

**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 Statement, Dissenting
Kathryn L. Zerfuss
John F. Coleman, Jr., Joint Statement, Dissenting

Paul Sablich

C-2022-3033148

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 (I.D.) of Administrative Law Judge (ALJ) Darlene Davis Heep, issued on January 6, 2023,¹ 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),

¹ We note that although the Initial Decision is dated January 6, 2022, we believe this is an error, as the correct date is January 6, 2023.

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 6, 2022, Paul Sablich (Complainant or Mr. Sablich) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Company), alleging there was “discrimination of service based on placement of electric transformers on his neighbors’ property but not for his home.” I.D. at 1; Complaint at 2.

On July 6, 2022,² PECO filed an Answer to the Complaint, *inter alia*, denying all the material allegations but admitting that Mr. Sablich was seeking that a transformer be installed in a “non-standard location.” I.D. at 1.

By an Interim Order Setting Resolution Conference dated July 7, 2022, Chief Administrative Law Judge Charles E. Rainey, Jr. directed that the Parties attempt to resolve the matter themselves. A telephonic mediation session was scheduled for August 12, 2022. The matter was not resolved.

On August 15, 2022, the Commission served an initial telephonic Hearing Notice (Hearing Notice) setting a formal call-in telephonic hearing for this matter for October 6, 2022. The Hearing Notice was sent by electronic mail (email) to the email

² We note that although the Initial Decision reflects the filing date as July 7, 2022, our review of the Commission’s case management system indicates that PECO’s Answer was filed on July 6, 2022.

address the Complainant provided on his complaint form.³ The Hearing Notice, *inter alia*, named 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.

Also on August 15, 2022, the Commission issued and served electronically a Prehearing Order upon the Parties advising them, *inter alia*, of the toll-free call-in number to participate in the hearing and language explaining what might happen if a party failed to appear. Both the Hearing Notice and the Prehearing Order were sent to Mr. Sablich at the email address he listed on his Complaint and, according to the ALJ were not returned to the Commission as undeliverable. I.D. at 3.

On October 6, 2022, the hearing convened as scheduled. Counsel for PECO, Khadijah Scott, Esquire, appeared along with three witnesses. Mr. Sablich did not call in to participate. PECO made a motion to dismiss Mr. Sablich's Complaint and the ALJ took the motion under advisement.⁴

The record closed on October 12, 2022, the date the transcript for this case was filed.

³ 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.

⁴ PECO's motion did not request dismissal *with prejudice*. Tr. at 8.

On January 6, 2023, the Commission issued the Initial Decision of ALJ Heep, in which she granted PECO's motion and dismissed the Complaint, with prejudice, for failure of the Complainant to appear and prosecute the matter. I.D. at 1, 6-7.

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).⁵

⁵ 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).

ALJ's Initial Decision

ALJ Heep made twelve Findings of Fact and reached seven Conclusions of Law. I.D. at 2-3, 5-6. 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 because the Complainant challenged where PECO placed transformers on his property and the property of his neighbors, Mr. Sablich, has the burden of proof in this proceeding. I.D. at 4. The ALJ stated that the Prehearing Order and Hearing Notice were both sent to Mr. Sablich at the email address he provided and neither was returned to the Commission as undeliverable. According to the ALJ, notice electronically served to a party with no notification that service has failed is presumed received. I.D. at 4, citing *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017) (*Zirkel*). Accordingly, the ALJ presumed that these documents sent to Mr. Sablich in the ordinary course of business were received by him. *Id.*; *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered November 16, 2016). The ALJ further stated that the Hearing Notice 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. I.D. at 4.

According to the ALJ, no one appeared on behalf of Mr. Sablich at the time of the hearing, nor did anyone ever request a postponement or continuance of the hearing. As such, the ALJ asserted that Mr. Sablich had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, the ALJ considered Mr. Sablich's due process rights to have been fully protected. I.D. at 4, citing *Sentner v. Bell Tel. Co.*

of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

The ALJ opined that it is appropriate to dismiss this Complaint. I.D. at 5, citing *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995). Hence, the ALJ determined that the merits of the Complaint will not be addressed in her Initial Decision. Furthermore, the ALJ noted that there are no facts in the record that would allow the Commission to reach the conclusion that the Complainant's failure to attend the hearing was unavoidable. Accordingly, the ALJ 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); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered March 14, 2019).

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.⁶ 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.⁷ 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 ALJ found that the Hearing Notice and Prehearing Order were served on 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 4. In support, the ALJ cited to several Commission decisions and concluded that the due process rights of the Complainant were fully protected.⁸ 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

⁶ 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).

⁷ See, e.g., *Amanda Polk Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Order entered September 15, 2022).

⁸ See, e.g., *Hu and Zirkel*.

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.

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.⁹ 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 ALJ's Initial Decision, consistent with the discussion in this Opinion and Order.

Conclusion

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

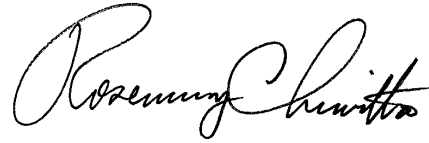
⁹ The Commission may reopen the record after the presiding officer has issued a decision if conditions of fact or of law have changed or the public interest so requires the reopening of the proceeding. 52 Pa. Code § 5.571(d).

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge Darlene Davis Heep issued on January 6, 2023, is adopted as modified, consistent with this Opinion and Order.
2. That Paul Sablich 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 of Paul Sablich filed on June 6, 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 Paul Sablich by certified mail.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 20, 2023

ORDER ENTERED: May 30, 2023