

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Dlugosh

v.

UGI Utilities, Inc.

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C-2022-3032579

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses with prejudice the Formal Complaint of an electric service customer seeking a payment arrangement because the Complainant, by failing to appear for the hearing, failed to carry her burden of proving by a preponderance of the evidence that she is entitled to a Commission-ordered payment arrangement. In addition, this Initial Decision prohibits the Complainant from filing further informal or formal complaints related to her outstanding balance, which currently exceeds \$7,800.00, because of her bad faith in paying her electric bills and her history of abusing the Commission’s complaint procedures to avoid service termination.

HISTORY OF THE PROCEEDING

On May 17, 2022, the Complainant, Jennifer Dlugosh, filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. (UGI) in which she requested a Commission-issued payment arrangement for the outstanding balance on her UGI account.

On June 13, 2022, UGI filed an Answer and New Matter in response to Ms. Dlugosh's Complaint. In its Answer, UGI denied that the Complainant is entitled to another Commission-ordered payment arrangement since she defaulted on a previous Commission-ordered arrangement. In addition, UGI averred that the Complainant has defaulted on several company-issued payment arrangements and has shown bad faith in paying her UGI bills since she has not made a payment toward her balance since April 17, 2019. UGI requested that Ms. Dlugosh's Complaint be dismissed and that she be barred from filing any further complaints related to her current outstanding balance. In its New Matter, to which was attached a Notice to Plead, UGI again averred that Ms. Dlugosh is not entitled to another Commission-ordered payment arrangement and that she abused the administrative process by filing numerous complaints with the Commission to avoid termination of her service. Ms. Dlugosh did not file a response to UGI's Notice to Plead.

By Hearing Notice dated July 11, 2022, an Initial Call-In Telephonic Hearing was scheduled for September 7, 2022, and the matter was assigned to me.

The telephonic hearing was convened as scheduled on September 7, 2022. The Complainant appeared *pro se*. UGI was represented by Larry Crayne, Esquire. Prior to the start of the hearing, the parties discussed and agreed upon settlement terms as a resolution of Ms. Dlugosh's Complaint. The settlement required, among other things, that Ms. Dlugosh make a lump sum payment to UGI on or before September 21, 2022, and, thereafter, to pay her current charges plus an additional amount each month toward her outstanding balance. By electronic mail dated October 3, 2022, however, I was informed by Counsel to UGI that Ms. Dlugosh had not made the required initial lump sum payment. Accordingly, by Further Call-In Telephonic Hearing Notice dated October 6, 2022, the Commission scheduled a further hearing for November 10, 2022.

The Further Hearing was convened as scheduled at 10:00 a.m. on November 10, 2022. Ms. Dlugosh did not call in to connect to the hearing at 10:00 a.m. I waited until 10:10 a.m. to start the hearing in case she was running late. Ms. Dlugosh never called in to connect to and participate in the hearing. UGI requested, based on the Complainant's poor payment history

and her history of filing numerous complaints with the Commission to avoid service termination, that she be barred from filing any further complaints related to her outstanding balance. Accordingly, to that end, UGI presented the testimony of one witness who sponsored four exhibits, all of which were admitted into the record.

The evidentiary record closed on December 2, 2022, upon the filing of the hearing transcript with the Commission and consists of a 28-page transcript and four UGI exhibits.

FINDINGS OF FACT

1. The Complainant is Jennifer Dlugosh.
2. The Respondent is UGI Utilities, Inc.
3. The service address at issue is 705 Nandy Drive, Apt. 5, Kingston, PA 18704.
4. By Hearing Notice dated July 11, 2022, an Initial Call-In Telephonic Hearing was scheduled for September 7, 2022.
5. The Hearing Notice was electronically served on Complainant at the email address provided by her on her Formal Complaint form.
6. The telephonic hearing was convened as scheduled on September 7, 2022.
7. Prior to the start of the hearing, the parties discussed and agreed upon settlement terms as a resolution of Ms. Dlugosh's Complaint.
8. The settlement required, among other things, that Ms. Dlugosh make a lump sum payment to UGI on or before September 21, 2022, and, thereafter, to pay her current charges plus an additional amount each month toward her outstanding balance.

9. By electronic mail dated October 3, 2022, I was informed by Counsel to UGI that Ms. Dlugosh had not made the required initial lump sum payment.

10. By Further Call-In Telephonic Hearing Notice dated October 6, 2022, the Commission scheduled a further hearing for November 10, 2022.

11. The Further Hearing Notice was electronically served on Ms. Dlugosh at the email address provided by her on her Formal Complaint form.

12. The Further Hearing Notice was not returned as undeliverable.

13. The Further Hearing Notice instructed the parties that they may lose their case if they failed to appear for the hearing and present evidence on the issues raised.

14. The Further Hearing was convened as scheduled at 10:00 a.m. on November 10, 2022. Ms. Dlugosh never called in to participate in the hearing. Tr. 15-16.

15. Amy Wynn is a Senior Compliance Representative with UGI. Tr. 17.

16. Ms. Wynn sponsored and addressed the following four exhibits on behalf of UGI:

- UGI Ex. 1: Account billing, consumption and pay statement for Ms. Dlugosh's UGI account;
- UGI Ex. 2: Summary of company and PUC payment arrangements;
- UGI Ex. 3: Timeline of termination actions and PUC complaints;
- UGI Ex. 4: Most recent Informal Complaint decision.

17. Ms. Dlugosh established electric service with UGI on July 26, 2017. Tr. 18.

18. Ms. Dlugosh has not made a good payment on her UGI account since April 17, 2019. Tr. 19; UGI Ex. 1.

19. The five most recent payments from Ms. Dlugosh have all been returned due to insufficient funds. Tr. 19; UGI Ex. 1.

20. The outstanding balance on Ms. Dlugosh's UGI account as of the date of the hearing was \$7,809.56. Tr. 19; UGI Ex. 1.

21. Since April of 2018, UGI has established two payment arrangements with Ms. Dlugosh for the payment of outstanding charges on her account. Tr. 19; UGI Ex. 2.

22. Ms. Dlugosh did not comply with either of the company-issued payment arrangements. Tr. 20; UGI Ex. 2.

23. Since April of 2018, the Commission has established two payment arrangements for the payment of the outstanding charges on her UGI account. Tr. 19-20; UGI Ex. 2.

24. Ms. Dlugosh did not comply with either of the Commission-ordered payment arrangements. Tr. 20; UGI Ex. 2.

25. Ms. Dlugosh has filed ten informal complaints against UGI since February of 2019. Tr. 20; UGI Ex. 3.

26. Each of the informal complaints filed by Ms. Dlugosh were filed in response to termination notices issued to her by UGI. Tr. 20-21; UGI Ex. 3.

27. Ms. Dlugosh has avoided termination of her UGI service on numerous occasions by either filing complaints with the Commission or due to the Commission's winter moratorium against service shut off. Tr. 20-21; UGI Ex. 3.

28. Ms. Dlugosh filed her most recent informal complaint with the Commission's Bureau of Consumer Services (BCS) on April 7, 2022, at BCS Case No. 3828063. Tr. 21; UGI Ex. 4.

29. The BCS dismissed Ms. Dlugosh's informal complaint due to her failure to comply with a previous Commission-ordered payment arrangement at BCS Case No. 3679409. Tr. 21; UGI Ex. 4.

30. An emergency medical certification was submitted to UGI on Ms. Dlugosh's behalf on September 27, 2022, to prevent the termination of her service. The certification expired on October 27, 2022. Tr. 22.

31. Counsel for UGI and a witness for UGI were present and prepared to proceed at the time of the November 10, 2022 hearing.

32. Complainant has not contacted the Commission to explain her failure to appear at the November 10, 2022 hearing.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a Complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). A Complainant can meet that burden if he or she presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950) (*Se-Ling Hosiery*). The

offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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

Administrative agencies, 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 provided notice and the opportunity to appear and be heard. *Id.*

As noted above, Ms. Dlugosh was provided notice of the date and time of the hearing. Notwithstanding that notice, no one appeared on behalf of Ms. Dlugosh at the date and time set for the hearing in this case. Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 of the Code 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 thereafter to reopen the disposition of the 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).

The Further Hearing Notice was electronically served on Ms. Dlugosh at the email address provided by her on her Formal Complaint form. The document was not returned to the Commission as undeliverable. Accordingly, it may be presumed that the notice sent to Ms. Dlugosh in the ordinary course of business was received by her. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016). The Further Hearing Notice 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 noted, no one appeared on behalf of Ms. Dlugosh at the time of the hearing, nor did she request a postponement or continuance of the hearing. As such, Ms. Dlugosh had notice of the hearing and an opportunity to be heard but chose not to appear. Accordingly, the hearing was held in her absence. I find that Ms. Dlugosh's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

Ms. Dlugosh is seeking a Commission-issued payment arrangement. Because she failed to appear at the hearing and present evidence in support of her request, she failed to meet her burden of proving, by a preponderance of the evidence, that she is entitled to the relief she is seeking. *Se-Ling Hosiery*. Accordingly, her complaint seeking a payment arrangement will be dismissed.

I next address the issue of the Complainant's bad faith and her abuse and/or manipulation of the Commission's complaint procedures to avoid service termination and payment of her utility bills.

The Commission has consistently held that a party may be precluded from filing additional formal or informal complaints if they have abused the administrative process and the Commission's complaint procedures. *See, Brown v. Phila. Gas Works*, Docket No. C-2022-3032000 (Opinion and Order entered Nov. 10, 2022); *Sanford v. Phila. Gas Works*, Docket No. C-2019-3009831 (Final Order entered Aug. 10, 2020); *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered Apr. 23, 2014); *see also, Argento's Pizza v. Phila. Gas Works*, Docket No. C-2009-2138055 (Final Order entered Oct. 1, 2010) (*Argento's Pizza*). In *Seidenstricker v. Metropolitan Edison Co.*, Docket No. F-2008-2019388 (Opinion and Order entered July 28, 2009), the Commission precluded the filing of further complaints pertaining to the same account until the arrearage was paid in full after finding that the Complainant had abused the system by using the Commission's procedures to prevent termination of service while receiving utility service and accruing a large outstanding balance. Similarly, in *Manu v. The Bell Telephone Co. of Pennsylvania*, Docket No. F-09029141 (Opinion and Order entered May 9, 1994), the Commission found an abuse of process had occurred and it precluded Complainants from filing further complaints, formal or informal, until their arrearages were paid in full. The factors to be considered as put forth in the *Argento's Pizza* case include the following: 1) the number and nature of complaints; 2) the number of defaulted payments; 3) the use of tactics to avoid payments and service terminations that became due; and 4) the history of payments. *Argento's Pizza*.

Here, as was noted above, the Complainant has not made a good payment toward the balance on her UGI electric account since April 17, 2019. Tr. 19; UGI Ex. 1. Further, the five most recent payments tendered by her were all returned due to insufficient funds. Tr. 19; UGI Ex. 1. As a result of her poor payment history, her balance at the time of the hearing was \$7,809.56. Additionally, UGI established two payment arrangements with the Complainant and the Commission ordered two payment arrangements for the payment of the Complainant's outstanding balance. Tr. 19-20. Ms. Dlugosh did not comply with any of these four payment arrangements. Tr. 19-20. I find that the record evidence demonstrates bad faith on the part of the Complainant in paying her UGI electric bills.

Additionally, the record evidence demonstrates that Ms. Dlugosh has repeatedly misused the Commission's complaint procedures to continue to receive electricity service from UGI while avoiding paying for the service. As discussed above, Ms. Dlugosh has filed ten informal complaints against UGI since February of 2019. Tr. 20; UGI Ex. 3. Each of the informal complaints was filed by Ms. Dlugosh in response to termination notices issued to her by UGI. Tr. 20-21; UGI Ex. 3. Ms. Dlugosh has avoided termination of her UGI electric service on numerous occasions by either filing complaints with the Commission or due to the Commission's winter moratorium against service shut off. Tr. 20-21; UGI Ex. 3.

I conclude, based on the undisputed record evidence, that the Complainant is abusing the Commission's administrative due process and complaint procedures to avoid payment and to avoid the termination of her service. The Complainant has shown a pattern of filing numerous complaints with the Commission to avoid service termination, defaulting on both Commission and company-issued payment agreements, and has a very poor payment history. As a result, UGI has been unable to obtain payment for its electric service due to applicable laws requiring it to provide a stay of termination while a dispute/complaint is pending before the Commission. 52 Pa. Code § 5.63(b).

By law, a public utility is entitled to receive payment for the service it provides, and the Complainant must pay the Respondent for the service she consumes. *Scaccia v. W. Penn Power Co.*, 55 Pa.P.U.C. 637 (1982); *Kea v. Peoples Nat. Gas Co.*, 60 Pa.P.U.C. 215 (1985);

Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa. Cmwlth. 1982). The Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303, *Neal v. Phila. Gas Works*, Docket No. Z-00871874, (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990). Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. *Bolt v. Duquesne Light Co.*, Docket No. Z-08721758 (Opinion and Order entered April 8, 1988). The record in this case highlights a disturbing trend in Complainant's use of the Commission's complaint procedures to avoid paying her electric bills while evading the company's termination procedures.

Due to the high amount of the Complainant's outstanding balance, and in order to prevent the unnecessary expenditure of any additional Commission resources, the Complainant will be prohibited from filing any further informal or formal complaints with the Commission until such time as the current outstanding balance on her UGI electric account is paid in full.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).
3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.
4. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. The due process requirement is satisfied when

the parties are provided notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

5. Documents sent to a party in the ordinary course of business to the email address provided by the party and not returned as undeliverable may be presumed to have been received by the party. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016).

6. The Commission may preclude a party from filing further informal or formal complaints when the party has abused the Commission's complaint procedures in order to avoid the termination of his or her service. *Brown v. Phila. Gas Works*, Docket No. C-2022-3032000 (Opinion and Order entered Nov. 10, 2022); *Sanford v. Phila. Gas Works*, Docket No. C-2019-3009831 (Final Order entered Aug. 10, 2020); *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered Apr. 23, 2014); *Argento's Pizza v. Phila. Gas Works*, Docket No. C-2009-2138055 (Final Order entered Oct. 1, 2010); *Seidenstricker v. Metro. Edison Co.*, Docket No. F-2008-2019388 (Opinion and Order entered July 28, 2009); *Manu v. Bell Tel. Co. of Pa.*, Docket No. F-09029141 (Opinion and Order entered May 9, 1994).

7. The Complainant has abused the administrative due process by filing multiple similar complaints, incurring a substantial outstanding balance, and evidencing a poor payment history, in order to avoid termination and payment for services. *Brown v. Phila. Gas Works*, Docket No. C-2022-3032000 (Opinion and Order entered Nov. 10, 2022); *Sanford v. Phila. Gas Works*, Docket No. C-2019-3009831 (Final Order entered Aug. 10, 2020); *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered Apr. 23, 2014); *Argento's Pizza v. Phila. Gas Works*, Docket No. C-2009-2138055 (Final Order entered Oct. 1, 2010); *Seidenstricker v. Metro. Edison Co.*, Docket No. F-2008-2019388 (Opinion and Order entered July 28, 2009); *Manu v. Bell Tel. Co. of Pa.*, Docket No. F-09029141 (Opinion and Order entered May 9, 1994).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed in Jennifer Dlugosh v. UGI Utilities, Inc. at Docket No. C-2022-3032579 is denied and dismissed with prejudice.

2. That Jennifer Dlugosh be, and hereby is, precluded from filing further informal or formal complaints with the Pennsylvania Public Utility Commission regarding the arrearages on her current UGI electric account until such time as the entire current outstanding account balance is paid in full, and that, further, the filing of any complaint pertaining to the arrearages which are the subject of this proceeding shall be dismissed without further proceedings.

3. That Commission staff (including but not limited to the Bureau of Consumer Services and the Secretary's Bureau) shall reject any formal or informal complaints that Jennifer Dlugosh, or any person acting on her behalf, may attempt to file with the Commission, pertaining to the current balance on her UGI Electric account until the entire outstanding account balance is paid in full.

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

5. That a copy of this decision shall be served to the Bureau of Consumer Services and the Secretary's Bureau.

6. That Docket No. C-2022-3032579 be marked closed.

Date: February 1, 2023

_____/s/_____
Steven K. Haas
Administrative Law Judge