

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michele Thomas	:	
	:	
v.	:	C-2022-3031826
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

The Complainant did not appear for the hearing and the Formal Complaint is dismissed for failure to prosecute. This decision also bars the Complainant from filing further Complaints regarding her Philadelphia Gas Works account balance until she pays, in full, the balance due to Philadelphia Gas Works.

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**HISTORY OF THE PROCEEDING**

On April 11, 2022, Michele Thomas (Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent). On the Complaint form, Ms. Thomas stated that she is a gas customer of PGW, that the utility is threatening to shut off her service and that she would like a payment agreement.

On May 5, 2022, Respondent filed its Answer (Answer), denying the material averments of the Complaint. PGW also stated in the Answer that the Complainant has defaulted on

several payment arrangements with the company as well as a payment agreement issued by the Commission on May 28, 2021.

On May 10, 2022, a Hearing Notice was eServed to all parties, setting an Initial Telephonic Hearing for June 28, 2022.

On May 17, 2022, a Pre-hearing Order was issued and eServed to all parties. The Pre-hearing Order advised the parties of the hearing procedures and stated the date and time of the hearing.

On June 21, 2022, the Complainant emailed the Commission and stated that she would like a continuance of the June 28, 2022 hearing because she was scheduled for a work event and could not be present on the call. Ms. Thomas did not contact or copy PGW regarding her request for a continuance. The hearing was continued, and the Complainant was advised that in the future, she should contact PGW's attorney directly to determine whether there is any objection, as instructed in the Pre-hearing Order.

On June 28, 2022, a Telephonic Hearing Cancellation/Reschedule Notice was eServed to all parties, setting an Initial Telephonic Hearing for July 29, 2022, beginning at 10:00 a.m.

On July 11, 2022, a Pre-hearing Order was issued and eServed to all parties. The Pre-hearing Order reminded the parties of the hearing procedures and again stated the date and time of the hearing.

On July 29, 2022, the hearing convened as scheduled. The Complainant did not call in to the hearing. (Tr. 4, 6). Counsel for PGW moved that the Complaint be dismissed with prejudice and also moved that the Complainant be prohibited from filing any additional informal or formal Complaints regarding her balance. (Tr. 7). Counsel for PGW averred that the Complainant has a pattern of filing informal and formal complaints to prevent PGW from

engaging in collection activities and that her balance at the time of the hearing was \$12,304.96. (Tr. 7).

PGW offered PGW Exhibits 1 and 5 in support of its motions. Jessica Glace, Senior PGW Customer Review Officer testified on behalf of PGW. PGW Exhibit 1 - Statement of Account, and PGW Exhibit 5 - Timeline of Informal and Formal Complaints filed by the Complainant, were admitted into the record.

The hearing concluded at approximately 10:44 a.m. and the Complainant had not called in to the hearing. The Complainant has not otherwise contacted the Commission. The record closed on September 1, 2022, with the filing of the transcript and exhibits.

#### FINDINGS OF FACT

1. The Complainant is Michele Thomas a PGW gas customer residing at 8515 Ferndale Street, Philadelphia, Pennsylvania 19111.
2. Philadelphia Gas Works is the Respondent.
3. On April 11, 2022, the Complainant filed this Formal Complaint.
4. The Respondent filed an Answer on May 5, 2022.
5. On May 10, 2022, a Hearing Notice was served electronically to all parties setting an Initial Telephonic Hearing for June 28, 2022.
6. On May 17, 2022, a Prehearing Order was issued.
7. On June 21, 2022, the Complainant submitted an email requesting a continuance of the June 28, 2022 hearing because she had a conflicting work obligation.

8. On June 28, 2022, a Telephonic Hearing Cancellation/Reschedule Notice was served electronically to all parties setting an Initial Telephonic Hearing for July 29, 2022 beginning at 10:00 a.m.

9. On July 11, 2022, a Pre-hearing Order was issued.

10. The Pre-hearing Order reminded the Complainant of the procedures and again stated the date and time of the hearing.

11. Both Hearing Notices issued in this matter advised all parties:

[y]ou may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be, dismissed “with prejudice” which means that you will be, barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

12. Both Pre-hearing Orders issued in this matter stated:

**FAILURE TO APPEAR:** You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

13. Counsel for PGW called in for the July 29, 2022 hearing but the Complainant did not call in for the 10:00 a.m. hearing.

14. The July 29, 2022 hearing adjourned at 10:44 a.m.

15. The Hearing Notices and Prehearing Order were served electronically on the Complainant to the email address that she provided in the pleadings.

16. None of the documents served electronically to the parties were returned as undeliverable to the Office of Administrative Law Judge (OALJ).

17. The Complainant did not request a continuance of the July 29, 2022 hearing or provide a statement of "good cause" for her absence on the scheduled hearing date.

18. As of the date of the hearing, the Complainant's PGW balance totaled \$12,304.96. (PGW Exhibit 1; Tr. 11, 13).

19. Since 2012, the Complainant has filed 8 informal complaints, 6 formal Complaints and failed to appear at 3 hearings. (PGW Exhibit 5; Tr. 16-28)

20. Between June 22, 2017 and May 27, 2022, the Complainant made six payments to PGW. (PGW Exhibit 1).

### DISCUSSION

As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S.A. § 332(a).

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 (Pa. Cmwlth. 1984). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016). Further, electronic service which is not indicated undeliverable is considered presumed to be received by the parties. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016) (*Morella*).

A Hearing Notice and a Prehearing Order were served electronically to the Complainant to the email address provided by her in her Complaint. The Prehearing Order and

the Hearing Notice contained information regarding the date, time and call-in information for the hearing. These documents were served upon the Complainant and neither of these documents were returned as undeliverable. It is therefore deemed that the Complainant received these documents and had notice of the date and time of the scheduled hearing. *Morella*.

As the Commission noted in *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2633043, p. 6 (Opinion and Order entered July 18, 2018), "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing," (citing, *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Complainant was notified of the scheduled hearing and did not appear. To date, the Complainant has not contacted the Commission or the undersigned regarding this hearing. The Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995) (*Jefferson*).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. *El-Ayazra v. W. Penn Power Co.*, Docket No. F 2015-2509292 (Opinion and Order entered June 30, 2016); *Jefferson*; 52 Pa. Code § 5.245. The record supports dismissing the Complaint for failure to prosecute and PGW's Motion to Dismiss will be granted.

At the hearing, PGW's counsel moved that the Commission bar the Complainant from filing further Complaints regarding her PGW account balance until she pays in full the balance due. (Tr. 6-7). Counsel for PGW averred that the Complainant has a pattern of filing informal and formal complaints to prevent PGW from engaging in collection activities. (Tr. 7). The Commission may preclude a complainant from filing further complaints until all account

arrears are paid in full when the Commission determines that the complainant has abused the Commission's administrative process. *DiFilippo v. PECO Energy Co.*, Docket No. C-20027116 (Final Order dated October 3, 2002) (*DiFilippo*).

In determining whether there is an abuse of the Commission's process, the Commission considers several factors. These include the frequency of requests to continue hearings and failure to appear, the number and nature of the complaints filed, the number of defaulted payment arrangements, the complainant's payment history and the use of tactics to avoid payments and service termination. *See Grossman v. Bell Tel. Co. of Pa.*, 67 Pa. PUC 714 (1988); *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*.

Recently, the Commission considered a Complainant's substantial unpaid balance and the infrequency of payments made by the Complainant to the utility and determined that precluding the complainant from filing further complaints with the Commission until all arrears were paid in full was appropriate. *See Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered September 15, 2022). Considering these various factors noted by the Commission, the record here supports granting PGW's motion.

As Jessica Glace, Senior PGW Customer Review Officer, testified, collection activities stop when a customer files an informal or formal complaint or receives a medical hold on the account. (Tr. 16, 18, 19). In her review of the Complainant's payment record, Ms. Glace testified that the Complainant has used the Commission's administrative process to thwart PGW's collection activities on her delinquent account. (Tr. 15, 17, 19, 33). Testimony and evidence presented by PGW show that the Complainant has filed at least 14 Formal and Informal Complaints since 2012 and that during that period her outstanding bill has increased from \$1,471.03 to \$12,304.96 at the time of the hearing. (PGW Exhibit 5; Tr. 10-37).

Also, in three matters filed with the Commission - C-2018-3001019, C-2019-3012118 and the instant Complaint - the Complainant failed to appear for the hearing. (PGW

Exhibit 5, p 40, 60; Tr. 5-6). The record also shows that between June 22, 2017 and May 27, 2022, the Complainant made only six payments to PGW. (PGW Exhibit 1).

For the aforementioned reasons, the Complainant will be barred from filing any further complaints until she satisfies the PGW balance in full.

### CONCLUSIONS OF LAW

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

2. As the Complainant, Ms. Thomas had the burden of proof and failed to carry that burden. 66 Pa.C.S.A. § 332(a).

3. The Complainant received notice of the hearing. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016).

4. The due process rights of the Complainant have been fully protected in this proceeding. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

5. By failing to appear and be heard on this Complaint, Complainant waived the opportunity to participate in the hearing. 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995).

6. The Complainant has failed to meet her burden of proving that she is entitled to the relief sought from the Commission. 66 Pa.C.S.A. § 332(a).

7. The Commission may preclude a complainant 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).

8. 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).

9. 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 motion of Philadelphia Gas Works to dismiss the Formal Complaint of *Michele Thomas v. Philadelphia Gas Works* at Docket No. C-2022-3030542 for failure to appear and prosecute is granted.

2. That the Formal Complaint filed by *Michele Thomas v. Philadelphia Gas Works* at Docket No. C-2022-3030542 is dismissed with prejudice for failure to prosecute.

3. That the motion of Philadelphia Gas Works that the Complainant be precluded from filing further complaints regarding her PGW balance is granted.

4. That Michele Thomas is precluded from filing further complaints with the Commission, whether informal or formal in nature, regarding arrearages on her account for gas service rendered by Philadelphia Gas Works until all arrearages are paid in full.

5. That a complaint filed by the Complainant pertaining to such arrearages shall be dismissed without further proceedings.

6. That a copy of this Initial Decision shall be provided to the Commission's Bureau of Consumer Services.

7. That the Secretary's Bureau should mark this matter closed.

Date: October 20, 2022

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/s/  
Darlene Heep  
Administrative Law Judge