

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held April 14, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
John F. Coleman, Jr., Vice Chairman  
Ralph V. Yanora

Myesha Brown

C-2019-3009486

v.

PECO Energy Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision on Remand (Remand I.D.) of Administrative Law Judge (ALJ) Eranda Vero, issued on February 1, 2022, in the above-captioned proceeding. No Exceptions have been filed. However, we have exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h). For the reasons stated below, we shall adopt the Initial Decision, as modified, consistent with this Opinion and Order.

## History of the Proceeding

On April 26, 2019, Myesha Brown (Ms. Brown or Complainant) filed a Formal Complaint (Complaint) with the Commission against PECO Energy Company (PECO or Company) regarding service at 3008 Wharton Street, Philadelphia, Pennsylvania 19146 (Service Address). In the Complaint, Ms. Brown: (1) alleged that the utility is threatening to, or already has, shut off her electric service; and (2) requested a payment arrangement. Complaint at 2.

On May 1, 2019, PECO filed an Answer to the Complaint (Answer), denying all material allegations of fact and conclusions of law in the Complaint. The Company countered that the Complainant enrolled in PECO's Customer Assistance Program (CAP) on December 3, 2004, was last recertified in CAP on October 17, 2016, and is considered actively enrolled in CAP. Further, PECO provided that, on November 26, 2018, the Complainant's electric service at the Service Address was terminated for a past due balance of \$4,141.62. Moreover, PECO noted that the Complainant's current outstanding balance is \$4,660.47 (as of the date the Answer was filed). Answer at 2-3.

On June 4, 2019, a hearing was convened in this matter. The Complainant appeared *pro se* and did not present testimony or exhibits. PECO was represented by counsel and did not present testimony or exhibits. Prior to the hearing, both of the Parties engaged in settlement discussions. Consequently, at the start of the hearing, the Complainant made an on-the-record request to withdraw her Complaint against PECO. The Company did not object to the Complainant's request.

On October 2, 2019, the Commission issued the Initial Decision of ALJ Vero granting Ms. Brown's request to withdraw her Complaint.

On November 1, 2019, Ms. Brown filed Exceptions to the Initial Decision stating, “I’m not withdrawing my complaint due to the fact that I still haven’t got any help or true assistance with my original concern. I feel like nothing has change and I can’t comply with PECO’s recommendation.” Remand I.D. at 2.

On November 18, 2019, PECO filed Replies to Exceptions alleging that, in filing Exceptions, the Complainant was attempting to delay this matter and to use the Commission’s appeals process to avoid paying her electric bill. PECO further averred that it would be prejudiced by the reopening of this case. *Id.*

On August 26, 2021, the Commission issued an Opinion and Order (*August 2021 Order*) which granted the Complainant’s Exceptions, reversed the Initial Decision, and remanded the matter to the Office of Administrative Law Judge (OALJ) for further proceedings as deemed necessary. *August 2021 Order* at 7-10.

On August 27, 2021, a Call-In Telephone Hearing Notice (Remand Hearing Notice) was served upon the Parties,<sup>1</sup> informing them that a call-in telephonic hearing on the matter would be convened by the ALJ on October 14, 2021, at 10:00 a.m. The Remand Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to call on that date in order to participate in the telephonic hearing. The Remand Hearing Notice further stated the following warning:

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<sup>1</sup> In mid-March 2020, in response to the COVID-19 pandemic, the Commission’s offices began closing throughout the Commonwealth and with staff teleworking, thereby precluding the Commission from sending or receiving mail through the U.S. Postal Service. Consequently, on March 20, 2020, the Commission issued an Emergency Order at Docket No. M-2020-3019262, which in relevant part stated as follows: “All service *upon* the Commission or its staff, and service *by* the Commission, shall be performed electronically, consistent with this Order, until further notice.” Remand I.D. at 6.

**FAILURE TO APPEAR:** You may lose the case if you do not take part in this hearing and present evidence on the issue(s) 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.

On September 27, 2021, the ALJ served a Prehearing Order (Remand Prehearing Order), which was electronically served upon the Parties, and, *inter alia*, reminded them to call, on October 14, 2021, at 10:00 am for the scheduled hearing. The Remand Prehearing Order also provided the Toll-Free Bridge Number as well as directed the Parties to enter the PIN to participate in the telephonic hearing. Furthermore, the Prehearing Order repeated in full the **FAILURE TO APPEAR** warning mentioned above. Additionally, the Remand Prehearing Order informed the Parties about the applicable procedural rules, including the procedure to follow to request a hearing continuance.

The Remand Hearing Notice and Remand Prehearing Order were served via email in the ordinary course of the Commission’s business to the email address provided by the Complainant to the Commission. The Commission did not receive a return electronic message that delivery of either document to the Complainant’s email address had failed. Remand I.D. at 6. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable. Furthermore, no request for a continuance was received by the Commission prior to the hearing.

On October 14, 2021, by 10:00 a.m., the call for the telephonic hearing commenced as scheduled and counsel for PECO and the ALJ dialed into the telephonic proceeding. The court reporter was also present. However, the Complainant did not call into the telephonic proceeding. The court reporter and counsel for PECO were prepared to proceed at the scheduled time. The ALJ recessed the proceeding and waited at least an

additional fifteen (15) minutes to permit additional time for the Complainant to appear or to contact the OALJ to explain her absence before convening the hearing. The telephone line remained open with counsel for PECO, the court reporter, and the ALJ on the telephone line waiting for the Complainant to join the proceeding. The hearing reconvened after the ALJ gave Ms. Brown an additional seventeen minutes to call-in. When the hearing reconvened, the Complainant had not called into the hearing nor contacted the OALJ to explain her absence. Accordingly, the hearing proceeded in the Complainant's absence. Counsel for PECO then moved for dismissal of the Complaint, with prejudice, for lack of prosecution. The ALJ informed counsel that the motion would be taken under advisement and a Remand Initial Decision would be issued. The hearing was adjourned at 10:21 a.m. on October 14, 2021. Remand Tr. at 6-7; Remand I.D. at 3.

On February 1, 2022, the Commission issued the Initial Decision of ALJ Vero which dismissed the Complaint, without prejudice, for failure of the Complainant to prosecute the matter. Remand I.D. at 7-8.

### **Discussion**

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider*, 479 A.2d at 15 (Pa. Cmwlth. 1984). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980).

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See* 66 Pa. C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice.

52 Pa. Code § 5.201(a). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *See Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (Pa. 1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944, 946 (Pa. Cmwlth. 1994), *appeal denied*, 539 Pa. 696, 653 A.2d 1234 (1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Order entered September 16, 2010).

Once a hearing is scheduled and duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Order entered October 25, 1993).

### **ALJ's Initial Decision**

ALJ Vero made eighteen Findings of Fact and reached five Conclusions of Law. I.D. at 3-5, 7-8. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law except as reversed or modified by this Opinion and Order, either expressly or by necessary implication.

The ALJ stated that the Commission satisfies the requirement of affording a complainant with administrative due process, by providing timely notice of the hearing on the complaint and the opportunity to be heard. Remand I.D. at 6, citing *Schneider v. Pa. PUC*, 479 A.2d 10 (Pa. Cmwlth. 1984). The ALJ noted that on August 27, 2021, the Remand Hearing Notice was electronically served upon the Complainant at the email address she provided to the Commission. The ALJ further noted that the notice advised the Complainant that the case could be dismissed for failure to call-in and participate in the hearing. According to the ALJ, the Commission did not receive a return electronic

message that delivery of the notice to the Complainant's email address had failed. Accordingly, the ALJ presumed that the Complainant received electronic notice of the hearing and elected not to participate in the hearing. Remand I.D. at 6-7, citing *Morella v. PECO Energy Company*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). Therefore, the ALJ concluded that the Complainant's due process rights have been fully protected. Remand I.D. at 6-7.

The ALJ also noted that pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a), the burden of proof is on the proponent of a rule or order. According to the ALJ, in this proceeding, the Complainant as the proponent of a rule or order had the burden of proving she was entitled to the relief requested in his Complaint. The ALJ noted that by failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet her burden of proof. As such, the ALJ determined that since the Complainant failed to appear and participate in the scheduled telephonic hearing, her Complaint may be dismissed. Remand I.D. at 7, citing *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995) (*Jefferson*); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016) (*El-Ayazra*); 52 Pa. Code § 5.245. Accordingly, the ALJ dismissed the Complaint without prejudice. Remand I.D. at 7-8.

## **Disposition**

As a preliminary matter, any argument that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. We are not required to consider expressly or at length each contention or argument raised by parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). On exercise of our independent review of the Parties' positions in

their pleadings in this case, we shall adopt the Initial Decision, as modified, consistent with the following discussion.

From an administrative due process standpoint, the question is whether a complainant's failure to appear at a scheduled and duly notified hearing shall be deemed to be the party's waiver of the opportunity to participate in a hearing in the matter. 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. 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. 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). However, if a complainant fails to bring the situation to the attention of the presiding officer prior to the issuance of the Initial Decision, the record closes and the presiding officer can no longer exercise that discretion. *See, e.g., Alice Anderson v. PECO Energy Company*, Docket No. F-2017-2614241 (Order entered July 18, 2018).

As noted earlier, in her Initial Decision, ALJ Vero noted that on August 27, 2021, the Remand Hearing Notice was electronically served upon the Complainant at the email address she provided to the Commission and the Commission did not receive a return electronic message that delivery of the Hearing Notice to the Complainant's email address had failed. Accordingly, it is presumed that the Complainant received electronic notice of the hearing and elected not to participate in the hearing. Remand I.D. at 6-7. In addition, as the proponent of a rule or order in this case, the Complainant bears the burden of proving she was entitled to the relief requested in her Complaint. However, the Complainant was not present for the hearing. Remand I.D. at 7. Since the Complainant failed to appear and participate in the scheduled telephonic hearing, her Complaint may be dismissed with prejudice. *See Jefferson; El-Ayazra*; 52 Pa. Code § 5.245.

Under the circumstances of this case, we find that the ALJ correctly exercised her discretion to dismiss the Complaint because the Complainant failed to appear at the hearing as instructed and to present any evidence in support of her Complaint. While we agree with dismissing the Complaint, we disagree with the ALJ in dismissing it without prejudice.

The Code provides that a party who fails to attend a scheduled conference and hearing “shall be deemed to have waived the opportunity to participate” and shall not be permitted to later reopen the matter. 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245. As noted, the Commission may excuse non-attendance at a hearing where “... the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced.” *Id.* No determination was made that the non-attendance was unavoidable, and there are no facts in the record that would allow the Commission to reach this conclusion. Accordingly, we will modify the ALJ’s Initial Decision so that the Complaint is dismissed, with prejudice, as required by law and consistent with relevant case precedent.<sup>2</sup>

### **Conclusion**

Based on the foregoing, we shall adopt the Initial Decision of ALJ Vero, as modified, consistent with this Opinion and Order; **THEREFORE,**

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<sup>2</sup> *Amir Williams v. PECO Energy Company*, Docket No. C-2018-3000734 (Order entered March 14, 2019).

**IT IS ORDERED:**

1. That the Initial Decision of Administrative Law Judge Eranda Vero issued on February 1, 2022, is adopted as modified, consistent with this Opinion and Order.
2. That the Motion of PECO Energy Company to dismiss the Formal Complaint of Myesha Brown at Docket C-2019-3009486 with prejudice is granted, consistent with this Opinion and Order.
3. That the Formal Complaint filed by Myesha Brown on April 26, 2019, at Docket Number C-2019-3009486, is dismissed, with prejudice, consistent with this Opinion and Order.
4. That the proceeding at Docket No. C-2019-3009486 be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: April 14, 2022

ORDER ENTERED: April 22, 2022