

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Candy Scott	:	
	:	
v.	:	C-2022-3032717
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This decision dismisses the complaint of an electric service customer for the failure of the customer to appear for the scheduled hearing and prosecute her complaint. This decision denies the post-hearing motion of the customer to schedule a further hearing on the complaint, which motion was filed after testimony was completed at the hearing, and two prior continuances of the hearing were granted. This decision also grants the company’s motion to bar the customer from filing further informal or formal complaints regarding the customer’s electric utility account balance until she pays that balance in full. The customer’s conduct of filing numerous complaints, breaking payment arrangements, tendering bad checks, and other behavior constitutes an abuse of the administrative process calculated to avoid or delay the termination of her utility service which balance exceeds \$13,500.00.

HISTORY OF THE PROCEEDING

On June 1, 2022, Candy Scott (“Complainant”) filed a formal complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against

West Penn Power Company (“West Penn,” “Respondent” or “Company”) alleging that her electric service was subject to termination for non-payment. As relief, Complainant requested a Commission payment arrangement.

On June 22, 2022, West Penn timely filed an Answer and New Matter. In its Answer, West Penn denied the material allegations in the Complaint, averring that Complainant was not entitled to a second or subsequent Commission payment arrangement. In its New Matter, West Penn averred that Ms. Scott defaulted on a 2017 Commission payment arrangement; defaulted on two Company payment agreements; experienced an increase, not a decrease, in her household income since the 2017 Commission payment arrangement; has not experienced an increase in her household size since the 2017 Commission payment arrangement; has a “horrendous” payment history; and has a large account balance.

Further, West Penn averred that Complainant has abused the Commission’s administrative complaint process, averring, *inter alia*, that since June 2011, Complainant has filed seven complaints, five of which requested a Commission payment arrangement to prevent termination of service. As relief, West Penn requested that the Commission dismiss the Complaint with prejudice and bar Complainant from filing any further complaints until the balance is paid in full. Further, West Penn requested that a hearing be scheduled as soon as practicable due to the large account balance.

On June 24, 2022, a Call-In Telephonic Hearing Notice was e-served on both parties scheduling a hearing on July 12, 2022, at 10:00 a.m., and assigning me as the administrative law judge (ALJ) to preside over this matter. On this same date, a Prehearing Order was served on both parties which reminded the parties of the hearing date and time and provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

On June 28, 2022, Complainant filed a Reply to New Matter. Complainant admitted that she defaulted on the 2017 Commission payment arrangement; that her household

monthly income increased, and her household size remained the same, since her 2017 Commission payment arrangement; and that she owed the total account balance. Complainant denied that she has abused the Commission complaint process and repeated her request for another Commission payment arrangement.

On July 12, 2022, the hearing convened as scheduled. Complainant appeared and represented herself. Margaret A. Morris, Esquire, appeared on behalf of West Penn, along with a witness, Tammy Taylor, Senior Customer Service Representative. Prior to the hearing, as a result of an off-the-record discussion between the parties about possibly settling this matter, Complainant requested to continue this matter, which request the Company did not oppose. The continuance was to allow time for Complainant to meet settlement terms negotiated between the parties which included that Complainant would pay, as a demonstration of good faith, a certain amount on her account balance by a certain date, which Complainant said she could and would do. If payment were made, the Company would agree to another payment agreement. However, West Penn requested that another hearing date be scheduled in the event the conditions for settlement were not met. I granted these requests, and after consulting with both parties as to their availability, it was agreed that a further hearing would be scheduled for August 16, 2022, at 2:00 p.m., if necessary. (Tr. 3-4).

Following the July 12, 2022, hearing, a Further Call-In Telephonic Hearing Notice was e-served on both parties scheduling a further hearing on August 16, 2022, at 2:00 p.m.

On August 16, 2022, the further hearing convened as scheduled. Both parties appeared, as well as West Penn's witness, Ms. Taylor. Prior to this hearing, as a result of some further off-the-record discussion, Ms. Scott requested another continuance in order allow more time for her to make the agreed payment amount to meet the settlement terms between the parties, which Complainant had not done yet but said she could and would do. (Tr. 10-11). The Respondent did not oppose this request and stated that once Complainant's check cleared, a certificate of satisfaction indicating the parties' settlement would be filed. (Tr. 10). I also directed, and the parties agreed, that if settlement could not be culminated, that counsel for West

Penn would notify me via email, copying Complainant, requesting another hearing date be scheduled. (*Id.*).

On September 7, 2022, I received an email from counsel for West Penn, on which Complainant was copied, requesting that a hearing date be scheduled as soon as practicable since the conditions for settlement were not met by Complainant and thus, the parties could not settle.

Also on September 7, 2022, I received an email from Complainant, on which West Penn was not copied, requesting that the hearing not be scheduled before a certain date, and discussed the merits of the case. However, in order to avoid any *ex parte* communication, on September 8, 2022, I forwarded this email to Attorney Morris, copying Complainant. I also stated that since this matter has not settled, in the interests of moving the case forward, that it was appropriate to schedule a hearing as soon as practicable. Next, I listed seven dates (one in September, the remainder in October of 2022) from which I asked the parties to select which dates they were available, so that a hearing could be promptly scheduled.

On September 8, 2022, Complainant responded that she was available on three of the dates I proposed, including October 28, 2022, at 10:00 a.m. Later that day, counsel for West Penn responded that out of the three dates selected by Complainant, that counsel was available on October 28, 2022, at 10:00 a.m. That same day, I followed up the parties' email advising that, based on their responses, a hearing would be scheduled for October 28, 2022, at 10:00 a.m.

Also on September 8, 2022, a Further Call-In Telephonic Hearing Notice was e-served on both parties scheduling a further hearing on October 28, 2022, at 10:00 a.m.

On October 20, 2022, in anticipation of the hearing, counsel for West Penn submitted eleven proposed exhibits to Complainant and the undersigned. The proposed exhibits contained a cover letter which referred to the hearing scheduled for October 28, 2022,

at 10:00 a.m., and contained an index to the proposed exhibits, also referencing the day, date and time of the hearing.¹

On October 28, 2022, at 10:00 a.m., the further hearing convened as scheduled. Attorney Morris appeared on behalf of West Penn, along with a witness, and the Company was prepared to proceed. Complainant did not appear. I recessed the hearing and convened it again approximately fifteen minutes later to allow time for Complainant to appear. Since the Complainant did not appear after this recess, the hearing proceeded in her absence. West Penn presented that testimony of Ms. Taylor to support the Company's allegation that Complainant was abusing the Commission's complaint process. Ms. Taylor sponsored eleven exhibits, all of which were admitted into the record. They are:

- Respondent Exhibit 1 -- Customer Contacts
- Respondent Exhibit 2 -- Statement of Account (10/2020 – 9/2022)
- Respondent Exhibit 3 -- Medical Certification History
- Respondent Exhibit 4 -- Payment History (9/2017 – 8/2022)
- Respondent Exhibit 5 -- Payment Arrangement History
- Respondent Exhibit 6 -- Complaint Chart
- Respondent Exhibit 7 -- BCS decision No. 3558483, closed 9/11/2017
- Respondent Exhibit 8 -- BCS decision No. 3638195, closed 4/9/2019
- Respondent Exhibit 9 -- BCS decision No. 3717719, closed 3/20/2020
- Respondent Exhibit 10 -- BCS decision No. 3835528, closed 5/25/2022
- Respondent Exhibit 11 -- Collection History

Testimony concluded in the morning. (*See* Tr. 32).

By email to me dated October 28, 2022, 1:48 p.m., on which Attorney Morris was copied, Complainant stated that she missed the hearing because she “had it on my [Complainant's] calendar for the 8th for some unknown reason.” Complainant asked to reschedule the hearing. That same day, I responded to Ms. Scott, copying attorney Morris, that testimony was completed that morning and if Ms. Scott wanted me to consider a request to reopen or schedule a further hearing, she must as soon as possible, but no later than November 4, 2022, at 4:00 p.m., file a written motion requesting a further hearing; and that this motion must contain her

¹ Counsel had undertaken this same process for the other two hearings scheduled on July 12 and August 16, 2022, each time submitting a complete set of updated proposed exhibits, cover letter and index.

reason and details for missing the hearing and why she could not request a continuance sooner. I also stated that any motion must be served on the Company, which would have an opportunity to respond.

On November 4, 2022, Complainant filed, in a letter form, what I am deeming herein as a Motion to Schedule a Further Hearing (“Motion”).² Because Ms. Scott’s Motion did not indicate whether the Company was served, on November 10, 2022, in an abundance of caution to ensure Respondent was aware of said Motion, I attached said Motion in an email to Attorney Morris, copying Complainant. Attorney Morris replied via email and pointed out that there was also no Notice to Plead attached to the Motion and inquired when the Company’s response was due.

In response to the Company’s inquiry, I replied via email to the parties that pursuant to 52 Pa. Code § 5.103(c) (relating to Motions), and the authority of the presiding officer to fix the response date to a Motion, that the Company’s response will be due within twenty days from the date of the above email exchange, or by November 30, 2022. This deadline was memorialized in an “Order Fixing Response Date to Complainant’s Motion,” issued on November 15, 2022.

On November 15, 2022, a 37-page hearing transcript was filed with the Commission’s Secretary’s Bureau. On November 30, 2022, West Penn timely filed an “Answer of West Penn Company to the Motion for Continuance of Candy Scott” (“Answer”). West Penn opposes Complainant’s request for a further hearing. In the alternative, West Penn requests that should Complainant’s request be granted, that Complainant be required to take the record as it presently stands.

² Although the Motion does not fully comply with requirements of 52 Pa. Code § 5.103 (relating to scope, content, and presentation of motions), I will consider the Motion as filed in order to secure a “just, speedy and inexpensive determination” in this proceeding, particularly as the Complainant is *pro se*. See 52 Pa. Code § 1.2(a),(d).

The record closed following the filing of West Penn's Answer to Complainant's Motion.

For the reasons discussed below, the Complaint will be dismissed with prejudice, the Complainant's Motion to reopen or schedule a further hearing will be denied, and the Company's request to bar the Complainant from filing further complaints concerning the outstanding balance will be granted.

FINDINGS OF FACT

1. The Complainant is Candy Scott, a residential electric service customer.
2. The Respondent is West Penn Power Company, which provides electric service to Complainant.
3. On June 1, 2022, Ms. Scott filed a Formal Complaint against Respondent.
4. On June 22, 2022, Respondent timely filed an Answer and New Matter to the Complaint.
5. On June 24, 2022, an Initial Call-In Telephonic Hearing Notice was e-served on both parties scheduling an initial telephonic hearing on July 12, 2022, at 10:00 a.m.
6. On June 24, 2022, a Prehearing Order was e-served on both parties which, *inter alia*, reminded the parties of the date and time of the scheduled hearing and the telephone number to call, and the passcode to enter, to participate in the hearing.
7. Both the Hearing Notice and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a

continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the Complaint.

8. On June 28, 2022, Complainant filed a Reply to New Matter.

9. On July 12, 2022, the hearing convened as scheduled, and upon the unopposed oral request of Complainant, this matter was continued by agreement until August 16, 2022, at 2:00 p.m., to allow time for Complainant to meet proposed settlement terms between the parties which included that Complainant would pay a certain amount on her account balance by a certain date, which Complainant said she could and would do. (Tr. 3-4).

10. On July 12, 2022, a Further Call-In Telephonic Hearing Notice was e-served on both parties scheduling a further hearing on August 16, 2022, at 2:00 p.m.

11. On August 16, 2022, the hearing convened as scheduled, and upon the unopposed oral request of Complainant, this matter was continued to allow more time for Complainant to meet the settlement terms between the parties, including making a certain payment by a certain date; also, the undersigned directed that if settlement could not be culminated, that counsel for West Penn would notify me via email, copying Complainant, requesting another hearing date be scheduled. (Tr. 10-11).

12. On September 7, 2022, West Penn emailed the undersigned, copying Complainant, requesting that a hearing date be scheduled as soon as practicable since the conditions for settlement were not met by Complainant and thus, the parties could not settle.

13. On September 8, 2022, the undersigned emailed both parties listing seven dates (one in September, the remainder in October of 2022), from which the parties were to select to indicate their availability for a hearing. (“Attachment 1” to West Penn’s Answer to Motion of Complainant to Continue the Hearing).³

³ West Penn attached copies of all relevant email exchanges between the undersigned and the parties concerning the hearing scheduled for October 28, 2022, at 10:00 a.m., to its Answer to the Motion for

14. On September 8, 2022, Complainant responded via email that she was available on three proposed dates including October 28, 2022, at 10:00 a.m.; later that day, counsel for West Penn responded that out of the three dates selected by Complainant, that counsel was available on October 28, 2022, at 10:00 a.m. (“Attachment 2” to West Penn’s Answer to Motion of Complainant to Continue the Hearing).

15. On September 8, 2022, the undersigned followed up the parties’ email advising them that a hearing would be scheduled for October 28, 2022, at 10:00 a.m. (“Attachment 2” to West Penn’s Answer to Motion of Complainant to Continue the Hearing).

16. On September 8, 2022, a Further Call-In Telephonic Hearing Notice was e-served on both parties scheduling a further hearing on October 28, 2022, at 10:00 a.m.

17. Neither the Hearing Notice scheduling the hearing for October 28, 2022, at 10:00 a.m., nor the Prehearing Order were returned to the Commission as undeliverable.

18. On October 28, 2022, Complainant failed to appear and participate in the scheduled hearing, which proceeded in her absence.

19. Complainant’s account with Respondent was established, effective on August 20, 2008. (Tr. 14).

20. In June 2011, Complainant submitted an informal complaint with BCS at BCS No. 2841299, seeking a payment arrangement; in September 2011, BCS dismissed the informal complaint because Complainant was enrolled in Respondent’s customer assistance program, which rates are not eligible for a Commission payment arrangement. (Tr. 28-29; Respondent Exhibit 6; 66 Pa.C.S. § 1405(c)).

Continuance of Complainant, which is discussed below. (See, “Attachment 2” to West Penn’s Answer to Motion of Complainant to Continue the Hearing).

21. In July 2016, Complainant submitted an informal complaint with BCS at BCS No. 3462495, seeking a payment arrangement on a balance of \$7,581.59; in July 2016, BCS dismissed the informal complaint because Complainant was enrolled in Respondent's customer assistance program, which rates are not eligible for a Commission payment arrangement. (Tr. 29; Respondent Exhibit 6; 66 Pa.C.S. § 1405(c)).

22. In December 2016, Complainant was removed from Respondent's customer assistance program for the failure to reverify her income. (Tr. 21-22).

23. In May 2017, Complainant submitted an informal complaint with BCS at BCS No. 3526299, seeking a payment arrangement on a balance of \$8,121.09; in August 2017, BCS dismissed the informal complaint because Complainant's arrearage included customer assistance program arrearages, which rates are not eligible for a Commission payment arrangement. (Tr. 29; Respondent Exhibit 6; 66 Pa.C.S. § 1405(c)).

24. On August 31, 2017, Complainant submitted an informal complaint with BCS at BCS No. 3558483, seeking a payment arrangement on a balance of \$8,148.57. (Tr. 29-30; Respondent Exhibit 6).

25. On September 11, 2017, Complainant was granted a Commission payment arrangement in BCS No. 3558483, on a balance of \$8,148.57 (*2017 Commission payment arrangement*). (Tr. 22, 24-25; Respondent Exhibits 5, 7).

26. Complainant defaulted on the *2017 Commission payment arrangement* due to non-payment. (Tr. 24; Respondent Exhibit 7).

27. In July 2018, Complainant submitted an informal complaint with BCS at BCS No. 3638195, seeking a payment arrangement on a balance of \$8,148.57; in April 2019, BCS dismissed this informal complaint on a closing balance of \$10,046.01, because Complainant defaulted and did not satisfy the *2017 Commission payment arrangement*. (Tr. 30; Respondent Exhibits 6, 8).

28. In July 2019, the Complainant submitted an informal complaint with BCS at BCS No. 3717719, seeking a payment arrangement on a balance of \$11,410.34; in March 2020, BCS dismissed the informal complaint on a closing balance of \$13,290.16, because Complainant defaulted and did not satisfy the *2017 Commission payment arrangement*. (Tr. 30; Respondent Exhibits 6, 9).

29. On August 4, 2020, the Company and Complainant entered into a payment agreement during Covid-19 on an account balance of \$14,867.56; Complainant defaulted on this payment agreement due to non-payment.⁴ (Tr. 23; Respondent Exhibit 5).

30. On April 22, 2021, the Company and Complainant entered into a payment agreement, described as a “company extended agreement,” on an account balance of \$14,963.56; Complainant defaulted on this payment agreement due to non-payment.⁵ (Tr. 23-24; Respondent Exhibit 4).

31. On May 2, 2022, Complainant opened an informal complaint with BCS at BCS No. 3835528, seeking a payment arrangement on a balance of \$15,649.50; on May 25, 2022, BCS dismissed the informal complaint because Complainant defaulted and did not satisfy the *2017 Commission payment arrangement*. (Tr. 30; Respondent Exhibits 6, 10).

32. Respondent Exhibit 4 is Complainant’s account payment history from September 2017 to August 2022. (Tr. 18; Respondent Exhibit 4).

33. In 2017, four good payments were posted to Complainant’s account; in 2018, four good payments were posted, and one additional payment was returned; in 2019, three good payments were posted, and two additional payments were returned; in 2020, no

⁴ At the hearing, Ms. Taylor noted a typographical error in Respondent’s Exhibit 5, explaining that this Exhibit states that this payment agreement began on September 21, 2017; however, the payment agreement actually began on September 21, 2020. (Tr. 23; Respondent’s Exhibit 5).

⁵ Ms. Taylor testified that this payment agreement was made consistent with the Commission’s Emergency Order concerning Covid-19. *See*, M-2020-3019244, *Public Utility Service Termination Moratorium Proclamation of Disaster Emergency Covid-19* (Emergency Order revised and ratified on March 18, 2021, effective April 1, 2021).

payments were posted; in 2021, nine good payments were posted and two additional payments were returned; and in 2022, three good payments were posted and two additional payments were returned. (Tr. 18; Respondent Exhibit 4).

34. There were 22 good customer payments posted in the approximate 62-month period from September 2017 to August 2022. (Tr. 19; Respondent Exhibit 4).

35. Since September 2017, Complainant has not made any payment during the winter moratoriums — from December 1 through March 31 — of each year, with the exception of one payment posted on March 5, 2019, in the amount of \$317. (Tr. 19; Respondent Exhibit 4).

36. Since September 2017, seven checks have been returned totaling \$16,570.50. (Tr. 19-20; Respondent Exhibit 4).

37. On August 12, 2022, a payment in the amount of \$1,077.00 was returned for “Account Not Found.” (Tr. 20; Respondent Exhibit 2).

38. On August 22, 2022, a payment in the amount of \$2,400.00 was returned for “Account Not Found.” (Tr. 20; Respondent Exhibit 2).

39. Respondent’s Exhibit 11 contains the history of the Company’s collection efforts on Complainant’s account and the results of these efforts. (Tr. 31; Respondent Exhibit 11).

40. Since August 2017, twenty-three 10-day termination notices were issued due to delinquent charges. (Tr. 31-32; Respondent Exhibit 11).

41. The Collection History shows that the twenty-three terminations were prevented for reasons including that termination was stayed due to the filing of an informal or formal complaint; that several payment agreements were made but subsequently broken; that

termination was prevented during the winter moratorium months during which no payments were made except for one in 2019 for \$317; and that several payments by check were posted but said payments were subsequently returned, in several instances they were returned as “account not found.” (Tr. 31-32; Respondent Exhibit 11).

42. At the time of the hearing, Complainant’s outstanding balance was \$13,583.09. (Tr. 16; Respondent’s Exhibit 2).

DISCUSSION

Due Process and Waiver of Hearing

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) (*Schneider*). This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Id.* As the proponent of any request for relief, the complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, the Commission’s decision must be supported by substantial evidence. 2 Pa.C.S. § 704.

The Commission is required to fix the time and place of a hearing in a complaint proceeding and serve notice thereof upon the parties in interest. 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.61(a). As the Commission explained, “[i]t is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” *Mumma v. UGI Elec. Utils. Corp.*, Docket No. C-00014869, at 3 (Opinion and Order entered Jan. 28, 2002) (citing *Schneider*).

A party to a proceeding has the right to request a continuance of the hearing, which may be granted by the presiding officer for “good cause.” *See* 52 Pa. Code § 1.15(b). Pursuant to the Commission's Regulations, a continuance request is required to be in writing and

filed with the presiding officer at least five days prior to the hearing date, except that, during a hearing, an oral request for hearing continuance may be made before the presiding officer in the hearing. *Id.* When “good cause” is shown for a hearing continuance, the Commission has acknowledged that the public interest is better served when all litigants, particularly *pro se* litigants, are afforded a meaningful opportunity to be heard. *See, e.g., Loucks v. Met-Ed Co.*, Docket No. C-2017-2619974 (Opinion and Order entered May 16, 2018) (reversed ALJ's decision to dismiss complaint with prejudice and remanded for hearing because the complainant attended and participated in the first scheduled hearing, which was not completed due to a technical problem with the teleconference line, and complainant sought a continuance of the rescheduled hearing to review the Company's newly proffered exhibits for which there was question in record as to whether such exhibits had been timely served on the complainant pursuant to the prehearing order's requirements).

If a party fails to attend a scheduled hearing, such failure to appear will be deemed a waiver of the party's opportunity to participate in a hearing, unless the presiding officer determines that such failure was “unavoidable” and that the interests of the other parties and of the public would not be prejudiced by permitting such reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b).

Whether the complainant's failure to appear at the hearing was “unavoidable” is a fact-based question. *Benvenger v. PECO Energy Co.*, Docket No. C-2018-3005286 (Opinion and Order entered Dec. 19, 2019) (*Benvenger*). Where a complainant's failure to appear at a scheduled hearing is unavoidable, the ALJ has the discretion to recognize that and to reschedule the hearing. *Id.* (citing 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b)).

However, if a complainant's failure to appear was not unavoidable, or if the complainant did not make a good faith attempt to attend the duly scheduled hearing, the Commission has recognized that any further procedural activity in the docket would prejudice the public interest due to the wasteful use of the agency's and the respondent's time and resources in addressing the complaint. *See, Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995) (*Jefferson*). In *Jefferson*, the Commission stated:

We are concerned with regard to the consequences that these “no-show” cases have on the already strained budget of the Commission. Such cases waste the time and resources of the Commission and the utility. We cannot condone the wastefulness of [a procedure] that permits a “no show complainant” to refile a complaint and thereby institute yet another stay of termination on the account. Such misuse of the process . . . cannot be tolerated.

Jefferson at 5. The Commission has explained that in such instances, to preserve judicial economy, the Commission typically will dismiss a complaint, with prejudice, barring the complainant from filing another complaint raising the same claims and issues presented in the dismissed complaint. *Benvenger*.

In the instant case, I cannot conclude that the Complainant’s failure to appear at the October 28 hearing was unavoidable, or that good cause exists to reopen or schedule a further hearing. Complainant’s reasons are insufficient and inconsistent for missing the hearing. Complainant claims in her Motion the following reasons why she did not appear at the scheduled hearing:

[d]ue to . . . the time lapse since the last meeting, I inadvertently put the meeting on my calendar for the 8th and not the 28th. Also, the morning of the 28th, I was seen at a local facility for medical reasons and that was at the time that the hearing was scheduled for. I also marked the hearing for 2:30 and not 10:30^[6] for reasons I can’t explain but do own up to the error being my fault.

Complainant’s Motion.

The case of *Divers v. Philadelphia Gas Works*, Docket No. F-2019-3012987 (Final Order entered July 17, 2020), is illustrative on the issue concerning unavoidability. In *Divers*, a *pro se* complainant called the Office of Administrative Law Judge (OALJ) approximately one hour after the hearing concluded requesting a new hearing date. After the complainant was directed to place her reasons in writing, Ms. Divers claimed that due to

⁶ The hearing was scheduled for 10:00 a.m. on October 28, 2022.

receiving an overwhelming amount of mail and insurance advertisements, that she had a difficult time deciphering which mail was “legitimate material.” The presiding officer did not find this to be an unavoidable preclusion from attending and participating in the hearing, thus finding that complainant waived the right to participate in the hearing, which exercise of discretion was upheld by the Commission. Also, in *Whaumbush v. PECO Energy Co.*, Docket No. C-2017-2622269 (Opinion and Order entered Aug. 23, 2018), a *pro se* complainant called the OALJ approximately one hour after the hearing concluded and stated that his failure to participate in the hearing was due to his lack of heat and that his condition at the time of the hearing, resulting from low temperature, prevented him from taking part in the proceeding. The ALJ in *Whaumbush* did not deem the complainant’s excuse sufficiently compelling to warrant reopening the hearing, which determination was upheld by the Commission. *Id.*

In the instant case, I do not deem Ms. Scott’s reason or reasons for failing to appear at the hearing to be an unavoidable preclusion from attending and participating in the hearing, which would warrant the reopening of the hearing or to schedule a further hearing. I also find that the Company and public will be prejudiced by permitting the reopening or further examination.

The October 28, 2022, hearing was the third scheduled hearing involving an outstanding account balance of over \$13,500, for which Ms. Scott does not dispute she is responsible. On all three occasions, the Company was prepared to proceed including presenting testimony and exhibits through its witness. The prior two scheduled hearings were continued at these hearings at the oral requests of Ms. Scott. Further, by email dated September 8, 2022, Complainant specifically chose from a list of proposed dates, the hearing date of October 28, 2022, at 10:00 a.m.⁷ Further, this day, date, and time were subsequently confirmed by a Further Hearing Notice e-served on Complainant. The hearing day, date, and time were also confirmed in the cover letter and index to the proposed eleven exhibits of counsel for the Company. (*See*, “Attachment 3” to Respondent’s Answer).

⁷ *See*, (“Attachment 2” to West Penn’s Answer to Motion of Complainant to Continue the Hearing).

Further, Ms. Scott does not assert any medical emergency or exigent circumstances for being at a local medical facility at the time of the hearing. Significantly, absence any exigent circumstances, Ms. Scott does not explain why she could not request a continuance prior to the hearing to go to the medical facility, or how she recalled at 1:48 p.m. on the date of the hearing that the hearing was held at 10:00 a.m. that morning. While West Penn argues that Complainant's actions are a further attempt to prevent the Company from lawfully terminating the undisputed large balance, I will separately address this contention below. The orderly resolution of the many cases that come before the Commission depends on reasonable diligence by the parties to litigation. *Forti v. PPL Elec. Utils. Corp.*, Docket No. C-2020-3015285 (Opinion and Order entered Nov. 19, 2020).

Since I find that Complainant's absence was not unavoidable, I must conclude that Ms. Scott waived the opportunity to participate in a hearing on the matters raised in the Complaint. I also find that by her failure to appear, Complainant did not meet her burden of proof that she is eligible for a second or subsequent Commission payment arrangement. Consequently, it is appropriate to dismiss Ms. Scott's Complaint. As the Commission has explained, where a complainant fails to appear for a scheduled hearing without good cause, the public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources. *See, e.g., Elliott v. Pa. Elec. Co.*, No. F-2018-3003502 (Opinion and Order entered Feb. 6, 2020) and the cases cited therein.

Accordingly, Respondent's Motion to dismiss the Complaint with prejudice will be granted.

Abuse of Administrative Process

Next, the Company requests that Ms. Scott be precluded from filing any further informal or formal complaints until the balance is paid in full. The Company argues that the evidence presented at the hearing demonstrates that Ms. Scott, by using the protections of Chapter 56 (relating to standards and billing practices of residential public utility service) to prevent lawful termination for non-payment, has violated the basic obligation under Chapter 56

of both the residential customer and the utility. The Company argues that Chapter 56 imposes an obligation of good faith, honesty and fair dealings in its performance and enforcement, and the Complainant's actions of preventing lawful termination while enjoying continued utility service should not be condoned. (Tr. 34).

The Commission has consistently held that a party can be precluded from filing additional formal or informal complaints if there is an abuse of the administrative process. *See, e.g., Sanford v. Phila. Gas Works*, No. C-2019-3009831 (Final Order entered Aug. 10, 2020); *Mazza v. PECO Energy Co.*, 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) (*Argento's Pizza*). In *Seidenstricker v. Metropolitan Edison Co.*, No. F-2008-2019388 (Final 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 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 (Final 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 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. *Id.*

The Commission recently addressed a similar situation in *Gilliard v. PECO Energy Co.*, No. C-2022-3032753 (Final Order entered Jan. 9, 2023) (*Gilliard*). In *Gilliard*, the Commission found an abuse of its administrative process where Mr. and Mrs. Gilliard defaulted on two Company-issued payment agreements and one Commission-issued payment arrangement; made only two payments on their account since August 25, 2020; accumulated a total outstanding balance at the time of the hearing of over \$9,000; and filed thirteen informal complaints to avoid payment and to delay the termination of their service due to non-payment.

In the instant case, I find that the record evidence demonstrates Complainant has abused the administrative complaint process. The customer's conduct of filing numerous complaints, breaking payment arrangements, tendering multiple bad checks, and other behavior constitutes an abuse of the administrative process calculated to avoid or delay the termination of her utility service which balance exceeds \$13,500.

First, it is concerning that the outstanding balance totals over \$13,500. Second, it is also concerning that Ms. Scott's requests to continue the prior two hearings scheduled for July 12 and August 16 were based on her representation that she could and would tender a good payment to her account as a demonstration of good faith to settle this matter and be placed on another Company payment arrangement. However, after these continuances were granted, two checks were returned for "Account Not Found" — i.e., the bank account was not found (Tr. 20). One check in the amount of \$1,077 was returned on August 12, 2022, and another check in the amount of \$2,400 was returned on August 22, 2022. (Tr. 20; Respondent Exhibit 2). Tendering two bad checks after requesting continuances at the two previously scheduled hearings for the purpose of tendering a good check has only caused further delay in addressing this matter. Additionally, since September 2017, seven checks have been returned totaling \$16,570.50. (Tr. 19-20; Respondent Exhibit 4).

Third, the Collection History shows that since August 2017, twenty-three 10-day termination notices were issued due to delinquent charges. (Tr. 31-32; Respondent Exhibit 11). In each instance, termination was prevented for reasons including that termination was stayed due to the filing of an informal or formal complaint; that several payment agreements were made but subsequently broken; or that termination was prevented during the winter moratorium months during which no payments were made except for one in 2019 for \$317.⁸ The record reflects that since 2011, Complainant has filed a total of seven informal complaints, and five of these complaints, as well as the present formal Complaint, requests a Commission payment arrangement to prevent termination.

⁸ See, 66 Pa.C.S. § 1406(e), which generally prevents termination after November 30 and before April 1, to customers with household incomes at or below 250% of the Federal poverty level with certain limited exceptions.

By law, a public utility is entitled to receive payment for the service it provides, and the complainants must pay the utility for the service they consume. *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 Apr. 8, 1988).

The record in this case reveals the Complainant's use of the Commission's informal and formal complaint procedures to avoid paying her electric bills while evading the company's termination procedures. *Gilliard*. The Complainant has shown a pattern of filing numerous complaints with the Commission in order to avoid service termination, defaulting on both Company and Commission payment arrangements, tendering bad checks, and has a very poor payment history. Therefore, consistent with other Commission decisions, I am constrained to find that granting the Company's request to bar the customer from filing further informal or formal complaints regarding the account balance herein until she pays that balance in full is warranted.

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 Commission is required to provide due process to the parties appearing before them; this due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

3. After being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(a).

4. A party to a proceeding has the right to request a continuance of the hearing, which may be granted by the presiding officer for “good cause.” A continuance request is required to be in writing and filed with the presiding officer at least five days prior to the hearing date, except that, during a hearing, an oral request for hearing continuance may be made before the presiding officer in the hearing. 52 Pa. Code § 1.15(b).

5. If the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination, the presiding officer may find that a party did not waive the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(b).

6. Complainant’s due process rights have been fully protected and Complainant’s failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm’n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 66 Pa.C.S. § 332(f).

7. As the party seeking relief, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a), *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

8. The Complainant has failed to meet her burden of proof in this proceeding.

9. 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. *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 (Final Order entered July 28, 2009); and *Manu v. Bell Tel. Co. of Pa.*, Docket No. F-09029141 (Final Order entered May 9, 1994).

10. The Complainant has abused the administrative complaint process.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of West Penn Power Company to dismiss with prejudice the Formal Complaint of Candy Scott at Docket No. C-2022-3032717 is granted.

2. That the Formal Complaint of Candy Scott filed against West Penn Power Company at Docket No. C-2022-3032717 is dismissed with prejudice.

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

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

