

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kristy Baughman	:	
	:	
v.	:	C-2022-3035524
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Charece Z. Collins
Administrative Law Judge

INTRODUCTION

This decision grants a motion to dismiss a Formal 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. Moreover, this decision denies a request to bar the Complainant from filing further informal or formal complaints related to the Complainant's current outstanding balance.

HISTORY OF THE PROCEEDING

On September 21, 2022, Kristy Baughman (Complainant or Ms. Baughman) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Penelec). In her Complaint, Ms. Baughman alleged that Penelec is threatening to shut off, or has already shut off, her service, and there are incorrect charges on her bill. Ms. Baughman wrote that she and her husband are being charged for an outstanding balance of \$7,238.50 that is the previous homeowner's responsibility; that they rented the home (of the service address at issue) before they bought it and utilities were

a part of their rent; that they have been forced to pay on payment agreements for a balance that is not their responsibility; that they have paid more than their usage every month; that they have medical conditions requiring a CPAP machine that uses electricity; and that their doctor informed them that obtaining a medical certification would take a while. Ms. Baughman requested that the balance of \$7,283.50 be removed from the account and made the responsibility of the prior homeowner, David Coder. Ms. Baughman's Complaint was served on Penelec on September 21, 2022.

On October 11, 2022, Penelec filed a timely answer and new matter, accompanied by a notice to plead, in response to Ms. Baughman's Complaint. In its answer, Penelec admitted that it issued a 10-day termination notice in accordance with Commission regulations and orders, its Company Tariff, and the PA Public Utility Code. Penelec averred that there have been 3 customers of record at the service address since 1989: David Coder (the previous homeowner and Complainant's father), the Complainant, and the Customer (Samuel Baughman, Complainant's husband). Penelec further averred that service was in the name of David Coder from August 14, 1989 to April 2, 2017, and the finalized balance on his account was \$8,580.69. Penelec also averred that Complainant accepted responsibility for her father's account balance, and service was established in Complainant's name effective April 3, 2017.

Penelec also averred that the Complainant subsequently filed an informal complaint with the Commission's Bureau of Consumer Services (BCS), and BCS dismissed the complaint and determined that Penelec may lawfully transfer the father's account balance on March 29, 2018. Service was terminated on May 22, 2019, and the finalized balance for the Complainant's account was \$14,454.31. Finally, Penelec averred that Complainant's husband accepted responsibility for the account balance, and service was placed in his name on May 22, 2019. Penelec averred that Mr. Baughman defaulted on two Company payment arrangements and a Level 1, 2021 Commission payment arrangement. Penelec averred that the account balance as of September 26, 2022 is \$17,506.62.

In its new matter, Penelec asserted that Complainant's husband has a faulty payment history and has defaulted on two Company payment arrangements and a Commission

payment arrangement, and that Complainant has filed three informal complainants under her husband's account disputing the transferred charges. Penelec argued that the Complainant's "conduct of filing meritless complaints to prevent lawful termination is an abuse of the Commission's complaint process. She is thwarting the Company's efforts to collect payment for services rendered and other customers, who dutifully and regularly provide payment for their utility service, must shoulder this expense, as unpaid bills are included in the utility's uncollectible expenses." Answer and New Matter ¶ 17. Penelec further argued that Complainant's abuse of the complaint process should result in her being barred from filing a future complaint until Complainant's husband's account balance is paid in full. Penelec therefore requested that the Complaint be dismissed with prejudice or denied in its entirety. Penelec also requested that a hearing be scheduled as soon as possible in light of the size of the delinquent balance. Penelec attached Samuel Baughman's customer account information and the 2018 BCS Decision to its answer and new matter. Complainant did not file a reply to Penelec's new matter.

On November 10, 2022, the Commission served an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for February 7, 2023, at 10:00 a.m. and assigning me as the presiding officer. In anticipation of the hearing, I served a prehearing order on November 10, 2022, setting forth hearing information and the rules that would govern the proceeding.

The Commission notice and prehearing order were served to Ms. Baughman via the Commission's eService at the email address that Ms. Baughman provided to the Commission when she registered to receive Commission documents via its eService system. Neither the hearing notice nor the prehearing order were returned to the Commission as undeliverable.

The February 7, 2023 hearing was held as scheduled. Margaret A. Morris, Esquire appeared on behalf of Penelec with one witness, and she was ready to proceed. Ms. Baughman did not call in for the hearing. The start of the hearing was delayed ten minutes to allow Ms. Baughman additional time to call in. Ms. Baughman did not contact the Commission to explain why she did not call in to the hearing. Witness Alison Walker, an Advanced

Customer Services Compliance Specialist with First Energy Service Company, testified for Penelec, and Penelec also offered nine exhibits that were admitted into the record.

During the hearing, Ms. Morris made a motion to dismiss the Complaint with prejudice for Complainant's failure to appear and prosecute her Complaint after having received notice of the hearing date and time. Ms. Morris also requested that the Commission issue an order barring the Complainant from filing any future complaints until her outstanding balance is paid in full. This Initial Decision grants the motion of Penelec made at the conclusion of the hearing to dismiss the Complaint with prejudice for failure to prosecute. This Initial Decision also denies Penelec's request to bar the Complainant from filing future complaints.

The record in this case consists of the transcript of 33 pages that was submitted to the Commission on March 7, 2023, along with the nine admitted exhibits submitted by Penelec. The record closed on March 7, 2023, upon the filing of the hearing transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Kristy Baughman. Tr. 5.
2. The Respondent is Pennsylvania Electric Company. Tr. 5.
3. The service address is 148 3rd Street, Falls Creek, PA 15840. Tr. 12; Penelec Exhibit 1.
4. On September 21, 2022, Ms. Baughman filed a Formal Complaint against Penelec.
5. The Complaint was served on Penelec on September 21, 2022.

6. On October 11, 2022, Penelec filed an answer and new matter to Ms. Baughman's Complaint.

7. On November 10, 2022, a hearing notice was eServed on the parties establishing an initial telephonic hearing in this matter for February 7, 2023 at 10:00 a.m. Tr. 8.

8. In anticipation of the February 7, 2023 hearing, a prehearing order was eServed on the parties on November 10, 2022, listing the hearing date and setting forth rules that would govern the proceeding. Tr. 8.

9. The hearing notice served on November 10, 2022 stated that a party may lose the case if it does not take part in the hearing and present evidence on the issues raised. Tr. 8.

10. The prehearing order served on November 10, 2022 stated, among other things, "You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed 'with prejudice' which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint." Tr. 8.

11. The hearing notices and the prehearing order were served to Ms. Baughman via the Commission's eService at the email address she provided to the Commission. Tr. 8-9.

12. Neither the hearing notices nor the prehearing order were returned to the Commission as undeliverable. Tr. 8-9.

13. The hearing was held as scheduled on February 7, 2023.

14. The start of the hearing was delayed ten minutes to accommodate any potential delay of Ms. Baughman. Tr. 5.

15. Ms. Baughman failed to call in for the February 7, 2023 hearing, and no one appeared on behalf of Ms. Baughman. Tr. 5, 9, 28-29, 30, 32.

16. Ms. Baughman has not contacted the Commission to explain her failure to appear for the hearing. Tr. 8.

17. Alison Walker, witness for Penelec, is a customer service specialist for First Energy Service Company in the Pennsylvania Compliance Department. Tr. 5-6, 10.

18. Ms. Walker has been employed by First Energy Service Company for 26 years, and she has been in her current position for 11 years. Tr. 10.

19. Ms. Walker's responsibilities include reviewing, investigating and responding to PUC complaints. Tr. 10.

20. Samuel Baughman, Complainant's husband, is the customer of record, and Kristy Baughman is an authorized contact for the service account at issue (service account). Tr. 13; Penelec Exhibit 1.

21. The service account was established on May 22, 2019. Tr. 14; Penelec Exhibit 1.

22. The service account is enrolled in budget billing. Tr. 17.

23. The current account balance is \$18,158.42. Tr. 18; Penelec Exhibit 3.

24. The monthly bills for this account are not paid in full and on time. Tr. 18; Penelec Exhibits 3 and 4.

25. Since the service account was established in May 2019, the Complainant has made 41 good payments on the account that were not returned for insufficient funds. Tr. 19; Penelec Exhibit 3.

26. Since the service account was established in May 2019, the Complainant has made four payments that were returned by the banking institution for nonsufficient funds: Payments were returned on May 31, 2019, August 7, 2019, April 15, 2022, and April 22, 2022. Tr. 19; Penelec Exhibits 3 and 4.

27. Payment was made on May 31, 2019, in the amount of \$9,123.94, to establish service in the customer's name. This payment was returned by the bank as nonsufficient funds. Tr. 19; Penelec Exhibit 4.

28. The returned payment on August 7, 2019 totaled \$1,577.68. Penelec Exhibit 4.

29. The returned payment on April 15, 2022 totaled \$1,027.18. Penelec Exhibit 4.

30. The returned payment on April 22, 2022 totaled \$1,181.94. Penelec Exhibit 4.

31. Penelec has entered into three payment arrangements for this service account. Tr. 20-21; Penelec Exhibit 5.

32. The first payment arrangement from Penelec was entered into on June 2, 2019, with a balance of \$14,430.31. Tr. 21; Penelec Exhibit 5.

33. The June 2, 2019 payment arrangement defaulted due to nonpayment. Tr. 21.

34. The second payment arrangement from Penelec was entered into on July 31, 2019, with a balance of \$12,981.98. Tr. 21; Penelec Exhibit 5.

35. The second payment arrangement defaulted due to nonpayment. Tr. 21.

36. A third payment arrangement, a Covid PAR consistent with the Commission's emergency order,¹ was entered into on May 6, 2021 with a balance of \$18,390.24. Tr. 21-22; Penelec Exhibit 5.

37. The third payment arrangement defaulted due to nonpayment. Tr. 22.

38. The Commission's Bureau of Consumer Services (BCS) directed a payment arrangement on October 12, 2021, with a balance of \$18,574.24.² Tr. 20, 22; Penelec Exhibit 5.

39. The BCS payment arrangement was not appealed. Tr. 22.

40. The BCS payment arrangement defaulted due to nonpayment. Tr. 22.

41. Three informal complaints have been filed since the service account was established on May 22, 2019. Tr. 22.

42. The first informal complaint was opened with BCS on July 31, 2019 and classified as a billing dispute.³ The complaint alleged incorrect supplier charges. Tr. 23; Penelec Exhibit 6.

43. BCS dismissed the first informal complaint on February 14, 2020, and determined that the account balance was correct as rendered, as there was no record of a selection of an alternate supplier, and the account balance total was "excessive" partly due to Complainant's balance in the amount of \$14,454.31 being transferred to the service account. Tr. 23; Penelec Exhibit 6.

¹ See Commission's Emergency Order at Docket Number M-2022-3019244 (Emergency Order revised and ratified on March 18, 2021, Effective April 1, 2021) (*Emergency Order*).

² BCS Case Number 3797550.

³ BCS Case Number 3722206.

44. The second informal complaint was opened with BCS on August 5, 2021 and classified as a payment arrangement with dispute (disputing the transferred balance to the service account or seeking a payment arrangement for the balance).⁴ Tr. 24; Penelec Exhibit 7.

45. BCS dismissed the August 5, 2021 dispute and granted a Commission payment arrangement consistent with the Commission's Emergency Order. Tr. 25; Penelec Exhibits 5 and 7; *Emergency Order*.

46. The third informal complaint was opened with BCS on July 14, 2022 and classified as a payment arrangement with dispute (seeking extra time to catch up on payment arrangement; awaiting information from Penelec to provide to doctor for medical certificate).⁵ Tr. 25; Penelec Exhibit 8.

47. BCS dismissed the third informal complaint on August 19, 2022, and determined that Penelec provided information for the medical certificate in June, and that Complainant was not eligible for a Commission payment arrangement because the customer had not satisfied the arrears on the current Commission payment arrangement. Tr. 25-26; Penelec Exhibit 8.

DISCUSSION

Failure to Appear

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.

⁴ BCS Case Number 3797550.

⁵ BCS Case Number 3844235.

The hearing notices and prehearing order were served upon Ms. Baughman via the Commission's eService, utilizing the email address that Ms. Baughman provided to the Commission. The documents were not returned to the Commission as undeliverable. Accordingly, it must be presumed that Ms. Baughman received the documents that were sent to her in the ordinary course of business. 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). Of note, the hearing notices 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. Tr. 8. Furthermore, counsel for Penelec indicated during the hearing the efforts that the Company also took to provide Ms. Baughman with notice of the hearing. Tr. 6-7.

Despite being provided notice, no one appeared on behalf of Ms. Baughman at the time of the hearing, nor did she request a postponement or continuance of the hearing. Tr. 5, 8, 28-29, 30, 32. As such, Ms. Baughman had notice and an opportunity to be heard in this proceeding but chose not to appear. Because she was provided notice and an opportunity to be heard, Ms. Baughman's due process rights in this proceeding have been fully protected. Sentner v. Bell Tel. Co. Of Pa., Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

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).

Moreover, 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, 70 A.2d 854 (Pa. 1950). 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 (1990) (Patterson). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In her Complaint, Ms. Baughman requested a payment arrangement in lieu of termination of her electric service. Therefore, Ms. Baughman has the burden of proof in this proceeding.

Penelec was present at the hearing with one witness and ready to proceed. Tr. 5-6. The Commission also expended valuable resources in preparation for the hearing, to provide Ms. Baughman with an opportunity to be heard. Ms. Baughman’s failure to appear unfortunately resulted in the misspent resources of both the Commission and Penelec. During the hearing, counsel for Penelec moved to have the Complaint dismissed with prejudice for lack of prosecution. Tr. 8. By failing to appear and present any evidence in support of her Complaint, Ms. Baughman has failed to carry her burden. 66 Pa.C.S. § 332(a); Patterson.

Ms. Baughman failed to appear for the hearing despite receiving notice via the Commission’s eService. The Complainant registered her email address with the Commission’s eService system, indicating her desire and consent to receive notice electronically. Ms. Baughman also did not contact the Commission at any time on or after February 7, 2023, to explain why she did not appear at the February 7, 2023, hearing. Consequently, Ms. Baughman

waived the opportunity to participate in a hearing on the matters raised in her complaint. 52 Pa. Code § 5.245(a)(1). Therefore, it is appropriate to dismiss the complaint with prejudice. Brown v. PECO Energy Co., Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); Williams v. PECO Energy Co., Docket No. C-2018-300734 (Opinion and Order entered Mar. 14, 2019) (citing Jefferson v. UGI Utils., Inc., Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995)); 52 Pa. Code § 5.245(a)(2)-(3). Accordingly, the merits of the complaint need not be addressed in this Initial Decision.

Abuse of Process

The Commission has consistently held that a party can be precluded from filing additional formal or informal complaints if there is an egregious abuse of the administrative process. See Dlugosh v. UGI Utils., Inc., Docket No. C-2022-3032579 (Order entered Mar. 16, 2023) (Dlugosh); Brown v. Phila. Gas Works, Docket No. C-2022-3032000 (Opinion and Order entered Nov. 10, 2022); Herr v. West Penn Power Co., Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022) (Herr); 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). The abuse of the Commission's administrative process can occur in various forms. 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. Manu v. The Bell Tel. Co. of Pa., Docket No. F-09029141 (Opinion and Order entered May 9, 1994).

Based on the record evidence, I cannot conclude that the record supports granting Penelec's request to bar the Complainant from filing future complaints based on an alleged abuse of the Commission's process. While the outstanding account balance total is certainly concerning, it is not clear from the record that the Complainant is intentionally abusing the Commission's procedures to avoid termination.

First, Alison Walker, customer service specialist for First Energy Service Company in the Pennsylvania Compliance Department and witness for Penelec, testified that the Complainant had four payments returned for insufficient funds. Tr. 19. However, the record evidence also shows that the Complainant has made 41 good payments that were not returned for insufficient funds. Tr. 19; Penelec Exhibits 3 and 4. Penelec's Exhibit 3 reflects that following the last check that was returned for insufficient funds on April 22, 2022, Complainant made several partial payments through January 11, 2023 (where the exhibit ends). Penelec Exhibit 3. Unlike the complainant in Dlugosh, for example, who had not made a good payment for more than two years, the Complainant in the instant proceeding has continued to make payments towards the service account.⁶ While the Complainant has not paid her monthly balance in full each month, the record evidence shows that payments were made and therefore does not reflect a bad faith failure to make any payments towards the outstanding account balance.

Moreover, Ms. Walker testified that Complainant has filed three informal complaints since the service account was established in 2019. Tr. 22. In reviewing the BCS decisions for each case: The first informal complaint, opened on July 31, 2019, alleged an unusually high balance due to incorrect fees being charged by an electricity supplier. BCS determined that the high balance was due to the previous balance of \$14,454.31 that was transferred to the service account. Tr. 23; Penelec Exhibit 6. The second informal complaint, opened on August 5, 2021, alleged that the prior balance should not have been transferred to the service account and sought a payment arrangement if the transferred balance could not be removed from the service account. BCS dismissed the dispute and granted a payment arrangement. Tr. 24-25; Penelec Exhibits 5 and 7. The third informal complaint, opened on July 14, 2022, sought time to catch up on a payment arrangement and alleged issues surrounding a medical certificate. BCS dismissed this complaint and determined that Complainant was not eligible for another payment arrangement. Tr. 25-26; Penelec Exhibit 8. Based on the record evidence, the informal complaints were not identical, and three separate complaints filed over the course of three years does not clearly constitute an egregious abuse of process.

⁶ Ms. Dlugosh had also filed a total of ten informal complaints with BCS, all of which were filed in response to termination notices issued by the company. See *Dlugosh* transcript pp. 20-21.

Lastly, Ms. Walker testified that the Complainant has had three company payment arrangements and one payment arrangement with the Commission. Tr. 20-21. The Complainant has defaulted on each payment arrangement. While this history would certainly factor in to whether the Complainant may be granted an additional payment arrangement and is also one of the factors used to determine an abuse of process, in viewing the evidence of record as a whole, I do not find that this is a reflection of an abuse of the Commission's processes.

As noted above, the high balance on the service account is a concern. Moreover, as the Complainant failed to appear at her hearing scheduled for February 7, 2023, after receiving proper notice of the hearing via the Commission's eService, it is appropriate to dismiss the Complaint with prejudice. Complainant will therefore not be permitted to file a future informal or formal complaint that contains allegations similar to those she raised in the instant Formal Complaint. See, Herr at 16; 66 Pa.C.S. § 316. However, the evidence of record does not support a finding of an egregious abuse of process, and therefore, Penelec's request to bar the Complainant from filing future complaints with the Commission based on an abuse of process standard will be denied.

CONCLUSIONS OF LAW

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

2. 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, 70 A.2d 854 (Pa. 1950).

4. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. This due process requirement is satisfied when

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

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 thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) Not be permitted to recall the witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

6. Ms. Baughman'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).

7. By failing to appear for the hearing and proffer any evidence to support her Complaint, Ms. Baughman 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).

8. The evidence of record does not support a finding of an egregious abuse of process.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Pennsylvania Electric Company to dismiss, with prejudice, the Formal Complaint filed by Kristy Baughman at docket number C-2022-3035524 for failure to prosecute is hereby granted.

2. That the Formal Complaint filed by Kristy Baughman in Kristy Baughman v. Pennsylvania Electric Company, Docket number C-2022-3035524, is dismissed with prejudice.

3. That the request of Pennsylvania Electric Company, made on February 7, 2023, to bar the Complainant from filing further complaints due to an alleged abuse of the Commission's complaint process is denied.

4. That the Commission's Secretary mark this docket as closed.

Date: May 31, 2023

/s/
Charece Z. Collins
Administrative Law Judge