

**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

Frank Everett

C-2022-3034443

v.

Philadelphia Gas Works

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) F. Joseph Brady, issued on January 19, 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 August 15, 2022, Frank Everett (Complainant or Mr. Everett) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Company), alleging his gas service has been terminated and requests a payment arrangement. Complaint at 2-3.

On September 6, 2022, PGW filed an Answer to the Complaint (Answer), *inter alia*, confirming that Mr. Everett's gas service was terminated. Answer at 1-2. PGW also stated that Mr. Everett has had at least two PGW-issued payment arrangements in the past which he defaulted on and has not shown a good faith effort to pay his gas bills. *Id.* at 1.

On September 13, 2022, the Commission issued an initial telephonic Hearing Notice (Hearing Notice) setting an initial call-in telephonic hearing for this matter for November 2, 2022. 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 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.

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.

On October 7, 2022, the Commission issued 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 or participate. Both the Hearing Notice and the Prehearing Order were sent to Mr. Everett 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 November 2, 2022, the hearing convened as scheduled. Counsel for PGW, Graciela Christlieb, Esquire, appeared. *Id.* Mr. Everett did not call in to participate. The hearing proceeded in his absence. Counsel for PGW made a motion to dismiss Mr. Everett's Complaint with prejudice and the ALJ took the motion under advisement. Tr. at 2-3.

The record closed on November 18, 2022.

On January 19, 2023, the Commission issued the Initial Decision of ALJ Brady, in which he granted PGW's motion and dismissed the Complaint, with prejudice, for failure of the Complainant to appear and prosecute the matter. I.D. at 1, 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).²

ALJ's Initial Decision

ALJ Brady made thirteen Findings of Fact and reached six 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 the notice for the November 2, 2022, hearing was served via email on the Complainant at the email address that the Complainant provided to the Commission, and it was not returned as undeliverable. Accordingly, the ALJ presumed that this notice, which was sent in the ordinary course of business, was received by the Complainant. I.D. at 4, citing *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered December 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered January 27, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered November 16, 2016) (*Morella*).

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).

According to the ALJ, as the Commission noted in *Strydio v. PPL Elec. Utils. Corp.*, “[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing.” I.D. at 4, citing *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-263304, p. 6 (Opinion and Order entered July 18, 2018) (citing, *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002)); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993). Additionally, the ALJ stated that both the Hearing Notice and Prehearing Order advised the Complainant that the case could be dismissed if the Complainant did not call in and participate in the hearing. According to the ALJ, the Complainant was notified of the scheduled telephonic hearing and did not appear. I.D. at 4.

The ALJ noted that in this case, the Complainant did not call in for the scheduled hearing and 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 ALJ considered the due process rights of the Complainant to have been fully protected. I.D. at 4-5, 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). The ALJ further stated that by failing to call in to the scheduled hearing, the Complainant has waived his opportunity to participate in the hearing. I.D. at 5, citing 52 Pa. Code § 5.245(a)(1); *Jefferson v. UGI Utils., Inc.*, 1995 Pa. PUC LEXIS 159 (Opinion and Order entered December 26, 1995).

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 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. Moreover, there is no indication that the Complainant has been provided a Commission-issued payment arrangement pursuant to Chapter 14 of the Code. Dismissing the Complaint with prejudice might operate to foreclose this possible remedy to help address the Complainant's outstanding balance and to permit restoration of his utility service.

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.

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).

Here, the ALJ 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 4. In support, the ALJ 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.

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, we shall provide the Complainant 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.

⁵ See, *Hu; Zirkel; and Morella*.

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).

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 Brady, as modified, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge F. Joseph Brady, issued on January 19, 2023, is adopted as modified, consistent with this Opinion and Order.

2. That Frank Everett 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 Frank Everett filed on August 15, 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 Frank Everett by certified mail.

BY THE COMMISSION,

A handwritten signature in cursive script, reading "Rosemary Chiavetta".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 20, 2023

ORDER ENTERED: May 30, 2023