

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Potora	:	
	:	
v.	:	C-2022-3036399
	:	
UGI Utilities, Inc. – Gas Division	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Initial Decision sustains the Preliminary Objections of UGI Utilities, Inc. – Gas Division (UGI or Company) and dismisses the Formal Complaint filed by Jennifer Potora (Complainant) against UGI. As UGI establishes in its Preliminary Objections, Ms. Potora’s Complaint is legal insufficient in that it is identical to three previous Complaints filed by Ms. Potora, and she has been barred by the Commission from filing further identical Complaints.

HISTORY OF THE PROCEEDING

On October 27, 2022, Jennifer Potora filed a Formal Complaint stating that Respondent was threatening to shut off her service and disputing both the accuracy of charges and the total amount due. The Complaint was limited to the statement: “I am disputing the charges and the amount used.”

On November 16, 2022, UGI filed an Answer contending that Complainant is seeking to relitigate the same or related factual and legal issues that were raised or could have

been raised in three preceding cases and that the Commission has barred Complainant from filing a complaint alleging any such claims.

UGI argued that the current Complaint is barred by (1) the doctrines of *res judicata* and collateral estoppel, and (2) the Commission's August 18, 2019 Order barring Complainant from filing further complaints due to abuse of process by Complainant.

On November 16, 2022, UGI filed Preliminary Objections arguing that the Complaint was legally insufficient for essentially the same reasons set forth in UGI's Answer.

On November 21, 2022, a hearing Notice was issued setting January 26, 2023, as the date for a telephonic hearing in this case.

On December 13, 2022, an Order was issued cancelling the hearing set for January 26, 2023.

On April 6, 2023, a hearing Notice was issued setting April 18, 2023, as the date for oral argument with respect to UGI's Preliminary Objections.

On April 12, 2023, an Order was issued rescheduling oral argument for May 4, 2023.

On May 3, 2023, an Order was issued cancelling the oral argument scheduled for May 4, 2023, after Complainant stated in an email that she was not mentally able to participate in a hearing due to medication that she is taking. The Order also denied Complainant's request for a continuance or rescheduling of the hearing, Complainant having been afforded multiple opportunities to appear.

This matter is ready for decision. For the reasons set forth below, the Preliminary Objections of UGI are sustained, and the Complaint will be dismissed.

FINDINGS OF FACT

1. Jennifer Potora is the Complainant in this case.
2. UGI Utilities, Inc. – Gas Division is the Respondent in this case.
3. On October 27, 2022, Complainant filed a Formal Complaint stating, “I am disputing the charges and the amount used,” and indicating that Respondent was threatening to shut off her service.
4. On November 16, 2022, UGI filed an Answer contending that Complainant is seeking to litigate the same or related factual and legal issues that were raised or could have been raised in three preceding cases and that Complainant was barred by the Commission from filing further Complaints for abuse of process.
5. On or about November 18, 2022, the Complaint was referred to the Office of Administrative Law Judge (OALJ) for hearing.
6. On November 21, 2022, the undersigned was assigned as presiding officer in this case.
7. On July 7, 2017, the Commission entered an Order dismissing the Formal Complaint in *Potora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2016-2574107 (Final Order entered July 7, 2017) (*Potora I*).
8. On August 14, 2018, the Commission entered an Order dismissing the Formal Complaint in *Potora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2018-3000028 (Final Order entered Aug. 14, 2018) (*Potora II*).

9. On August 8, 2019, the Commission entered an Order dismissing the formal Complaint in *Potora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2018-3003485 (Opinion and Order entered Aug. 8, 2019) (*Potora III*).

10. Complainant's Third Complaint (*Potora III*) raised the same concerns over termination, usage, and charges, as in her two prior Complaints but also alleged her income decreased after she stopped receiving child support payments and so sought a new payment arrangement. *Potora III*.

11. Complainant's Third Complaint (*Potora III*) was dismissed after the Commission found no disputed issues of fact remained because the alleged loss of child support, taken as true, did not constitute a change of income warranting a new payment arrangement. *Potora III* at 8-9.

12. Complainant, "has a history of abusing the Commission's process" and has been "precluded from filing further complaints with the Commission, whether of an informal or formal nature, regarding the arrearages on her account for gas service rendered by UGI Penn Natural Gas, Inc. until all arrearages are paid in full and that the filing of any complaint pertaining to such arrearages shall be dismissed without further proceedings." *Potora III* at 9, 11.

13. On November 16, 2022, UGI filed Preliminary Objections arguing that the Complaint was legally insufficient for essentially the same reasons set forth in UGI's Answer.

14. Oral argument relative to the Preliminary Objections was scheduled for January 26, 2023, April 18, 2023, and again on May 4, 2023, but Complainant did not appear, ultimately telling the presiding officer and Counsel for UGI by email that her medications would not permit her to think clearly and would thus preclude her participation in this matter as a result of which the final opportunity for oral argument was cancelled.

DISCUSSION

In considering the procedural posture of this case, we are confronted with the issue of determining at what point in the administrative process does the right to a hearing become established, even when the Commission has barred the filing of additional complaints. In this case, a Formal Complaint was received and accepted by the Office of the Secretary of the Commission on October 27, 2022, over three years after the Commission barred Complainant from filing identical Complaints in *Potora III*. UGI filed both an Answer to the Complaint and Preliminary Objections, and the matter was then assigned to the Office of Administrative Law Judge (OALJ) for hearing, and a hearing Notice was issued.

It is unquestionable that in *Potora III*, the Commission banned Complainant from filing further Complaints duplicative of the three she previously filed. It is, however, unclear what, *if any*, instructions were communicated to the Office of the Secretary in this regard. When the Secretary accepted the filing of the present Complaint on October 27, 2022, and UGI filed an Answer and Preliminary Objections, and the matter was then assigned to OALJ for hearing, this became a contested proceeding and Complainant was accorded the right to be heard. Consequently, a due process right to a hearing and an adjudication was created. The subject matter of that hearing was limited by the presiding officer to argument with respect to the Company's Preliminary Objections, because a Final Order directly impacting Complainant's substantive rights must now be the outcome of this matter. Thus, the agency may not summarily withdraw the right to hearing that it has accorded Complainant, no matter how inadvertently.

Failure to afford a reasonable opportunity to be heard may have resulted in a serious due process issue. The 5th Amendment of the Constitution of the United States directs that, "no person shall...be deprived of life, liberty, or property, without due process of law." This right was extended to the states by the XIV Amendment. Fundamental to procedural due process are adequate notice before the government can deprive one of life, liberty, or property, and the opportunity to be heard and defend one's rights. The boundaries of due process are not fixed and are the subject judicial interpretation and decision making. Further, Article I, Section 11 of the Constitution of Pennsylvania states:

§ 11. Courts to be open; suits against the Commonwealth.

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

Pa. Const. art. I § 11 (emphasis added).

While the authority of the Commission to impose limits on the filing of duplicative complaints is not at issue, here, the fact that this Complainant was afforded notice and an opportunity to be heard may not be summarily withdrawn because of administrative error, again, no matter how inadvertent.

This is not to say that UGI's arguments, which will be addressed, below, are without merit, but the Commission's action in scheduling a hearing afforded Complainant the right to a reasonable opportunity to be heard, hence a hearing for oral argument with respect to UGI's Preliminary Objections was ultimately scheduled for May 3, 2023. Complainant is a registered eService user, so recent concerns expressed by the Commission with respect to *pro se* complainants need not be addressed here. *See, Hoyt v. Columbia Gas of Pa., Inc.*, Docket No. F-2022-3032680 (Opinion and Order entered April 20, 2023).

On May 2, 2023, two days before the hearing in this matter, Complainant sent the following email to the presiding officer and to counsel for UGI:

Judge Buckley:

Due to me having a temporary mental health condition, as well as taking prescribed medications. I feel that while under the medication I will not be able to fully understand questions asked during the telephone conference scheduled for may 4 at 10:00 am and am asking that it be rescheduled.

Jennifer Potora

Complainant provided no verification from a qualified medical authority to support her claim of incapacity.

UGI objected to Complainant's request for continuance and asked that the hearing scheduled for May 4, 2023, go forward.

On May 3, 2023, I issued an Order cancelling the May 4, 2023, hearing and stated that a further hearing would not be scheduled effectively denying any continuance or rescheduled hearing.¹

Complainant was afforded a reasonable opportunity to be heard on several occasions but consistently failed to avail herself of the same. UGI's Preliminary Objections may now be addressed.

The grounds for a Preliminary Objection are set forth in the Commission's procedural regulations:

§ 5.101. Preliminary objections.

a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be (accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.

¹ If Complainant's contention with respect to her mental ability to participate in a hearing is accepted, then one might ask, rhetorically, when a hearing in this matter would ever take place? Indeed, an argument might be made that this latest attempted delay by Complainant is part of her established pattern of prolonging the resolution of her account delinquency for as long as possible.

- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Env't Res.*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Phila. Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission follows this standard. *Montague v. Phila. Elec. Co.*, 66 Pa.P.U.C. 24 (1988).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *Cnty. of Allegheny v. Commonwealth of Pa.*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pa. v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the Complaint in this case in the light most favorable to the Complainant and should dismiss the Complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

The Commission regulation at 52 Pa. Code § 5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa. Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

Accepting the facts alleged in the Complaint as true for purposes of disposing of its Preliminary Objection, UGI stated that Complainant is (1) seeking to relitigate the same or related

factual and legal issues that were raised or could have been raised in three preceding cases, and (2) barred from filing the current Complaint, as well as any future complaints, pursuant to the Commission's August 18, 2019 Order. Thus, the Complaint is legally insufficient. 52 Pa. Code § 5.101(a)(5).

The First and Second Complaints (*Potora I and Potora II*) referenced above were filed by Complainant at Docket Nos. C-2016-2574107 and C-2018-3000028. The Commission dismissed the First and Second Complaints with prejudice for failure to appear for the hearings and prosecute the complaints, after the Complainant was granted continuances on both dockets. *See Potora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2016-2574107 (Final Order entered July 7, 2017) ("*Potora I*"); *Potora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2018-3000028 (Final Order entered Aug. 14, 2018) ("*Potora II*").

Complainant's Third Complaint (*Potora III*) raised the same concerns over termination, usage, and charges, but also alleged her income decreased after she stopped receiving child support payments and so sought a new payment arrangement. *See Potora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2018-3003485 (Opinion and Order entered Aug. 8, 2019) ("*Potora III*"). The Third Complaint was also dismissed after the Commission found no disputed issues of fact remained because the alleged loss of child support, taken as true, did not constitute a change of income warranting a new payment arrangement. Additionally, the Commission found that the Complainant has a history of abusing the Commission's process and precluded Complainant from filing further complaints with the Commission, whether of an informal or formal nature, regarding the arrearages on her account for gas service rendered by UGI Penn Natural Gas, Inc. until all arrearages are paid in full and that the filing of any complaint pertaining to such arrearages shall be dismissed without further proceedings.

UGI details all of this in its Preliminary Objections:

This is the Fourth Formal Complaint filed by the Complainant against UGI Gas disputing the usage and charges for gas service at her residence. The Complainant's First and Second Complaints were dismissed with prejudice by the Commission for failure to prosecute. Later, when the Commission

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

* * *

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

UGI Preliminary Objections at 1-2 (footnotes omitted).

Complainant filed no Answer or responsive pleading to the Preliminary Objections. As detailed above, Complainant failed to avail herself of multiple opportunities to make oral argument with respect to the Preliminary Objections.

As a review of the succession of Complaints and their outcome plainly shows, UGI is correct that in the present Complaint, Ms. Potora has refiled the same Complaint as she has filed on three prior occasions. She did this despite the Commission's clear bar with respect to the filing of further Complaints in this regard. UGI's Preliminary Objections are sustained, and the Complaint will be dismissed.

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 conference or hearing shall be deemed to have waived the opportunity to participate in the conference or hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the conference or hearing. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(a).

4. 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); 52 Pa. Code § 5.245(a).

5. A person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. 52 Pa. Code § 5.21(a).

6. The Commission's regulation at 52 Pa. Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

7. The legal insufficiency of a Complaint constitutes grounds for a preliminary objection which, if sustained, requires dismissal of the complaint. 52 Pa. Code § 5.101(a)(5).

8. Complainant, "has a history of abusing the Commission's process" and has been "precluded from filing further complaints with the Commission, whether of an informal or formal nature, regarding the arrearages on her account for gas service rendered by UGI Penn Natural Gas, Inc. until all arrearages are paid in full and that the filing of any complaint pertaining to such arrearages shall be dismissed without further proceedings." *Potora v. UGI*

