

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

Tauheed Davenport

**Public Meeting held April 20, 2023
3033480-ALJ**

v.

Docket No. C-2022-3033480

PECO Energy Company

MOTION OF COMMISSIONER KATHRYN L. ZERFUSS

On June 27, 2022, Tauheed Davenport (Complainant) filed a Formal Complaint against PECO Energy Company (Company) seeking an affordable payment arrangement. The Company filed an Answer and New Matter denying that the Complainant is legally entitled to a Commission-ordered payment arrangement.

On September 26, 2022, a Notice of Telephonic Hearing (Hearing Notice) was sent by electronic mail (email) to the email address the Complainant provided on her complaint form.¹ Thereafter, a Prehearing Order providing the date and time of the hearing was sent by email to the Complainant. The hearing convened as scheduled on November 17, 2022. Counsel for the Company appeared with one witness; however, the Complainant did not call in for the hearing. The Company made an oral motion to dismiss the Complaint due to the Complainant's failure to appear.² By Initial Decision, issued on January 17, 2023, the ALJ dismissed the Complaint with prejudice.

I submit that the practice of dismissing complaints filed by *pro se* complainants, with prejudice, when there is no record of the complainant agreeing to service by email and the

¹ There is no record of the Complainant creating an account on the Commission's eFiling system or of her electing to receive documents through eService. The Complainant provided her email address in the contact information section on the complaint form which indicates that an email address is required. *See*, Complaint at 1. On September 15, 2022, the Commission extended a temporary waiver of the service requirement Regulations at 52 Pa. Code §§ 1.53 and 1.54 except where the applicable law requires a specific type of service, e.g., 66 Pa. C.S. § 702 ("Service in all hearings, investigations and proceedings pending before the commission shall be made by registered or certified mail or by e-mail upon agreement by each party."). *See, Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered September 15, 2022). There is no record of the Complainant requesting or agreeing to be served notice of the proceedings related to her formal complaint by email.

² I note that the motion of the Company did not request dismissal *with prejudice*. Tr. at 7-8.

complainant fails to appear at the hearing is inconsistent with due process.³ There is no need to close the door to this venue to *pro se* complainants unless record evidence shows that they are abusing the Commission's administrative process to avoid paying their utility bills.⁴ Here, there is no evidence of abuse of administrative process.

Additionally, I take this opportunity to express my concern that both the Hearing Notices and the Prehearing Order were sent only by email to the Complainant. *Pro se* complainants, who do not elect to receive notice through the Commission's eFiling or eService system, but who provide an email address in the required contact information section of the complaint form, cannot be presumed to know that notice of proceedings will be provided by email.

Here, the ALJ found that the Hearing Notices and Prehearing Order were provided to the Complainant's email and neither document was returned to the Commission as undeliverable. The Initial Decision provides that the documents sent to the Complainant were deemed to be received by the Complainant. I.D. at 5. In support, the ALJ cited to several Commission decisions and concluded that the due process rights of the Complainant were fully protected.⁵ I believe that these cases are distinguishable because they involved matters in which the Complainants affirmatively elected eService or had active eFiler status as required in our Regulation at Section 1.53(b)(3), 52 Pa. Code § 1.53(b)(3). Such is not the case here for the Complainant who simply provided her email address because the complaint form stated that she was required to do so. Thus, I do not believe the cases cited by the presiding officer support a presumption of receipt of the Hearing Notice and the Prehearing Order in this case.

Under the circumstances involving the Complainant's *pro se* status and her lack of affirmative agreement to service to her email address, I submit that it is in the public interest to afford the Complainant an opportunity for an evidentiary hearing if the Complainant elects one.⁶ Accordingly, I believe we should provide the Complainant twenty days to file a written request for a further hearing with the Secretary's Bureau. If the Complainant files such a request, the proceeding would be remanded to the Office of Administrative Law Judge for further proceedings as warranted. Failure to timely file the hearing request would result in the dismissal

³ This Commission has long recognized the mitigating effect *pro se* status confers upon litigants unlearned in the law when confronted with technical violations of its procedural rules. *Carlock v. The United Telephone Co. of Pa.*, Docket No. F-00163617 (Order entered July 14, 1993). Most important, from our perspective, the Commission has stated that it is in the public interest that all litigants, particularly *pro se* litigants, be afforded a meaningful opportunity to be heard. *Amir V. Williams v. PECO Energy Co.*, Docket No. C-2010-2190024 (Order entered January 14, 2011).

⁴ See, e.g., *Amanda Polk Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Order entered September 15, 2022).

⁵ See, *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered December 19, 2019); and *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Order entered January 27, 2017).

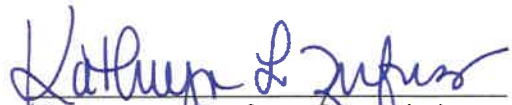
⁶ The Commission may reopen the record after the presiding officer has issued a decision if conditions of fact or of law have changed or the public interest so requires the reopening of the proceeding. 52 Pa. Code § 5.571(d).

of the Complaint and the matter would be closed without further action of the Commission. Further, I believe that any dismissal of the Complaint should be without prejudice.

THEREFORE, I MOVE THAT:

1. The Initial Decision of Administrative Law Judge Steven K. Haas, issued on January 17, 2023, is modified, consistent with this Motion.
2. The Complainant be provided an opportunity to file a written request for an evidentiary hearing within twenty (20) days of the entry of our Order in this matter.
3. If a written request for an evidentiary hearing is timely filed, the proceeding shall be remanded to the Office of Administrative Law Judge for further proceedings as warranted and for the issuance of an Initial Decision on Remand.
4. If a written request for an evidentiary hearing is not timely filed, the Complaint shall be dismissed without further action of the Commission.
5. The Office of Special Assistants prepare an Order consistent with this Motion.
6. The Secretary's Bureau serve a copy of the Order on the Complainant by certified mail.

DATE: April 20, 2023


Kathryn L. Zarfuss, Commissioner