

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

Public Meeting held April 20, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora, Joint Dissenting Statement
Kathryn L. Zerfuss
John F. Coleman, Jr., Joint Dissenting Statement

Robert Green

C-2022-3033307

v.

UGI Utilities, Inc. (Gas Division)

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Deputy Chief Administrative Law Judge (DCALJ) Christopher P. Pell, issued on January 10, 2023, 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 June 13, 2022, Robert Green (Complainant or Mr. Green) filed a Formal Complaint (Complaint) against UGI Utilities, Inc. (Gas Division) (UGI or Company) with the Commission. In the Complaint, Mr. Green placed a checkmark in the box marked “[o]ther” and wrote “[c]ontractor caused damage to curb while changing out gas lines.” Complaint at 2. Under the “requested relief” section of the Complaint, Mr. Green wrote, in pertinent part, that “[d]amage to my curb was caused by contractors that UGI hired. *Id.* All I’m asking for is for someone to correctly patch up the damage that was caused by one or both of these contractors.” *Id.* at 2-3.

On July 18, 2022, UGI filed an Answer and New Matter to the Complaint (Answer). In the Answer, UGI, *inter alia*, denied that its contractors caused damage to the Complainant’s curb. Answer at 1. As New Matter, UGI maintained that the Complainant’s request for repairs to his curb constitutes a request for damages. *Id.* at 2. UGI argued that any claim for an award of damages is beyond the Commission’s jurisdiction and is legally insufficient because the Complaint does not allege any violation of any statute, regulation or order which UGI has violated and which the Commission has jurisdiction to administer. UGI requested that the Complaint be dismissed for lack of jurisdiction and legal insufficiency. *Id.*

Also on July 18, 2022, UGI filed Preliminary Objections (POs) in which it requested that the Complaint be dismissed for lack of jurisdiction and legal insufficiency. POs at 1. In its Preliminary Objections UGI maintained that the Complainant’s request for repairs to his curb constitutes a request for damages, which is beyond the Commission’s jurisdiction. *Id.* UGI requested that the Complaint be dismissed for lack of jurisdiction and legal insufficiency. *Id.* at 1-2. The Complainant did not file a response to UGI’s Preliminary Objection.

On September 6, 2022, the Commission served an initial telephonic Hearing Notice (Hearing Notice) setting an initial call-in telephonic hearing for October 13, 2022, on the matter, including the outstanding Preliminary Objections. The Hearing Notice was sent by electronic mail (email) to the email address the Complainant provided on his complaint form.¹ The Hearing Notice, *inter alia*, named the Administrative Law Judge (ALJ) as the assigned presiding officer, provided a toll-free call-in number to the Parties and included language concerning the effects on the case if a party failed to appear.

On September 9, 2022, the Commission electronically served a Prehearing Order upon the Parties advising them, *inter alia*, of the toll-free call-in number to participate in the hearing and the language explaining what might happen if a party failed to appear or participate. Both the Hearing Notice and the Prehearing Order were sent to Mr. Green at the email address he listed in his Complaint and, according to the ALJ, were not returned to the Commission as undeliverable. I.D. at 5.

On October 7, 2022, the DCALJ issued an Interim Order granting, in part, and denying, in part, UGI's Preliminary Objections. I.D. at 3. While the Interim Order granted the preliminary objections on most of the issues it denied them concerning the Commission's jurisdiction to determine whether the Company rendered reasonable and

¹ There is no record of the Complainant creating an account on the Commission's eFiling system or of him electing to receive documents through eService. The Complainant provided his 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 his formal complaint by email.

adequate service to the Complainant and directed that the case proceed to an evidentiary hearing on this issue. The Interim Order was sent to the Complainant by email.

On October 13, 2022, the hearing convened as scheduled. UGI's counsel phoned in to the hearing along with several witnesses and was prepared to proceed. The Complainant did not call in at the scheduled time to participate in the hearing. The DCALJ stated that the Complainant did not contact his office prior to the hearing. Tr. at 3. Accordingly, the hearing proceeded in his absence. Tr. 1-5. At the hearing, no witnesses were presented, and no exhibits were introduced into the record. *Id.* UGI's counsel moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245, and the presiding officer granted the motion. *Id.* at 4.

The record closed on October 31, 2022.

On January 10, 2023, the Commission issued the Initial Decision of DCALJ Pell, in which he granted UGI's motion and dismissed the Complaint, with prejudice, for failure of the Complainant to appear and prosecute the matter. I.D. at 1, 6.

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).²

ALJ's Initial Decision

DCALJ Pell made eight Findings of Fact and reached three Conclusions of Law. I.D. at 3-4, 6. We shall adopt and incorporate herein by reference the DCALJ'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 DCALJ stated that the Complainant had adequate notice of the time and date of the hearing, and failed to call in, or explain why he could not attend the hearing at the scheduled time. Therefore, the DCALJ determined it is appropriate to dismiss the Complaint. I.D. at 4.

The DCALJ further noted that utilizing the email address provided by the Complainant, the Commission emailed notice of the October 13, 2022 hearing in this case to the Complainant on September 6, 2022. The DCALJ stated that the notice informed the Parties of the date and time of the hearing, as well as how to call in for the hearing. According to the DCALJ, to his knowledge, this notice was never returned to

² We note as well, and as discussed in the Initial Decision, as with most cases in which a party fails to appear, 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*, Docket No. C-00014869 (Order entered Jan. 24, 2002); *see also*, 66 Pa. C.S. § 332(f) and 52 Pa. Code § 5.245(a)-(b) (if a party fails to appear at a scheduled and duly notified hearing, the party will be deemed to have waived the opportunity to participate in the hearing).

the sender or the scheduling staff for the Office of Administrative Law Judge. I.D. at 4-5.

The DCALJ explained that he issued a Prehearing Order dated September 9, 2022, which, *inter alia*, warned both Parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. According to the DCALJ, the Prehearing Order, which was also emailed to the Complainant at the email address he provided to the Commission, was never returned as undeliverable. Accordingly, the DCALJ presumed that this email, which was sent in the ordinary course of business, was received by the Complainant. I.D. at 5, citing *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered December 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered January 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered November 16, 2016).

The DCALJ noted that the Complainant did not call in for the scheduled hearing and that under the circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the DCALJ considered the due process rights of the Complainant to have been fully protected. I.D. at 5, citing *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

Finally, the DCALJ stated that Section 332(a) of the Code, 66 Pa. C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. The DCALJ noted that as the Party bringing this Complaint, Mr. Green bears the burden of proving by a preponderance of the evidence that he is entitled to his requested relief. According to the DCALJ, a party who fails to attend a scheduled hearing has waived the opportunity to participate in that hearing and shall not be permitted to later reopen the matter. I.D. at 5, citing 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245. The DCALJ

concluded that by failing to participate and proffer any evidence to support his Complaint, the Complainant has failed to meet his burden. Therefore, the DCALJ dismissed the Complaint, with prejudice. I.D. at 5, citing *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered February 7, 2022); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); 52 Pa. Code § 5.245; 66 Pa. C.S § 332.

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.

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 complainant fails to appear at the hearing is inconsistent with due process.³ There is

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).

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, both the Hearing Notice 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 DCALJ found that the Hearing Notice 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 it must be presumed that the documents sent to the Complainant in the ordinary course of business were received by the Complainant. I.D. at 5. In support, the DCALJ cited to several Commission decisions and concluded that the due process rights of the Complainant were fully protected.⁵ 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 his email address because the complaint form stated that he was required to do so. Thus, the cases cited by the presiding officer do not support a presumption of receipt of the Hearing Notice and the Prehearing Order in this case.

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); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Order entered January 27, 2017); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Order entered November 16, 2016).

Under the circumstances involving the Complainant's *pro se* status and his lack of affirmative agreement to service to his email address, it is in the public interest to afford the Complainant an opportunity for an evidentiary hearing if the Complainant elects one.⁶ Accordingly, the Complainant shall be provided twenty (20) days to file a written request for a further hearing with the Commission's 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 of the Complaint and the matter would be closed without further action of the Commission. Further, dismissal of the Complaint should be without prejudice.

Accordingly, we will modify the DCALJ's Initial Decision, consistent with the discussion in this Opinion and Order.

Conclusion

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

IT IS ORDERED:

1. That the Initial Decision of Deputy Chief Administrative Law Judge Christopher P. Pell issued on January 10, 2023, is adopted as modified, consistent with this Opinion and Order.

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).

2. That Robert Green be provided an opportunity to file a written request for an evidentiary hearing within twenty (20) days of the entry of this Opinion and Order.

3. That, 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. That, if a written request of an evidentiary hearing is not timely filed, the Formal Complaint filed by Robert Green on June 13, 2022, shall be dismissed without further action of the Commission.

5. That the Commission's Secretary's Bureau serve a copy of this Opinion and Order on Robert Green by certified mail.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 20, 2023

ORDER ENTERED: April 20, 2023