

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Amanda Polk Herr	:	
	:	
v.	:	C-2021-3028202
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

This decision dismisses the complaint and bars a complainant from filing further informal or formal complaints regarding her electric utility account balance until she pays that balance in full. The complainant failed to appear for the hearing, and failed to prove that the Commission should grant her a further payment arrangement for her unpaid balance in excess of \$20,000. The complainant’s conduct of filing numerous complaints, breaking payment arrangements, and other behavior constitutes an abuse of the administrative process calculated to avoid or delay the termination of her utility service.

HISTORY OF THE PROCEEDINGS

On August 20, 2021, Amanda Polk Herr (Complainant or Ms. Herr) filed a formal complaint against West Penn Power Company (West Penn Power). Ms. Herr checked the boxes on the complaint form noting that the utility is threatening to terminate her service and that she would like a payment arrangement. Ms. Herr also checked the box noting that a court has granted her a Protection from Abuse (PFA) Order for her personal safety or welfare.

On September 20, 2021, West Penn Power filed an Answer and New Matter. West Penn Power denied that there is a pending termination. West Penn Power averred that the Commission awarded Ms. Herr a payment arrangement on July 16, 2020, and opposed a further Commission payment arrangement. In New Matter, West Penn Power contended that the Commission should decline to order any further payment arrangements to Ms. Herr and that the that the Complainant has abused the complaint process. West Penn Power requests the Commission bar Ms. Herr from filing any further complaints until she pays her balance in full.

The Answer and New Matter included a notice to plead which notified Ms. Herr that she should file a response to the New Matter within 20 days. Ms. Herr did not file a response to the New Matter.

By hearing notice dated October 25, 2021, the complaint was assigned to me and set for hearing on December 1, 2021. I issued a prehearing order on October 26, 2021, setting forth the procedures for the conduct of hearings, including the consequences of failing to appear as well as instructions for requesting a continuance. Also on October 26, 2021, I issued an order directing Ms. Herr to provide a copy of any PFA currently in effect, on or before November 15, 2021.

By email dated November 19, 2021, Ms. Herr requested a continuance of the December 1, 2021 hearing because she was required to appear at a premise inspection on December 1, 2021. Ms. Herr also claimed that she was “not doing the e-filing thing.” As a courtesy, I forwarded Ms. Herr’s email to counsel for West Penn Power, Margaret Morris, Esquire. I also directed Ms. Herr to provide an email address where she could be reached because there appeared to be multiple email addresses associated with her complaint, including the email address associated with her e-filing account.

I granted Ms. Herr’s request for a continuance in an interim order entered November 22, 2021. I also required Ms. Herr to contact Ms. Morris to agree on a new hearing date. Ms. Herr was further directed to contact the Commission’s Secretary’s Bureau if she

wished to unsubscribe from the Commission's e-service system. The hearing was subsequently rescheduled for December 14, 2021.¹

On the morning of December 14, 2021, I received an email from Ms. Herr stating that she no longer wished to have a hearing. I responded by email that the hearing would convene as scheduled in order to provide West Penn Power with an opportunity to respond to her request to withdraw her complaint. Ms. Herr also contacted the Office of Administrative Law Judge (OALJ) Scheduling Unit by telephone the morning of December 14, 2021, stating that she would not attend the hearing.²

The hearing convened as scheduled. Ms. Morris appeared and represented West Penn Power. A witness for West Penn Power also appeared, Ms. Tammy Taylor, a Senior Customer Service Specialist employed by FirstEnergy. Ms. Morris explained that she and Ms. Herr had been in settlement negotiations consistently in the days leading up to the hearing and had negotiated a joint settlement agreement. West Penn Power and Ms. Herr would request the Commission to approve the settlement agreement. However, Ms. Morris stated that Ms. Herr was unclear regarding her intention to continue pursuing a settlement. Ms. Morris requested a short continuance to finalize her settlement negotiations with Ms. Herr.

Ms. Morris also requested leave to present the testimony of Ms. Taylor to authenticate documents related to Ms. Herr's account history in support of West Penn's request raised in New Matter to preclude Ms. Herr from filing further complaints until her substantial past due balance is paid in full. Leave was granted and Ms. Taylor was permitted to testify. West Penn Power Exhibits 1-6, 16, 18 and 19 were admitted into the record subject to objection. Ms. Taylor authenticated these documents and summarized Ms. Herr's payment arrangement history, medical certificate history, payment history, returned check history and current outstanding balance. Additionally, I took official notice of a series of decisions of the Commission's Bureau of Consumer Services (BCS), which were provided as West Penn Power

¹ I also renewed my direction to Ms. Herr to provide a copy of a court issued PFA. She did not provide a copy of a PFA.

² See Tr. 6-7.

proposed exhibits, 8-14 and 17. I also took notice of the initial decision and Commission decision at Docket C-2019-3009143, resolving a formal complaint that Ms. Herr filed in 2019.³

I entered an interim order on December 14, 2021 which granted a continuance of the proceedings. I directed West Penn Power to file a status report on or before December 29, 2021 reporting whether the parties were able to finalize the settlement agreement. I also provided Ms. Herr with an opportunity to object to the exhibits that were admitted into the record and to object to the official notice of BCS decisions and the Initial Decision issued on December 13, 2019 and Opinion and Order entered on July 16, 2020, at Docket No. C-2019-3009143, including the facts set forth in those decisions.

Ms. Morris filed a status report on behalf of West Penn Power on December 29, 2021. Ms. Morris reported that she had sent Ms. Herr settlement documents for her signature on Friday, December 17, 2021. Ms. Morris further reported that she attempted to follow-up with Ms. Herr on December 23, 2021. Ms. Herr texted Ms. Morris a lab report which noted that Ms. Herr had tested positive for COVID-19, and that she was unable to sign anything. Ms. Morris finally stated that she received an email from Ms. Herr's son on December 28, 2021, stating that Ms. Herr was in the hospital and that she would "take care of this" at a later time. Ms. Morris attached the email and lab report to her status report.⁴

The Commission received the transcript of the December 14, 2021 hearing on January 7, 2022. I issued an order on January 10, 2022 closing the record.

FINDINGS OF FACT

1. The Complainant is Amanda Polk Herr.

³ West Penn Power provided the Commission's decision as West Penn Power's proposed Ex. 15. The initial decision was provided after the hearing and forwarded to the court reporter for inclusion in the transcript.

⁴ Alexander Polka, Ms. Herr's son, also copied Administrative Law Judge Gail Chiodo on the email to Ms. Morris. Judge Chiodo forwarded the email to me and notified Mr. Polka that I was the assigned presiding officer.

2. The Respondent, West Penn Power Company, is a jurisdictional public utility.

3. As of the date of the hearing, Ms. Herr's West Penn Power account balance was \$ 20,334.40. (Re. 36; WPP Ex. 2)

4. In July 2020, the Commission awarded Ms. Herr a 10-year payment arrangement for her \$15,838.03 balance.

5. Ms. Herr did not make any payments on her account from July 2020 until May 2021. (WPP Ex. 2)

6. On May 13, 2021, Ms. Herr made a payment by credit card in the amount of \$150. (WPP Exs. 2, 3)

7. On July 23, 2021, Ms. Herr made a payment by credit card in the amount of \$124. (WPP Exs. 2, 3)

8. Ms. Herr made an electronic check payment to West Penn Power on August 3, 2021 in the amount of \$12,577.47. (WPP Exs. 1, 4)

9. West Penn Power rejected the \$12,577.47 electronic check payment on August 9, 2021, noting "Account not found." (WPP Exs. 1, 4)

10. Ms. Herr made a second electronic check payment to West Penn Power on August 15, 2021 in the amount of \$12,520.80. (WPP Exs. 1, 4)

11. West Penn Power rejected the \$12,520.80 electronic check payment on August 19, 2021, noting "Account not Found." (WPP Exs. 1, 4)

12. From September 5, 2012 to September 20, 2018, 14 check payments were returned for nonpayment totaling \$76,669.10. (WPP Ex. 1,4; see also Initial Decision, C-2019-3009143, Finding of Fact 22)

13. At the time of the hearing on Ms. Herr's complaint at Docket C-2019-3009143, Ms. Herr reported a monthly income \$878. (WPP Ex. 6; Initial Decision, C-2019-3009143, Findings of Fact 33, 35)

14. West Penn Power provided Ms. Herr with a payment arrangement on May 14, 2021 based on her reported income of \$953. (WPP Ex. 6)

15. On June 14, 2021, Ms. Herr was enrolled in West Penn Power's Customer Assistance Program and West Penn Power re-deferred \$9,877.37. (Tr. 40-41; WPP Ex. 6)

16. Since 2015, Ms. Herr has filed eight informal complaints and two formal complaints seeking relief from the Commission in the form of payment arrangements. (WPP Ex. 19 (BCS Complaint History); Docket C-2019-3009143)⁵

17. Ms. Herr did not appear at the December 14, 2021 hearing. (Tr. 6)

DISCUSSION

Ms. Herr filed a formal complaint seeking relief from the Commission in the form of a payment arrangement. Ms. Herr must prove that she is entitled to this relief from the Commission.⁶ Ms. Herr not only failed to appear at the hearing scheduled for her benefit, but she has also failed to respond to any of the opportunities provided by me to participate in the resolution of her complaint. She has engaged in a course of conduct calculated to delay the conclusion of these proceedings and ultimately avoid responsibility for her unpaid balance. As

⁵ See Initial Decision, C-2019-3009143, Findings of Fact 7-9, 11, 13-15 for a detailed review of Ms. Herr's informal BCS complaints from 2015 through 2019.

⁶ 66 Pa.C.S. § 332.

explained in more detail below, I find that Ms. Herr has not shown that she is entitled to a further Commission-ordered payment arrangement. I further conclude that Ms. Herr's actions are an abuse of the Commission's administrative process to avoid termination of her electricity service and payment for the electricity service that she has consumed. Ms. Herr's complaint will be dismissed, and she will be barred from filing any formal or informal complaints regarding her unpaid balance until she pays that balance in full.

Entitlement to a Payment Arrangement

A public utility is entitled to receive payment for the service it provides.⁷ A complainant, who claims an inability to pay her utility bills, does not have an absolute right to a Commission-ordered payment arrangement.⁸ While the Commission has the authority to establish a payment arrangement, the Commission exercises this authority very carefully. It is entirely within the discretion of the Commission to determine on a case-by-case basis whether both parties, the customer, and the utility company, will benefit from the issuance of a payment arrangement.⁹ Specifically, the Commission will only approve a payment arrangement if the customer has “demonstrated some evidence of good faith efforts to pay their utility bills or who have experienced a significant change of circumstance outside of their control.”¹⁰

The Commission awarded Ms. Herr a generous payment arrangement in July, 2020, by granting Ms. Herr a 10-year payment arrangement for her \$15,838.03 balance.¹¹ In the year that followed, Ms. Herr only made two payments by credit card on May 13, 2021 and July

⁷ *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982).

⁸ *E.g., DeGannaro v. Pa. Elec. Co.*, Docket No. C-2012-2300818 (Final Order November 8, 2012).

⁹ *Id.*; *see also Creekmur v. PECO Energy Co.*, Docket No. C-2008-2079322 (Final Order entered February 4, 2010).

¹⁰ *Stormer v. Pa. Am. Water Co.*, Docket No. C-2011-2249169 (Final Order March 28, 2012). *See also Crawford v. Nat'l Fuel Gas Distrib. Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007); *Maye v. Nat'l Fuel Gas Distrib. Corp.*, Docket No. F-02140445 (Opinion and Order entered October 22, 2008); *Sayre v. UGI Utils., Inc.*, Docket No. F-02292619 (Opinion and Order entered November 4, 2008); *Thomas v. Nat'l Fuel Gas Distrib. Corp.*, Docket No. F-02144645 (Opinion and Order entered December 9, 2008).

¹¹ At the time, Ms. Herr had a valid PFA in place. Section 1417 of the Public Utility Code authorized the Commission to approve a payment arrangement with a longer repayment period than authorized by Section 1405. 66 Pa.C.S. § 1417.

23, 2021. Ms. Herr electronically submitted two checks to West Penn Power on August 3, 2021 and August 15, 2021, in the amounts of \$12,577.47 and \$12,520.80 respectively. Both of these checks were returned because the West Penn Power system did not find a valid account.

West Penn Power entered into a further payment arrangement with Ms. Herr in May 2021. At that time, she reported a slightly higher monthly income to West Penn Power than she reported at her hearing in 2019. West Penn Power also enrolled Ms. Herr in its customer assistance program in June 2021.

Ms. Herr did not appear at her hearing to offer any evidence of any changes to her income or any other challenges in her living circumstances which might explain why she only made two good payments after July 2020. Nor did she appear at the hearing and make an argument that the Commission should award her a further payment arrangement for any other reason. Therefore, I must conclude that, based on her actions regarding her electricity account since 2020 and supported by West Penn Power's evidence which was admitted into the record, she has not shown that she intends to make any payments on her past due balance on a regular basis or in good faith. Therefore, she has not shown that the Commission should authorize a further payment arrangement.

Abuse of the Administrative Process

West Penn Power asserts that Ms. Herr has abused the Commission's administrative process and requests that she be barred from filing further complaints until her entire account balance has been paid. In support of its position, West Penn Power points to Ms. Herr's very large balance, poor payment history and practice of writing large checks which are later rejected as non-payable. West Penn Power also argues that Ms. Herr's pattern of filing formal and informal complaints and medical certificates point to a pattern of using the Commission's process to avoid termination. Ms. Herr did not appear at the hearing to dispute these claims, nor did she take the opportunity to object to the admission of the evidence which supports West Penn Power's claims.

An order barring a customer from filing further complaints until the customer pays an account balance in full may seem like a harsh result. However, the Commission must also consider the interests of the utility and the utility's other customers. Unpaid bills are included in the utility's uncollectible expenses. A utility's customers pay this expense as part of the utility's rates.¹²

Abuse of the Commission's administrative process can occur in various forms. The Commission has barred complaints from individuals who frequently request hearing continuances and afterward fail to appear.¹³ The Commission will also consider the number and nature of complaints filed by a customer, the number of defaulted payment arrangements, the complainant's payment history and the use of tactics to avoid payments and service terminations.¹⁴

Ms. Herr has a substantial unpaid balance: \$20,334.40. From April 2014 until November 2021, she has only made ten payments to her account. She has tendered checks in the amount of \$101,767.37, which were returned by West Penn Power as unpayable. She has not complied with the Commission-issued payment arrangement, or any of the company payment arrangements or customer assistance program payment plans. Since 2015, Ms. Herr has filed eight informal complaints and two formal complaints seeking relief from the Commission in the form of payment arrangements. This pattern of behavior is similar to behavior the Commission considered inappropriate and determined that the customer was attempting to improperly avoid termination of utility service.

Ms. Herr's conduct in the current proceeding further evidences an abuse of the Commission's administrative process. She did not respond to or comply with two orders which required her to provide a copy of a PFA order. She subscribed for the Commission's e-filing

¹² *E.g., Bolt v. Duquesne Light Co.*, Docket No. Z-08721758 (Order entered April 8, 1988).

¹³ *Grossman v. Bell Tel. Co. of Pa.*, 67 Pa. PUC 714 (1988).

¹⁴ *See Hogan v. W. Penn Power Co.*, Docket F-2019-3012920 (Final Order entered March 10, 2020); *Potora v. UGI Penn Nat. Gas, Inc.* Docket No. C-2018-3003485 (Opinion and Order entered August 8, 2019); *DiFilippo v. PECO Energy Co.*, Docket No. C-20027116 (Final Order dated October 3, 2002).

service, but later complained she could not receive filings in that manner. She did not contact the Secretary's Bureau to unsubscribe from e-filing and to make other arrangements to receive service from the Commission.¹⁵ She contacted me and Ms. Morris on the eve of her hearing¹⁶ stating that she did not intend to pursue her complaint. I directed her to appear and explain her request to withdraw her complaint.¹⁷ She failed to appear.¹⁸

The Commission has recently barred individuals with very high unpaid balances from filing additional complaints in similar circumstances to those presented here. In *Hogan v. West Penn Power Company*,¹⁹ the Commission barred the complainant from filing additional complaints because of her unpaid balance in excess of \$30,000 which included CAP arrearages, an "abysmal" payment history, and failure to appear at three hearings. Similarly, in *Potora v. UGI Penn Natural Gas, Inc.*,²⁰ the Commission agreed with the administrative law judge, who found complainant appeared to have a history of abusing the Commission's process. Complainant Potora had filed ten complaints with the Commission, requested multiple continuances and failed to appear at many of the scheduled hearings. Consequently, the Commission precluded Complainant Potora from filing further complaints against UGI on her arrearages, whether informal or formal, until she paid her account in full.

In sum, Ms. Herr's substantial balance, poor payment history and conduct in proceedings before the Commission constitutes a pattern of activity calculated to avoid or delay termination of her utility service. West Penn Power deserves to be paid for the service it has

¹⁵ See *Potora, above*, at p. 13 (by selecting electronic service, the complainant agreed that a notification of the filings by electronic mail would constitute valid legal service); *Manu v. Bell Tel. Co. of Pa.*, Docket No. F-09029141 (Opinion and Order entered May 4, 1994)(finding that the complainant abused the Commission's administrative process, in part, because hearing notices were returned unclaimed by the complainant would request a continuance of that hearing.); 52 Pa. Code § 1.53(d)(It is the duty of a party to inform the Commission promptly of changes to the party's current contact information.).

¹⁶ See Tr. 9-10.

¹⁷ 52 Pa. Code § 5.94 (a person who wants to withdraw a complaint must provide a reason for the withdrawal and the opposing party must have an opportunity to object).

¹⁸ Tr. 6.

¹⁹ Docket F-2019-3012920 (Final Order entered March 10, 2020).

²⁰ Docket C-2018-3003485 (Opinion and Order entered August 8, 2019).

provided to Ms. Herr. West Penn Power's other customers should not be responsible for Ms. Herr's failure to make any good faith effort to pay for her service. Therefore, I find that she has abused the Commission's administrative process and should be barred from filing further formal or informal complaints until her balance is paid in full. The complaint is dismissed.

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. The Commission will not grant a payment arrangement where the complainant has a poor payment history and does show a good faith effort to pay for utility service. *Stormer v. Pa. Am. Water Co.*, Docket No. C-2011-2249169 (Final Order March 28, 2012).

4. The Complainant failed to sustain her burden of proving that the Commission should award her a further Commission-issued payment arrangement. 66 Pa.C.S. § 332(a); *Stormer v. Pa. Am. Water Co.*, Docket No. C-2011-2249169 (Final Order March 28, 2012).

5. The Commission may preclude a complaint from filing further complaints until all account arrearages are paid in full when the Commission determines that the complaint has abused the Commission's administrative process. *Hogan v. W. Penn Power Co.*, Docket F-2019-3012920 (Final Order entered March 10, 2020); *Potora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2018-3003485 (Opinion and Order entered August 8, 2019); *DiFilippo v. PECO Energy Co.*, Docket No. C-20027116 (Final Order dated October 3, 2002).

6. The Complainant's conduct constitutes an abuse of administrative process in order to avoid or delay the termination of her utility service. *Hogan v. W. Penn Power Co.*, Docket F-2019-3012920 (Final Order entered March 10, 2020); *Potora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2018-3003485 (Opinion and Order entered August 8, 2019); *DiFilippo v. PECO Energy Co.*, Docket No. C-20027116 (Final Order dated October 3, 2002).

7. It is appropriate to preclude the complainant from filing further complaints regarding her account balance until her account balance is paid in full. *Hogan v. W. Penn Power Co.*, Docket F-2019-3012920 (Final Order entered March 10, 2020); *Potora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2018-3003485 (Opinion and Order entered August 8, 2019); *DiFilippo v. PECO Energy Co.*, Docket No. C-20027116 (Final Order dated October 3, 2002).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Amanda Polk Herr v. West Penn Power Company at Docket No. C-2021-3028202 is dismissed, with prejudice.

2. That commencing with the next billing period subsequent to the Commission's Final Order in this proceeding, Amanda Polk Herr shall pay to West Penn Power Company, by cash, certified check, or money order, her account balance.

3. That if Amanda Polk Herr fails to comply with the terms of this Order, West Penn Power Company is hereby authorized to suspend or terminate service upon compliance with all applicable tariff and regulatory requirements, and take any other action permitted by law.

4. That Amanda Polk Herr is precluded from filing further formal or informal complaints with the Commission regarding the current balance on her account for electric service rendered by West Penn Power Company, until all arrearages are paid in full and that no complaint pertaining to such arrearages shall be accepted for filing by the Commission's Secretary's Bureau.

5. That the Commission's Bureau of Consumer Services and the Secretary for the Commission are requested to refuse to accept any further complaints, either informal or formal, by Amanda Polk Herr against West Penn Power Company, on the arrearages for electric service rendered by West Penn Power Company until all the arrearages are paid in full.

6. That a copy of this Opinion and Order shall be provided to the Commission's Bureau of Consumer Services.

7. That the Secretary's Bureau shall mark Docket No. C-2021-3028202 closed.

Date: March 21, 2022

_____/s/
Mary D. Long
Administrative Law Judge