the hearing. The Third Hearing Notice was mailed to Complainant at the address listed in the Complaint. The Third Hearing Notice was not returned by the U.S. Postal Service as undeliverable to Complainant.

On December 16, 2019, at 4:00 p.m., I received an email from the OALJ's Scheduling Staff in Harrisburg, stating Complainant had called at 3:47 p.m. requesting a continuance of the December 17, 2019 telephone hearing due to a work obligation and to leave a voicemail message concerning the ALJ's response to her request, if she was unavailable. As a result, at the ALJ's direction, the ALJ's staff left a voice message informing Complainant that her request for a continuance of the December 17, 2019, telephone hearing was denied, and she should call into tomorrow's hearing with the numbers provided.

On December 17, 2019, by 10:00 a.m., counsel for Equitable Division, Jennifer Petrisek, Esquire, and I had entered the telephonic proceeding. The court reporter was also present. Accordingly, the hearing convened at 10:03 a.m. Tr. 4. Ms. Stroud had not called into the telephonic proceeding. Attorney Petrisek was prepared to proceed with her witness, Dawn Vashie, a customer relations specialist. Thereupon, I recessed the hearing to permit additional time for Complainant to appear or to contact the hearing office in order to explain her absence. The telephonic proceeding remained open with counsel for Equitable Division and the court reporter in the telephonic hearing. I then left the hearing room to determine whether Ms. Stroud had called into the OALJ. Ms. Stroud had not called into the OALJ.

When I returned to the hearing room at 10:33 a.m., Ms. Stroud had not entered the proceeding nor had she called into the OALJ to explain her absence. Tr. 8.

Accordingly, the hearing proceeded in Ms. Stroud's absence. As a result, counsel for Equitable Division moved for dismissal of the Complaint with prejudice for lack of prosecution. I informed counsel that the Motion would be taken under advisement and an Initial Decision would be issued. Ms. Vashie provided testimony relevant to the averments raised in Respondent's Answer. The hearing adjourned at approximately 10:44 a.m. on December 17, 2019. Upon receipt of the hearing transcript, the record was closed by Interim Order entered on January 16, 2020.

FINDINGS OF FACT

1. Complainant Alisa Stroud established an account with Respondent Peoples Natural Gas Company LLC – Equitable Division for gas service on December 30, 2014. Tr. 16.

2. Respondent Peoples Natural Gas Company LLC – Equitable Division is a jurisdictional public utility providing gas service to Complainant and Pennsylvania customers.

3. On July 10, 2019, Ms. Stroud filed a Formal Complaint with the Commission alleging 1) the utility is threatening to shut off my service or has already shut off my service; 2) I would like a payment arrangement; and 3) incorrect charges are on my bill. As relief, Complainant requests a “new payment arrangement.” Complaint ¶¶ 4-5.

4. On July 31, 2019, Respondent filed an Answer.

5. Ms. Stroud has not made any valid payments on her service account since the account was opened almost five years ago. Tr. 16.

6. As of December 12, 2019, Ms. Stroud had a past due balance of \$2,041.48. Tr. 15.

7. Ms. Stroud's past due account balance includes \$1,451.00 in CAP arrearages. Tr. 15.

8. By Call-In Telephone Hearing Notice (First Hearing Notice) dated August 1, 2019, the Parties were informed that a call-in telephonic hearing in this proceeding would convene on September 20, 2019, at 10:00 a.m.

9. On August 2, 2019, a Prehearing Order was issued to the Parties reminding them of the date, time, and manner of the hearing and advising them of the applicable procedural rules, including the procedure to request a continuance at least five days before the scheduled hearing date.

10. The Prehearing Order stated as follows: **“You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.”** (emphasis in original).

11. Upon Respondent's written Motion for Continuance dated September 18, 2019, a First Interim Order dated September 19, 2019, was issued granting the Motion.

12. By Call-In Telephone Hearing Notice (Second Hearing Notice) dated September 20, 2019, the Parties were informed that the September 20, 2019, telephonic hearing was rescheduled to November 5, 2019, at 10:00 a.m.

13. Upon Complainant's written request for a hearing continuance dated October 28, 2019, a Second Interim Order dated November 4, 2019, was issued granting the request.

14. By Call-In Telephone Hearing Notice (Third Hearing Notice) dated November 4, 2019, the Parties were informed that the November 5, 2019, telephonic hearing was rescheduled to December 17, 2019, at 10:00 a.m.

15. The Third Hearing Notice directed the Parties to call, on the date and at the time of the scheduled hearing, the Toll-Free Bridge Number and enter the PIN that was provided in the notice in order to participate in the telephone hearing.

16. The Third Hearing Notice stated as follows: “At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.” (emphasis in original).

17. The First, Second and Third Hearing Notices and the Prehearing Order were mailed, by first-class mail, postage prepaid, to Ms. Stroud at the address provided by Ms. Stroud in her Formal Complaint.

18. The First, Second and Third Hearing Notices and Prehearing Order were not returned by the U.S. Postal Service as undeliverable to Ms. Stroud.

19. On December 16, 2019, at 3:47 p.m., Complainant called the OALJ’s Scheduling Staff in Harrisburg and requested a continuance of the December 17, 2019, telephone hearing due to a work obligation, and Complainant asked that voicemail message be left on her telephone, concerning the ALJ’s response to her request, if she was unavailable. Tr. 6-7.

20. At the ALJ’s direction, the ALJ’s staff left a voice message on Ms. Stroud’s telephone informing her that her request for a continuance of the December 17, 2019, telephone hearing was denied, and she should call into tomorrow’s hearing with the numbers provided. Tr. 6, 12.

21. Counsel for Respondent, Jennifer Petrisek, Esquire, together with her witness, Dawn Vashie, a customer relations specialist, were present by 10:00 a.m. on December 17, 2019, for the telephone hearing. Tr. 5.

22. By 10:33 a.m. on December 17, 2019, Ms. Stroud had not appeared for the hearing. Tr. 8.

23. When Ms. Stroud did not appear for the hearing, Respondent's counsel moved for dismissal of the Complaint with prejudice for lack of prosecution. Tr. 13.

DISCUSSION

Due Process

The Commission satisfies the requirement of affording a complainant with administrative due process, by providing timely notice of the hearing on the complaint and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

The November 4, 2019, Call-In Telephone Hearing Notice, the Third Hearing Notice, and the August 2, 2019, Prehearing Order were mailed, in the ordinary course of the Commission's business, to Complainant's address listed in her Complaint. The Third Hearing Notice and Prehearing Order were not returned to the Commission by the U.S. Postal Service. There is a presumption in the law that Ms. Stroud received the Third Hearing Notice and Prehearing Order. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Judge v. Celina Mutual Ins. Co.*, 449 A.2d 658 (Pa.Super. 1982); and *Samaras v. Hartwick*, 698 A.2d 71 (Pa.Super. 1997). More importantly, Ms. Stroud called the OALJ's scheduling staff in Harrisburg on the afternoon of December 16, 2019, and requested a continuance of the December 17, 2019, telephone hearing. Therefore, she was aware of the date and time of the scheduled hearing. Accordingly, her due process rights have been fully protected.

Hearing Continuances

Here, the denial of Ms. Stroud's second continuance request warrants mention. Two continuances of the initial telephone hearing were granted in this proceeding. Upon Respondent's Motion, the telephone hearing scheduled for September 20, 2019, was continued by First Interim Order dated September 19, 2019. Upon Ms. Stroud's request, the telephone hearing scheduled for November 5, 2019, was continued by Second Interim Order dated November 4, 2019. On the eve of the December 17, 2019, telephone hearing, Ms. Stroud made another request for a continuance, claiming she had a work commitment. Ms. Stroud's work commitment did not provide sufficient cause to warrant a third continuance because Ms. Stroud had specifically requested that the hearing be rescheduled to December.

Complainant's interest in due process does not afford her a right to never-ending hearings. *Steadwell v. Unemployment Comp. Bd. of Review*, 76 Pa. Commw. 439, 463 A.2d 1298 (1983). "Nor do due process standards guarantee him [or her] a right to a continuance, even for good reason, if he [or she] fails to request it in a timely fashion or in a manner consistent with reasonable procedural rules." *Steadwell*, 72 Pa. Commw. at 445, 463 A.2d at 1301. In Ms. Stroud's case she did not make a timely request for a continuance. Also see the Commonwealth Court's ruling citing *Steadwell* in *Skowronek v. Unemployment Comp. Bd. of Review*, 921 A.2d 555 (Pa. Cmwlth. 2007). In *Skowronek*, the Court declined to override the unemployment compensation referee's denial of counsel's continuance request, unless there was an abuse of discretion. The Court noted that a continuance request made one day prior to the hearing and after business hours was untimely. Last minute requests for a continuance are not viewed favorably by the Court. *Skowronek*, 921 A.2d at 558. In light of the rulings in *Steadwell* and *Skowronek*, the grant of Ms. Stroud's late request for a hearing continuance was not warranted.

Burden of Proof

Pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the

proponent of a rule or order. Therefore, Ms. Stroud had the burden of proving she was entitled to the relief requested in her Complaint. Respondent was present for the hearing through its attorney and witness. However, Ms. Stroud was not present for the hearing.

Section 332(f) of the Code, 66 Pa.C.S. § 332(f), provides in pertinent part:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat,

Since Ms. Stroud failed to appear and participate in the scheduled hearing, personally or by telephone, her Complaint may be dismissed with prejudice. See *Martin Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

Merits of the Complaint

While Ms. Stroud's Complaint may be dismissed for lack of prosecution, the merits are addressed to clarify the dismissal with prejudice. Ms. Stroud essentially is seeking a payment arrangement. The evidence establishes Ms. Stroud has a past due balance of \$2,041.48, which includes \$1,451.00 in CAP arrearages. Tr. 15. There is no evidence to establish that the balance is incorrect. Section 1405(c) of the Code states, "Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission." 66 Pa.Code § 1405(c). Thus, the Code prohibits the Commission from granting Ms. Stroud a payment arrangement on her CAP charges.

Concerning the remaining non-CAP charges in the amount of \$590.48, the Commission has authority to grant customers a payment arrangement under Section 1405(a) of the Code. 66 Pa.Code § 1405(a). However, the Commission has declined to grant a complainant a payment arrangement based on the complainant's poor payment history and her ability to keep

company-issued payment arrangements. *See Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013). Here, the evidence establishes that Ms. Stroud has not personally made any valid payments on her account since its inception almost five years ago.¹ Accordingly, she would not be eligible for a payment arrangement on the non-CAP charges because of her failure to make any payments on her account.

Accordingly, Ms. Stroud's lack of any payment on her account and failure to appear for the hearing to prosecute the Complaint warrants a dismissal of the Complaint with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Complainant as the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).
3. Complainant's interest in due process does not afford her a right to never-ending hearings. *Steadwell v. Unemployment Comp. Bd. of Review*, 76 Pa. Commw. 439, 463 A.2d 1298 (1983).
4. Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission. 66 Pa.Code § 1405(c).
5. The Commission has declined to grant a complainant a payment arrangement based on the complainant's poor payment history and her ability to keep

¹ Federal LIHEAP (Low Income Home Energy Assistance Program) grants were credited to Ms. Stroud's account in 2017 — \$200.00 on April 26, \$500.00 on May 24 and \$95.00 on September 6, 2017. Tr. 20.

company-issued payment arrangements. *Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013).

6. When a complainant fails to appear for a scheduled conference or hearing, the complaint may be dismissed with prejudice. *Martin Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Peoples Natural Gas Company LLC – Equitable Division to dismiss the Complaint of Alisa Stroud at Docket No. C-2019-3011476 is granted.

2. That the Complaint of Alisa Stroud against Peoples Natural Gas Company LLC – Equitable Division at Docket No. C-2019-3011476 is dismissed, with prejudice, for the failure of Alisa Stroud to prosecute her Complaint.

3. That the Secretary’s Bureau shall mark Docket No. C-2019-3011476 closed.

Date: January 29, 2020

/s/
Conrad A. Johnson
Administrative Law Judge