

**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

Marcella Parker

F-2022-3034455

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) Arlene Ashton, issued on January 27, 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 8, 2022, Marcella Parker (Complainant or Ms. Parker) filed a Formal Complaint (Complaint)¹ against PECO Energy Company (PECO or Company) at the above docket number alleging, *inter alia*, that her service was terminated and that she wanted her service restored and a payment arrangement that would be affordable. Complaint at 2.

On August 30, 2022, PECO filed an Answer (Answer) admitting, in part, and denying, in part all of the material allegations of fact in the Complaint. Answer at 3. PECO averred, *inter alia*, that the Complainant's service was terminated on July 28, 2022, for non-payment. *Id.* at 2. PECO further averred that the Complainant's service bills, and the balance owed are correct. PECO stated that the Complainant has had multiple payment arrangements but only made two payments in the last two years, demonstrating a continued poor payment history. *Id.* at 2-3. Additionally, PECO averred that the Complainant's balance is \$8,670.30, and requested that the Complaint be dismissed. *Id.* at 3-4.

On August 31, 2022, the Commission issued an initial formal call-in telephonic Hearing Notice (Hearing Notice) setting an initial formal call-in telephonic hearing for this matter for October 20, 2022. The Hearing Notice was sent by electronic

¹ The Complaint is a timely appeal from a determination of the Commission's Bureau of Consumer Services (BCS) at BCS No. 3854040. Appeal of a BCS informal complaint decision is a *de novo* review conducted by either an ALJ or a special agent. 52 Pa. Code § 56.173(a). The Complaint was served on PECO on August 17, 2022.

mail (email) to the email address the Complainant provided on her complaint form.² 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.

On September 6, 2022, the Commission electronically issued 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. The Prehearing Order also advised the Parties of the date and time of the scheduled hearing as well as how to call in for the hearing. Additionally, the Prehearing Order directed the Parties to comply with various procedural requirements. Both the Hearing Notice and Prehearing Order were electronically sent to the Complainant's email address she provided to the Commission. According to the ALJ, neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable. I.D. at 4.

On October 20, 2022, the hearing convened as scheduled. Counsel for PECO was present with a witness and was prepared to proceed. Ms. Parker did not call in to participate in the hearing at the scheduled time. Accordingly, the hearing

² 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.

proceeded in her absence. PECO's counsel moved to dismiss the Complaint for lack of prosecution pursuant to 52 Pa. Code § 5.245³

The hearing record closed on November 14, 2022.

On January 27, 2023, the Commission issued the Initial Decision of ALJ Ashton, 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, 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).⁴

³ PECO's motion did not request dismissal *with prejudice*. Tr. at 6.

⁴ 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

ALJ's Initial Decision

ALJ Ashton made twelve Findings of Fact and reached eight Conclusions of Law. I.D. at 3-4, 6-7. 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 indicated that the Complainant had adequate notice of the time and date of the hearing and failed to appear or explain why she could not attend the hearing at the scheduled time. I.D. at 4. Therefore, the ALJ found it appropriate to dismiss the Complaint. The ALJ stated that the Commission served notice of the October 20, 2022 hearing in this case to the Complainant on May 18, 2022,⁵ via e-mail, to the address she provided in her Complaint. *Id.* The notice informed the Parties of the date and time of the hearing, as well as how to call in for the hearing. *Id.* According to the ALJ, the notice was not returned as undeliverable. *Id.*

The ALJ further stated that a Prehearing Order dated September 6, 2022, was issued, 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. I.D. at 5. According to the ALJ, the Prehearing Order, which was also served on the Complainant electronically, was not returned as undeliverable. *Id.* The ALJ explained that the Hearing Notice and Prehearing Order were sent to the Complainant at the email address she provided. *Id.* Accordingly, the ALJ determined that these documents, which were sent in the ordinary course of business, were presumed to be received by the Complainant. I.D. at 5, citing *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075

scheduled and duly notified hearing, the party will be deemed to have waived the opportunity to participate in the hearing).

⁵ We believe the May 18, 2022 service date in the Initial Decision was an error. The correct date is August 31, 2022.

(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*).

Consequently, the ALJ granted PECO's motion and dismissed Ms. Parker's Complaint, with prejudice. I.D. at 6, citing *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered April 22, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered March 14, 2019) (citing *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (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); see also 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. 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 the Complainant address her outstanding balance and to permit restoration of her 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.

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 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

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).

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 her email address because the complaint form stated that she 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 her lack of affirmative agreement to service to her 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, 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.

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

⁸ *See, Hu; Zirkel; and Morella.*

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).

Conclusion

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

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge Arlene Ashton issued on January 27, 2023, is adopted as modified, consistent with this Opinion and Order.

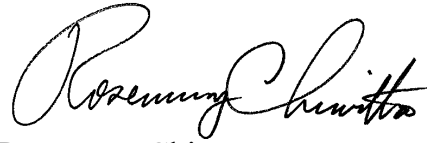
2. That Marcella Parker be provided an opportunity to file a written request for an evidentiary hearing within twenty (20) days of the entry of this Opinion and Order.

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 Marcella Parker filed on August 8, 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 Marcella Parker 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