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November 16, 2022

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Jennifer Potora v. UGI Utilities, Inc. – Gas Division
Docket No. C-2022-3036399**

Dear Secretary Chiavetta:

Attached please find the Preliminary Objection to the Complaint of Jennifer Potora for filing on behalf of UGI Utilities, Inc. – Gas Division in the above-referenced proceeding. Copies will be provided per the Certificate of Service.

Respectfully submitted,



Devin Ryan

DR/kl
Enclosure

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA EMAIL ONLY

Jennifer Potora
53 Academy Street
Plymouth, PA 18651
jpatora@icloud.com

Date: November 16, 2022



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Potora,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2022-3036399
	:	
UGI Utilities, Inc. – Gas Division,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTION WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTION MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL FOR UGI UTILITIES, INC. – GAS DIVISION.

Timothy K. McHugh (ID # 317906)
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Dated: November 16, 2022

Counsel for UGI Utilities, Inc. – Gas Division

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Potora,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2022-3036399
	:	
UGI Utilities, Inc. – Gas Division,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTION OF
UGI UTILITIES, INC. – GAS DIVISION TO THE
COMPLAINT OF JENNIFER POTORA**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes UGI Utilities, Inc. – Gas Division (“UGI Gas” or the “Company”) and hereby files this Preliminary Objection, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Commission dismiss the above-captioned Formal Complaint (“Fourth Complaint”) filed by Jennifer Potora (“Complainant”) in its entirety and with prejudice as against UGI Gas because it is legally insufficient.

This is the **Fourth** Formal Complaint filed by the Complainant against UGI Gas disputing the usage and charges for gas service at her residence.¹ The Complainant’s First and Second

¹The First and Second Complaints were filed at Docket Nos. C-2016-2574107 and C-2018-3000028. The Commission dismissed the First and Second Complaints with prejudice for failure to appear for the hearings and prosecute the complaints, after the Complainant was granted continuances on both dockets. *See Potora v. UGI Penn Natural Gas, Inc.*, Docket No. C-2016-2574107 (Order entered July 7, 2017) (“*Potora I*”); *Potora v. UGI Penn Natural Gas, Inc.*, Docket No. C-2018-3000028 (Order entered August 14, 2018) (“*Potora II*”). The Complainant’s Third Complaint raised the same concerns over termination, usage, and charges, but also alleged her income decreased after she stopped receiving child support payments and so sought a new payment arrangement. *See Potora v. UGI Penn Natural Gas, Inc.*, Docket No. C-2018-3003485 (Order entered Aug. 8, 2019) (“*Potora III*”). The Third

Complaints were dismissed with prejudice by the Commission for failure to prosecute. Later, when the Commission dismissed the Complainant's Third Complaint on the merits with prejudice, the Commission barred the Complainant from initiating any further formal or informal complaints with the Commission regarding her arrearages for natural gas service rendered by the Company until all her arrearages are paid in full. The Commission went on to state that "the filing of any complaint pertaining to such arrearages shall be dismissed without further proceedings."² Thus, without leave of the court, the Complainant is legally barred from initiating any formal or informal complaints against UGI Gas concerning the arrearages on her natural gas service account until she pays her arrearages in full.

Here, the Complainant once again raises issues concerning the arrearages on her natural gas service account with the Company. Nothing in the Complainant's Fourth Complaint provides any evidence that she has paid in full the arrearages on her account. Instead, Complainant has a balance in arrears of \$4,361.54 as of the date of this Preliminary Objection. For these reasons, the Complainant's Fourth Complaint is legally insufficient and should be summarily dismissed with prejudice.

In support thereof, UGI Gas states as follows:

Complaint was also dismissed after the Commission found no disputed issues of fact remained because the alleged loss of child support, taken as true, did not constitute a change of income warranting a new payment arrangement. *Id.* at 8-9. Additionally, the Commission found that the Complainant "has a history of abusing the Commission's process" and "precluded [Complainant] from filing further complaints with the Commission, whether of an informal or formal nature, regarding the arrearages on her account for gas service rendered by UGI Penn Natural Gas, Inc. until all arrearages are paid in full and that the filing of any complaint pertaining to such arrearages shall be dismissed without further proceedings." *Id.* at 9, 11.

² *Potora III* at 11.

I. BACKGROUND

1. UGI Gas is a “public utility” and a “natural gas distribution company” as those terms are defined under the Public Utility Code, 66 Pa.C.S. §§ 102 and 2202, subject to the regulatory jurisdiction of the Commission.

2. UGI Gas provides natural gas distribution service to approximately 650,000 customers, located primarily in south, central, and northeastern Pennsylvania.

3. Prior to October 1, 2018, UGI Gas had two wholly-owned subsidiaries, UGI Central Penn Gas, Inc. (“UGI-CPG”) and UGI Penn Natural Gas, Inc. (“UGI-PNG”), and all three entities were certificated to provide natural gas service by the Commission.

4. On October 1, 2018, UGI-CPG and UGI-PNG were merged into UGI Gas, in accordance with the Commission’s order approving the proposed merger. *See Joint Application of UGI Utils., Inc., UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc.*, Docket Nos. A-2018-3000381, *et al.* (Order entered Sept. 20, 2018).

5. The Complainant received natural gas service from UGI-PNG before the merger and has received natural gas service from UGI Gas since the merger.

6. On October 27, 2022, UGI Gas was served with the above-captioned Fourth Complaint, in which the Complainant disputes the arrearages on her natural gas service account and the Company’s issuance of a termination notice due to her failure to pay the amounts owed on that account. (Fourth Complaint ¶¶ 4-5.)

7. Previously, on November 3, 2016, the Complainant filed a Formal Complaint against UGI-PNG (“First Complaint”) at Docket No. C-2016-2574107 alleging that UGI-PNG threatened to terminate her service, included incorrect charges on her bill, and recorded her household information incorrectly, while requesting a meter test as relief.

8. On July 7, 2017, the Commission dismissed the First Complaint with prejudice for failure to prosecute when the Complainant failed to appear for her scheduled hearing after being granted multiple continuances. *See Potora I*, Docket No. C-2016-2574107 (Order entered July 7, 2017).³

9. On February 21, 2018, the Complainant filed another Formal Complaint (“Second Complaint”) at Docket No. C-2018-3000028 against UGI-PNG, alleging that UGI-PNG planned to terminate her service and included incorrect charges and usage amounts on her bills, while requesting a payment arrangement as relief.

10. On August 14, 2018, the Commission dismissed the Second Complaint with prejudice for failure to prosecute when the Complainant again failed to appear for her scheduled hearing after being granted one continuance and failing to produce documentation verifying her claim that she missed the hearing due to exigent circumstances. *See Potora II*, Docket No. C-2018-3000028 (Order entered Aug. 14, 2018).⁴

11. On July 13, 2018, the Complainant filed another Formal Complaint (“Third Complaint”) against UGI-PNG at Docket No. C-2018-3003485, alleging that UGI-PNG planned to terminate her service and included incorrect usage amounts on her bills, while requesting a meter test and payment arrangement as relief. The Complainant’s Third Complaint also alleged that a new payment agreement was warranted because her household income changed when she stopped receiving child support payments.

12. On August 8, 2019, the Commission issued an Order dismissing the Third Complaint. The Commission concluded that it could not offer the relief sought, *i.e.*, instituting a

³ True and correct copies of the Initial Decision and Final Order from the *Potora I* proceeding are attached hereto as **Appendix A**.

⁴ True and correct copies of the Initial Decision and Final Order from the *Potora II* proceeding are attached hereto as **Appendix B**.

new payment arrangement, because the Complaint did not raise any genuine issue of material fact. The Commission also determined that the Complainant's alleged loss of child support payments, even taken as true, would not warrant granting a new payment arrangement because: (1) child support was not included in the Complainant's household income when she was granted her first payment arrangement; and (2) child support is not typically considered by the Commission in calculating household income. *See Patora III*, Docket No. C-2018-3003485, at 8-9 (Order entered Aug. 8, 2019).⁵

13. Additionally, the Commission found that the Complainant had "a history of abusing the Commission's process" in order to avoid termination of service, evidenced by her pattern of filing formal complaints, requesting multiple continuances, and ultimately failing to appear at the hearings to prosecute her complaints. *Id.* at 9.

14. Accordingly, the Commission barred the Complainant from filing with the Commission any informal or formal complaints against UGI-PNG (which has been merged into UGI Gas) regarding arrearages on her account for gas service until her existing arrearages are paid in full. *Id.* at 11.

15. UGI Gas herein files this Preliminary Objection to the Fourth Complaint. For the reasons explained below, UGI Gas respectfully requests that the Commission summarily dismiss the Fourth Complaint as legally insufficient because without leave of court, the Complainant is barred from pursuing informal or formal complaints against UGI Gas until she has paid her arrearages in full.

⁵ A true and correct copy of the Commission's Opinion and Order in the *Patora III* proceeding is attached hereto as **Appendix C**.

II. STANDARD OF REVIEW

16. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a) (emphasis added).

17. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlt.*, 910 A.2d 775, 781 (Pa. Cmwlt. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlt. 2005)). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlt. 2007). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

18. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlt. 1987).

Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

III. PRELIMINARY OBJECTION

A. THE COMPLAINT IS LEGALLY INSUFFICIENT AND SHOULD BE DISMISSED BECAUSE THE COMPLAINANT IS BARRED FROM INITIATING INFORMAL OR FORMAL COMPLAINTS AGAINST UGI GAS REGARDING THE ARREARAGES ON HER NATURAL GAS SERVICE ACCOUNT UNTIL THOSE ARREARAGES ARE PAID IN FULL

19. UGI Gas incorporates by reference Paragraphs 1 through 18 as if fully set forth herein.

20. The Complaint should be dismissed as legally insufficient because the Complainant is barred from initiating informal or formal complaints against UGI Gas regarding arrearages on her natural gas service account until her existing arrearages are paid in full.

21. As noted above, the Complainant previously filed three formal complaints against UGI-PNG, which has been merged into UGI Gas, disputing the arrearages on her natural gas service account.

22. Each of those three complaints were dismissed by the Commission. The First and Second Complaints were dismissed with prejudice for failure to prosecute, and the Third Complaint was dismissed with prejudice on the merits for failure to raise a genuine issue of material fact.

23. Additionally, in its Order dismissing the Third Complaint, the Commission found that the Complainant had “a history of abusing the Commission’s process” to avoid termination of service, evidenced by her pattern of filing formal complaints, requesting multiple continuances, and ultimately failing to appear at the hearings to prosecute her complaints. *Potora III* at 9.

24. Therefore, the Commission barred the Complainant from filing with the Commission informal or formal complaints against UGI Gas regarding arrearages on her natural gas service account until her existing arrearages are paid in full. *Potora III* at 11.

25. The Commission further ordered that “the filing of any complaint pertaining to such arrearages shall be dismissed without further proceedings.” *Id.*

26. Thus, without leave of court, the Complainant is legally barred from initiating any informal or formal complaints against UGI Gas until her existing arrearages are paid in full.

27. Here, the Complainant has filed yet another Complaint against UGI Gas disputing the arrearages on her natural gas service account. (*See Fourth Complaint ¶¶ 4-5.*)

28. The Complainant in the instant action is the same Complainant whose Third Complaint, which also challenged Complainant’s arrearage amounts, was dismissed by the Commission with prejudice.

29. The Respondent in the instant action is the same Respondent as in the Third Complaint proceeding because UGI-PNG was previously merged into UGI Gas in 2018.

30. The Complainant’s natural gas service account is the same that was at issue in the Third Compliant proceeding.

31. Nothing in the Fourth Complaint establishes that the Complainant has paid in full the arrearages on her natural gas service account with UGI Gas.

32. As of the date of this Preliminary Objection, the Complainant has not paid her arrearages in full and has a balance in arrears with UGI Gas of \$4,361.54.

33. Therefore, the Complainant’s Fourth Complaint should be dismissed without further proceedings in accordance with the Commission’s decision in *Potora III*.

34. Thus, the Complainant's Fourth Complaint is legally insufficient and should be summarily dismissed with prejudice pursuant to 52 Pa. Code § 5.101(a)(4).

IV. CONCLUSION

WHEREFORE, UGI Utilities, Inc. – Gas Division respectfully requests that the above-captioned **Fourth** Formal Complaint filed by Jennifer Potora at Docket No. C-2022-3036399 be dismissed in its entirety pursuant 52 Pa. Code § 5.101(a)(4).

Respectfully submitted,



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Dated: November 16, 2022

Counsel for UGI Utilities, Inc. – Gas Division

Appendix A

Initial Decision and Final Order in the *Potora I* Proceeding

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Potora

v.

UGI Penn Natural Gas, Inc.

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C-2016-2574107

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

This decision dismisses the complaint filed in this matter for failure of the complainant to appear for the hearing and prosecute the complaint.

HISTORY OF THE PROCEEDINGS

On November 3, 2016, Jennifer Potora (Complainant) filed a formal complaint against UGI Penn Natural Gas, Inc. (UGI-PNG or Respondent) alleging that the utility was threatening to terminate her service; that there are incorrect charges on her bill; and Respondent had her household information recorded incorrectly. As relief she requested that her meter be checked.

On November 21, 2016, Respondent filed an answer averring that the Complainant owed \$1,451.14 and had not made a payment on her account since June 20, 2016.

Respondent further represented that Complainant's gas meter would be tested "in the near future."¹

By hearing notice dated January 10, 2017, the matter was assigned to me and scheduled for a telephonic hearing on Thursday, February 16, 2017. On January 11, 2017, I issued a prehearing order setting forth instructions and procedures for the conduct of the hearing.

By email dated February 10, 2017, the Complainant requested a continuance of the hearing because she had a medical appointment in Philadelphia. Respondent had no objection to the request for a continuance which was granted by interim order dated February 13, 2017.

By hearing notice dated February 22, 2017, the hearing was rescheduled for Tuesday, March 28, 2017. By email dated March 14, 2017, the Complainant again requested a continuance because a knee procedure had to be rescheduled to March 27, 2017, due to an impending blizzard. Respondent did not object, and by interim order dated March 15, 2017, the second request for a continuance was granted.

By hearing notice dated March 21, 2017, the hearing was rescheduled for Wednesday, April 26, 2017. By email dated April 21, 2017, the Complainant again requested a continuance, stating that she had received a notice to attend jury duty on April 26, 2017. By email the Complainant was instructed to reduce her request to writing and include a copy of her jury summons.

On April 25, 2017, the Complainant faxed her written request for a continuance which did not include a copy of her jury summons. The Complainant stated that her meter was scheduled to be replaced on Saturday, April 29, 2017. She also stated that she had not received copies of Respondent's exhibits. By interim order dated April 25, 2017, I denied her request for a continuance, but converted the April 26, 2017 hearing to a prehearing conference.

¹ Answer at ¶ 4.

The prehearing conference convened as scheduled. The Complainant appeared representing herself. Respondent was represented by Larry R. Crayne, Esquire. Amy Wynn, a representative of Respondent also participated. Following a discussion of the status of the dispute, the parties agreed to continue the hearing. A new hearing was scheduled for May 24, 2017 at 10:00 a.m. Counsel for Respondent was directed to re-send his proposed exhibits by certified mail. An interim order memorializing the matters agreed upon at the prehearing conference was served on April 26, 2017. Also on April 26, 2017, a hearing notice was served, scheduling the May 24, 2017 hearing.

By fax, on May 22, 2017, the Complainant wrote a letter stating that she would not be attending the May 24, 2017 hearing. She did not provide a reason other than “I have nothing else to report”

The May 24, 2017 hearing convened as scheduled. The Complainant did not call into the hearing to participate. Respondent was represented by Larry R. Crayne, Esquire who appeared along with two witnesses, ready to proceed. Attorney Crayne reported that he had sent proposed exhibits by certified mail as instructed by the April 26, 2017 interim order. Delivery was attempted on May 18, 2017 and May 23, 2017. No signed receipt was returned. The hearing was briefly recessed to permit the Complainant additional time to call in.

The Respondent moved to dismiss the complaint for failure to appear and prosecute and the motion was granted. The record closed at the conclusion of the hearing. This decision memorializes the order at the hearing granting the Respondent’s motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Jennifer Patora.
2. The Respondent in this case is UGI Penn Natural Gas, Inc.

3. On November 3, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on November 21, 2016.
5. By notice dated April 26, 2017, the Commission scheduled this matter for a telephonic hearing on May 24, 2017 at 10:00 a.m.
6. The Commission sent notice of the telephonic hearing in this case to the Complainant by regular first class mail to the address stated on the complaint.
7. The Commission's hearing notice was not returned to the sender.
8. The Complainant failed to appear at the May 24, 2017 telephonic hearing.

DISCUSSION

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). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to the Complainant on April 26, 2017, by regular first class mail to the address stated on the complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for OALJ.

In addition, I issued an interim order dated April 26, 2017, which included the date and time of the hearing. This order provided that the provisions of the prehearing order dated January 11, 2017 remained in effect. The January 11, 2017 prehearing order included instructions for requesting a change in the date and time of the hearing as well as notification that

failure to take part in a hearing and present evidence may result in dismissal of the complaint. The prehearing order, as well as the other orders and hearing notices, which were mailed to the Complainant at the address shown on the complaint, were never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was 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., 444 A.2d 658 (Pa.Super. 1982).

The Complainant did not appear for the scheduled hearing because she did not call the conference number shown on the April 26, 2017 hearing notice. Under these circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Telephone Co. of Pa. Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

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 for the hearing and proffer any evidence to support the complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. Under these circumstances, the complaint should be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and 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.

CONCLUSIONS OF LAW

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

2. The due process rights of the Complainant have been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear for the hearing and proffer any evidence to support the complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of UGI Penn Natural Gas, Inc. to dismiss the complaint filed by Jennifer Potora at Docket C-2016-2574107 is granted.

2. That the complaint of Jennifer Potora against UGI Penn Natural Gas, Inc. at Docket C-2016-2574107 is dismissed with prejudice for failure of the Complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. C-2016-2574107 is marked closed.

Date: May 25, 2017

_____/s/
Mary D. Long
Administrative Law Judge

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Jennifer Potora

v.

UGI Penn Natural Gas, Inc.

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C-2016-2574107

FINAL ORDER

In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Mary D. Long dated May 25, 2017, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the motion of UGI Penn Natural Gas, Inc. to dismiss the complaint filed by Jennifer Potora at Docket C-2016-2574107 is granted.
2. That the complaint of Jennifer Potora against UGI Penn Natural Gas, Inc. at Docket C-2016-2574107 is dismissed with prejudice for failure of the Complainant to appear for the hearing and prosecute the complaint.
3. That the docket at Docket No. C-2016-2574107 is marked closed.

BY THE COMMISSION,


Rosemary Chiavetta
Secretary

(SEAL)

ORDER ENTERED: July 7, 2017

Appendix B

Initial Decision and Final Order in the *Potora II* Proceeding

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Potora

v.

UGI Penn Natural Gas, Inc.

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C-2018-3000028

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision dismisses a complaint for failure to prosecute because the complainant failed to appear for the hearing at the designated date and time despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On February 21, 2018, Jennifer Potora filed a formal complaint against UGI Penn Natural Gas Company (UGI), docket number C-2018-3000028. In her complaint, Ms. Potora averred that UGI is threatening to shut off her service or has already shut off her service and that she is disputing the amount of her bills since her meter was moved to the outside of her house. Ms. Potora requested a payment agreement.

On March 12, 2018, UGI filed an answer in response to the complaint admitting that it has sent Ms. Potora a termination notice due to her repeated and persistent failure to pay monthly bills in full and on a timely basis. UGI also noted that Ms. Potora has previously been

provided various payment agreements, each of which she has failed to honor, and that the company has tested her meter to ensure that Ms. Potora has been correctly billed for consumption in accordance with the company's tariffs.

On March 15, 2018, a hearing notice was issued establishing an initial telephonic hearing for this case for Monday, April 30, 2018 and assigning me as the presiding officer. A prehearing order was issued on March 15, 2018 setting forth various procedural rules that would govern the hearing. Of note, the hearing notice stated: "You may lose the case if you do not take part in this hearing and present facts on the issues raised." Similarly, the prehearing order stated, among other things, that: "If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party."

By letter dated April 5, 2018, Ms. Potora requested a continuance of the hearing scheduled for April 30, 2018, noting that she will be out of town for a medical appointment and unavailable by phone. In response, UGI objected to Ms. Potora's request for a continuance, noting a "long history of [her] filing formal complaints and requesting continuances" in prior cases. UGI provided docket numbers to three cases in support of its objection.

Ms. Potora's request was granted over the objection of the Company via order dated April 10, 2018 pursuant to Sections 1.15, 5.483 and 1.2 of the Commission's regulations. It was determined that because Ms. Potora indicated that she has a medical appointment out of town and will be unable to participate in the telephonic hearing at the scheduled time, she had demonstrated good cause to reschedule the hearing. UGI's objection to Ms. Potora's request was duly noted and Ms. Potora was advised that the Commission does not want proceedings to linger and, therefore, repeated continuances of the hearing is unlikely, absent exigent circumstances.

On April 26, 2018, a call-in telephonic hearing notice was issued scheduling an initial call-in telephonic hearing for this case for Thursday, May 17, 2018.

By email dated May 17, 2018, and sent at 4:39 a.m., Ms. Potora provided:

Judge Cheskis:

I am unable to make the phone call this morning at 10:00. I have been in the ER since 9:00 p.m. with numbness on my left side and tightness of my chest with my blood pressure is out of control. At this time I need to find out what is wrong with me as I am awaiting to be admitted to a room. Also I have messaged Ms. Wynn informing her that I am awaiting my income tax and would be able to pay next week on the account but have not heard back from her. Thank you Jennifer Potora.¹

This email from Ms. Potora was forwarded to counsel for UGI.

The hearing in this case convened at 10:00 a.m., as scheduled. Larry Crayne, Esquire, appeared on behalf of UGI with one witness. Although the hearing was delayed for 15 minutes to allow Ms. Potora to appear, she did not appear for the hearing.

During the hearing, Ms. Potora's email was read in to the record. In response, UGI's witness testified regarding Ms. Potora's multiple requests for continuances, among other things, made in other formal and informal proceedings before the Commission involving both Ms. Potora's electric and gas accounts with UGI.

Ms. Potora was then given 15 days from the date of the hearing to provide evidence of her admission to the emergency room to validate her absence from the May 17, 2018 hearing. To the extent that Ms. Potora can present such evidence, it would then be determined whether exigent circumstances exist to warrant scheduling a third hearing for this matter. If it is not determined that such exigent circumstances exist, or Ms. Potora failed to provide such evidence, Ms. Potora's complaint would be dismissed for failure to prosecute via a separate decision. This directive was confirmed in prehearing order #2 dated May 17, 2018 that was sent to Ms. Potora via first class mail.

The record in this case consists of the hearing transcript of 12 pages. The record closed in this proceeding when the transcript was filed with the Commission on May 31, 2018.

¹ Ms. Wynn is an employee of UGI.

FINDINGS OF FACT

1. The complainant in this case is Jennifer Potora.
2. The respondent in this case is UGI Penn Natural Gas Company.
3. The hearing in this matter was originally scheduled for April 30, 2018.
4. On April 5, 2018, Ms. Potora requested a continuance of the April 30, 2018 hearing because she would be out of town due to a medical appointment.
5. UGI objected to a continuance of the April 30, 2018 hearing because Ms. Potora has a “long history of filing formal complaints and requesting continuances.”
6. Ms. Potora’s request for a continuance was granted via order dated April 10, 2018, noting UGI’s objection and informing Ms. Potora that a further continuance would be unlikely absent exigent circumstances.
7. A hearing notice was issued on April 26, 2018 scheduling an initial call-in telephonic hearing for this matter for Thursday, May 17, 2018.
8. A copy of the April 26, 2018 hearing notice was sent to Ms. Potora via first class mail to the address she provided on her complaint.
9. The April 26, 2018 hearing notice was not received back by the Commission as undeliverable.
10. By email dated May 17, 2018, Ms. Potora indicated that she would be unable to participate in the hearing that day because she had been in the emergency room since 9:00 p.m. the night before.

11. No one appeared at the hearing on behalf of Ms. Potora. Tr. 1, 4.

12. During the hearing, Amy Wynn, a senior compliance representative for UGI, testified regarding multiple continuances Ms. Potora has requested in prior formal and informal complaint proceedings before the Commission. Tr. 8-9.

13. Prehearing order #2 was issued on May 17, 2018 giving Ms. Potora 15 days to provide evidence of her admission to the emergency room as an exigent circumstance sufficient to warrant a second continuance of her hearing.

14. To date, Ms. Potora has not submitted evidence of her admission to the emergency room as an exigent circumstance sufficient to warrant a second continuance of her hearing.

15. The hearing notice and the prehearing order issued in this matter stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

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). “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, 364 Pa. 54, 70 A.2d 854 (1950). In this proceeding, based on a reading of her complaint, Ms. Potora complained that UGI was threatening to terminate her service or had already terminated her service and that she would like a payment agreement. Ms. Potora indicated that she disputed the amount of her bills since her meter had been moved to outside her home. Ms. Potora, therefore, has the burden of proof in this proceeding.

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). This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. Id.

Neither Ms. Potora nor anyone on behalf of Ms. Potora appeared at the date and time set for the hearing in her case despite notice of the hearing. In fact, Ms. Potora had indicated a few hours prior to the hearing that she was in the emergency room and that she would not be able to participate in the hearing. In most cases, such a situation would have warranted a continuance of the hearing. In this case, however, not only had Ms. Potora already been given one continuance, UGI presented significant evidence that Ms. Potora has requested multiple continuances in other formal and informal proceedings at the Commission. UGI surmised that Ms. Potora has been abusing the process to avoid termination. As a result, prehearing order #2 was issued after the hearing giving Ms. Potora an opportunity to demonstrate that she, in fact, was unable to participate in the hearing because she was in the hospital or had some other exigent circumstance. Ms. Potora was warned in the order granting her first continuance that a second continuance would be unlikely absent exigent circumstances. To date, Ms. Potora has not submitted evidence of her admission to the emergency room as an exigent circumstance, or any other evidence, sufficient to warrant a second continuance of her hearing.

Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

- (a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:
 - (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
 - (2) Not be permitted to reopen the disposition of a matter accomplished at the conference or hearing.

- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa.Code § 5.245(a).

In addition, the prehearing order and hearing notice were sent to Ms. Potora by regular first class mail and neither were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Ms. Potora in the ordinary course of business were received by Ms. Potora. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Super. Ct. 221, 444 A.2d 658 (1982). Both the hearing notice and the prehearing order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. As such, Ms. Potora had notice and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, Ms. Potora's due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

As noted in prehearing order #2, while Ms. Potora's well-being is important, the company has alleged that she has a history of filing formal and informal complaints in an effort to delay paying her utility bills. This practice cannot be condoned. Each proceeding before this Commission expends valuable time and resources of the Commission and the parties. Ms. Potora was given notice and the opportunity to be heard on her complaint. If she does not take advantage of that opportunity, her complaint will be dismissed.

By failing to appear and present any evidence in support of her complaint, Ms. Potora has failed to carry her burden. Thus, it is appropriate to dismiss the complaint with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995). Accordingly, the merits of the complaint will not be addressed in this Initial Decision.

CONCLUSIONS OF LAW

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

2. 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).

3. "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, 364 Pa. 54, 70 A.2d 854 (1950).

4. 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). This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. Id.

5. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa.Code § 5.245(a).

6. Ms. Potora's due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

7. Ms. Potora has failed to carry her burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Jennifer Potora against UGI Penn Natural Gas Company at Docket Number C-2018-3000028 is hereby dismissed with prejudice for failure to prosecute.
2. That this matter be marked closed.

Date: June 27, 2018

_____/s/_____
Joel H. Cheskis
Deputy Chief Administrative Law Judge

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Jennifer Potora

v.

UGI Penn Natural Gas, Inc.

:
:
:
:
:

C-2018-3000028

FINAL ORDER

In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Deputy Chief Administrative Law Judge Joel H. Cheskis dated June 27, 2018, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Jennifer Potora against UGI Penn Natural Gas Company at Docket Number C-2018-3000028 is hereby dismissed with prejudice for failure to prosecute.

2. That this matter be marked closed.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ENTERED: August 14, 2018

Appendix C

Opinion and Order in the *Potora III* Proceeding

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held August 8, 2019

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
David W. Sweet, Vice Chairman
Norman J. Kennard
Andrew G. Place
John F. Coleman, Jr.

Jennifer Patora

C-2018-3003485

v.

UGI Penn Natural Gas, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Jennifer Patora (Complainant or Ms. Patora) on November 19, 2018, to the Initial Decision (Initial Decision or I.D.) of Deputy Chief Administrative Law Judge (ALJ) Joel H. Cheskis, served on October 1, 2018. UGI Penn Natural Gas, Inc. (UGI, Respondent, or Company) filed Replies to Exceptions on November 28, 2018. For the reasons stated below, we will deny the Complainant's Exceptions and modify the ALJ's Initial Decision, consistent with this Opinion and Order.

History of the Proceeding

On July 13, 2018, Ms. Potora filed a Formal Complaint (Complaint) against UGI. In the Complaint, Ms. Potora checked the boxes indicating that UGI was threatening to terminate her service or had already terminated her service and that she would like a payment arrangement. Ms. Potora also stated that she did not agree with the usage amount for her gas service. Complaint ¶ 4. As relief, Ms. Potora requested a payment arrangement based on lost child support payments and asked that UGI test her meter while she was present. Complaint ¶ 5.

On August 7, 2018, UGI filed an Answer and New Matter. In its Answer, UGI admitted that it sent Ms. Potora a termination notice due to her repeated and persistent failure to pay monthly bills in full and on a timely basis. UGI also admitted that Ms. Potora requested another payment arrangement. UGI averred that Ms. Potora was provided with a payment arrangement from the Company, from the Commission at Bureau of Consumer Services Case Number 3312966, and a settlement and resolution payment arrangement in response to a prior complaint, all of which she failed to honor. UGI stated that the Company tested Ms. Potora's meter before its installation on May 1, 2017, and that the Company will schedule another meter test with Ms. Potora present provided that Ms. Potora cooperates with the Company in scheduling the meter test date. Answer ¶ 4.

In its New Matter, which was accompanied by a notice to plead, UGI averred that Ms. Potora had filed another complaint on February 21, 2018 at Docket Number C-2018-3000028, that was substantively identical to her instant complaint. New Matter ¶ 8. UGI stated that the prior complaint was dismissed for failure to appear. New Matter ¶ 10. UGI requested that the instant Complaint be dismissed on the basis that it demonstrates the Complainant's pattern of filing informal and formal complaints in order to delay UGI from receiving payment from the Complainant for natural gas service.

On August 16, 2018, UGI filed a Motion for Judgment on the Pleadings (Motion). In its Motion, which was accompanied by a notice to plead, UGI argued that Ms. Potora's Complaint should be dismissed based on the *res judicata* doctrine. Motion ¶ 3. UGI reiterated that Ms. Potora's Complaint is substantively identical to an earlier complaint that Ms. Potora filed on February 21, 2018, at Docket Number C-2018-3000028, which addressed Ms. Potora's allegations regarding a payment arrangement and charges for natural gas service. Motion ¶ 1.

Ms. Potora did not file an answer to either UGI's New Matter or its Motion.

In the Initial Decision served on October 1, 2018, the ALJ granted UGI's Motion, dismissed Ms. Potora's Complaint, and precluded Ms. Potora from filing further complaints with the Commission regarding the arrearages on her account for gas service UGI provided until all arrearages are paid in full.

On October 15, 2018, Ms. Potora requested an extension of time to file Exceptions, averring that she did not receive the Initial Decision by email or certified mail. By Secretarial Letter issued November 9, 2018, the Commission granted the Complainant's request for an extension of time and directed that Exceptions were due on or before November 19, 2018, and Replies to Exceptions were due on or before November 29, 2018.

As previously noted, the Complainant filed Exceptions on November 19, 2018, and UGI filed Replies to Exceptions on November 28, 2018.

Discussion

Legal Standards

This case is before us on a Motion for Judgment on the Pleadings. Motions for summary judgment and judgment on the pleadings are governed by Section 5.102 of our Regulations, 52 Pa. Code § 5.102. Judgment on the pleadings is available when the pleadings show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Judgment on the pleadings should only be granted when the right to relief is clear and free from doubt. In determining the absence of a genuine issue of material fact, the Commission must take the view of the evidence most favorable to the non-moving party and resolve any doubts against the entry of the judgment. *Day v. Volkswagenwerk Aktiengesellschaft*, 318 Pa. Super. 225, 231, 464 A.2d 1313, 1316 (1983).

UGI has specifically asserted that the Complaint should be dismissed based on the doctrine of *res judicata*. The doctrine of *res judicata* prevents a suit between the same parties on the same cause of action after a court of competent jurisdiction has rendered a final judgment on the merits. In order for the doctrine to prevail, all of the following four requirements must be met: “(1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality or capacity of the parties suing or sued.” *Id.* at 232, 1316-17.

In the Initial Decision, Deputy Chief ALJ Cheskis made seven Findings of Fact and reached fourteen Conclusions of Law. I.D. at 3-4, 10-12. We shall adopt and incorporate herein by reference the ALJ’s Findings of Fact and Conclusions of Law unless they are either expressly or by necessary implication overruled or modified by this Opinion and Order.

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The ALJ's Initial Decision

The ALJ granted UGI's Motion for Judgment on the Pleadings, finding that when accepting as true all well pleaded facts by Ms. Patora, the record showed that no facts were at issue, that the law was so clear that a trial would be a fruitless exercise, and that UGI was entitled to judgment as a matter of law. The ALJ did not dismiss the Complaint on *res judicata* grounds. The ALJ stated that the Complainant's averment that she lost child support payments, when viewed as true, raised a fact that the Complainant did not previously raise in her complaints and, as a result, an identity of issues required for a *res judicata* finding did not exist. I.D. at 6.

Rather, the ALJ dismissed the Complaint based on an abuse of process finding. The ALJ referred to UGI's arguments in its New Matter and Motion that Ms. Patora has filed various complaints with the Commission and has requested multiple continuances in those complaint proceedings. *Id.* at 6-7. The ALJ found that UGI's averments in its New Matter were admitted as true because Ms. Patora did not file a reply to the New Matter. *Id.* at 8 (citing 52 Pa. Code § 5.63(b)).¹ The ALJ added that the Commission's records indicated that the Complainant has filed approximately ten formal complaints at the Commission in the past two years. I.D. at 8. The ALJ relied on various

¹ Section 5.63(b) provides that "[f]ailure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted."

Commission decisions which, when paired with Ms. Potora's complaint filing history with the Commission, guided his findings that the Complainant had engaged in an abuse of process. See I.D. at 7-9 (citing *Grossman v. Bell Telephone Company of Pennsylvania*, 67 Pa. P.U.C. 714 (1988) (*Grossman*); *Manu v. The Bell Telephone Company of Pennsylvania*, Docket No. F-09029141 (Order entered May 4, 1994) (*Manu*); *DiFilippo v. PECO Energy Company*, Docket No. C-20027116 (Final Order entered October 3, 2002); *Seidenstricker v. Metropolitan Edison Company*, Docket No. F-2008-2019388 (Order entered July 28, 2009); *Thomas v. The Peoples Natural Gas Company*, Docket No. C-2009-2102194 (Order entered June 17, 2010)).

Additionally, the ALJ noted that under most circumstances, the Complainant's averment that she no longer receives child support payments would constitute a well-pleaded material fact that warranted a hearing. However, in this case, the ALJ determined that the Complainant's history of abusing the process did not warrant a hearing, because to allow a hearing would enable the Complainant to avoid termination of her service by modifying her complaint slightly each time. I.D. at 9. The ALJ further prohibited Ms. Potora from filing any more complaints with the Commission until her balance with UGI was paid in full. *Id.* at 10.

Exceptions and Replies

In her Exceptions,² the Complainant reiterates the averments set forth in her Complaint. The Complainant states that she has asked UGI to test her meter when she is present. Exc. at 1. The Complainant also states that her income has decreased since she

² We acknowledge that the Complainant's Exceptions do not strictly comply with 52 Pa. Code § 5.533(b), which requires that Exceptions be numbered, identify the finding of fact or conclusion of law to which exception is taken, and cite to the relevant pages of the decision. Nevertheless, we will consider the Complainant's Exceptions in order to secure a just, speedy, and inexpensive determination in this proceeding consistent with 52 Pa. Code § 1.2, particularly since the Complainant is *pro se*.

no longer receives child support payments. The Complainant requests that UGI test her meter in her presence and that the Commission establish a new payment arrangement for her. *Id.* at 2. The Complainant also makes statements regarding extra-record email and phone contacts between the Complainant and UGI concerning mediation and meter testing.

In its Replies to Exceptions, UGI argues that the Complainant has improperly raised factual averments regarding contacts with UGI that are not part of the record. R. Exc. at 1. UGI requests that the Complainant's Exceptions be denied and the ALJ's decision be adopted without modification. *Id.* at 2.

Disposition

Initially, we note that our decision will be based on the Parties' pleadings and the ALJ's ruling on UGI's Motion for Judgment on the Pleadings. We cannot base our decision on averments that are not part of the record before us.

Upon review, we will deny the Complainant's Exceptions and modify the Initial Decision. We agree with the ALJ's determination to grant UGI's Motion for Judgment on the Pleadings and to dismiss the Complaint. However, we find it more appropriate under the circumstances in this case to do so on the basis that the Commission cannot provide the relief that the Complainant is requesting in the form of a payment arrangement, rather than solely on the basis of an abuse of process finding.

We have examined the ALJ's decision in light of the fact that Ms. Potora is a *pro se* Complainant. In *Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (Order entered July 14, 1993), we held that in the normal course, we would not dismiss a *pro se* complaint without first providing a hearing during which the *pro se* complainant could further explain his or her position and the factual basis for

the complaint. Our concern was that in general, *pro se* complainants may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe their basic issue and supporting facts. Nevertheless, there are some cases, such as this one, where we find that a hearing would not enable the Complainant to better explain his or her position or provide additional facts that would alter the inevitable conclusion that this Commission cannot provide the Complainant with the requested relief. On this basis, we distinguish *Carlock* from the case now before us.

As the ALJ noted, the Complainant raised one new claim – that she no longer receives child support payments as part of her household income - which was not included in any of the prior complaints the Complainant filed with the Commission.³ This claim alone is not sufficient to demonstrate that disputed issues of fact exist in this case or that we can provide the Complainant with a new payment arrangement. The Code provides that “[a]bsent a change in income,⁴ the Commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a Commission order or decision.” 66 Pa. C.S. § 1405(d). Under the Code, “household income” includes “[t]he combined gross income of all adults in a residential household who benefit from the public utility service.” 66 Pa. C.S. § 1403.

³ Ms. Potora had an opportunity to be heard on her general request for a payment arrangement and on her claims regarding her meter in previous complaint proceedings before the Commission. *See Jennifer Potora v. UGI Penn Natural Gas, Inc.*, Docket No. C-2018-300028 (Final Order entered August 14, 2018); *Jennifer Potora v. UGI Penn Natural Gas, Inc.*, Docket No. C-2016-2574107 (Final Order entered July 7, 2017). The Commission’s decisions in these cases remain conclusive upon the Parties pursuant to Section 316 of the Code, 66 Pa. C.S. § 316.

⁴ The Code defines “change in income” as “[a] decrease in household income of 20% or more if the customer’s household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer’s household income level is 200% or less of the Federal poverty level.”

Based on our records, it appears that child support was not included in the Complainant's household income amount when the Commission issued the Complainant her first payment arrangement. Moreover, the Commission generally does not consider child support or other similar payments benefitting minors in calculating the household income amount under Section 1403 of the Code. *See Mandy Botts v. PPL Electric Utilities Corporation*, Docket No. F-2017-2620661 (Order entered December 20, 2018); *Amber Cozart v. Philadelphia Gas Works*, Docket No. C-2018-2646671 (Order entered September 17, 2018). Under the circumstances, even when viewing the evidence in a manner most favorable to Ms. Patora, we conclude that this case does not involve any disputed issues of fact, and the applicable law is clear that we cannot provide the Complainant with a new payment arrangement. Our decision in this case is similar to our decision in *Gassenheimer v. Metropolitan Edison Company*, Docket Number C-2010-2212621 (Order entered June 13, 2011), in which we granted a Motion for Judgment on the Pleadings and dismissed a customer complaint when it was clear that we could not award the customer a new payment arrangement because her household income had increased. *See also Painter v. Pa. PUC*, 116 A.3d 749 (Pa. Cmwlth. 2015) (holding that the Commission's decision to dispose of customers' complaint on summary judgment did not violate the customers' due process rights because the case involved interpretation of a utility's tariff and the customers raised no fact in dispute).

Additionally, we agree with the ALJ that based on prior Commission decisions and our records of the other complaint proceedings in which Ms. Patora has been involved, it appears that she has a history of abusing the Commission's process. Ms. Patora has filed ten complaints with the Commission and has requested multiple continuances and then failed to appear at the scheduled hearings in many of these cases. *See, e.g., Jennifer Patora v. UGI Penn Natural Gas, Inc.*, Docket No. C-2018-300028 (Final Order entered August 14, 2018); *Jennifer Patora v. UGI Penn Natural Gas, Inc.*, Docket No. C-2016-2574107 (Final Order entered July 7, 2017); *Jennifer Patora v. UGI Utilities, Inc.*, Docket No. C-2016-2575793 (Final Order entered May 14, 2018). While this

information is a consideration in reaching our determination in this proceeding, we are not aware of any Commission proceedings in which we have dismissed a *pro se* complainant's case, without first providing an opportunity for a hearing, solely based on an abuse of process finding. Accordingly, we find it more appropriate to dismiss Ms. Patora's Complaint because this case does not involve any genuine issues of material fact and, under the circumstances, it would not be in the public interest to conduct a hearing. *See* 66 Pa. C.S. § 703(b).

Conclusion

Based on our review of the Parties' pleadings, the ALJ's decision, and the applicable law, we shall deny the Complainant's Exceptions and modify the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Jennifer Patora on November 19, 2018, are denied.
2. That the Initial Decision of Deputy Chief Administrative Law Judge Joel H. Cheskis, served on October 1, 2018, is modified consistent with this Opinion and Order.
3. That the Motion for Judgment on the Pleadings filed by UGI Penn Natural Gas, Inc. on August 16, 2018, is granted for the reasons set forth in this Opinion and Order.

4. That the Formal Complaint filed by Jennifer Potora on July 13, 2018 against UGI Penn Natural Gas, Inc. at Docket Number C-2018-3003485, is dismissed.

5. That Jennifer Potora is precluded from filing further complaints with the Commission, whether of an informal or formal nature, regarding the arrearages on her account for gas service rendered by UGI Penn Natural Gas, Inc. until all arrearages are paid in full and that the filing of any complaint pertaining to such arrearages shall be dismissed without further proceedings.

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

7. That this case shall be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

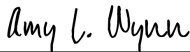
ORDER ADOPTED: August 8, 2019

ORDER ENTERED: August 8, 2019

VERIFICATION

I, Amy L. Wynn, Senior Compliance Representative of UGI Utilities, Inc., hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: November 16, 2022

DocuSigned by:

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Amy L. Wynn