

**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

Tauheed Davenport

C-2022-3033480

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) Steven K. Haas, issued on January 17, 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 27, 2022, Tauheed Davenport (Complainant or Ms. Davenport), filed a Formal Complaint (Complaint) with the Commission against PECO Energy Company (PECO or Company) in which she, *inter alia*, is seeking an affordable payment arrangement. Complaint at 2-3.

On July 18, 2022, PECO filed an Answer and New Matter to Ms. Davenport's Complaint (Answer). In its Answer, PECO denied all of the material allegations of facts and conclusions of law in the Complaint that PECO is threatening to terminate her service and she is requesting a payment arrangement on her outstanding balance. Answer at 2. PECO also noted that the Complaint had a past due balance of \$309.42 and thus PECO issued a Ten-Day Termination Notice effective on or after June 1, 2022. Answer at 3-4. PECO denied that the Complainant is legally entitled to a Commission-ordered payment arrangement noting that the Complainant has had two prior payment arrangements. In New Matter, PECO averred that, since the Complainant is enrolled in the Company's customer assistance program, the Commission may not give her a payment arrangement. 66 Pa. C.S §1405(c). Answer at 5. PECO's New Matter contained a Notice to Plead. Ms. Davenport did not file a response to the New Matter.

By an Interim Order Setting Resolution Conference dated August 18, 2022, Chief Administrative Law Judge Charles E. Rainey, Jr. referred the dispute to the Commission's Mediation Unit. The Parties did not achieve a resolution of Ms. Davenport's Complaint.

On September 26, 2022, the Commission issued an initial telephonic Hearing Notice (Hearing Notice) for this matter for November 17, 2022. The Hearing Notice was sent by electronic mail (email) to the email address the Complainant provided

on her complaint form.<sup>1</sup> 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 or participate.

Also, on September 26, 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 Ms. Davenport at the email address she listed on her Complaint and, according to the ALJ, were not returned to the Commission as undeliverable. I.D. at 3.

On November 17, 2022, the hearing convened as scheduled. I.D. at 2. Khadijah Scott, Esquire, appeared on behalf of PECO. No one appeared on behalf of the Complainant. No exhibits were admitted into the record. At the hearing, Ms. Scott moved for dismissal of the Complaint for the failure of the Complainant to appear and prosecute her case.<sup>2</sup> *Id.*

The record closed on November 8, 2022.

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<sup>1</sup> 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.

<sup>2</sup> PECO's motion did not request dismissal *with prejudice*. Tr. at 7-8.

On January 17, 2023, the Commission issued the Initial Decision of ALJ Haas, in which he 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, 2 & 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).<sup>3</sup>

### **ALJ's Initial Decision**

ALJ Haas made twelve Findings of Fact and reached eight Conclusions of Law. I.D. at 2-3, 6-7. We shall adopt and incorporate herein by reference the ALJ's

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<sup>3</sup> 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).

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 noted that, in the instant proceeding, Ms. Davenport is requesting that the Commission establish an affordable payment arrangement. Therefore, she has the burden of proof. However, the ALJ stated no one appeared on behalf of Ms. Davenport at the date and time set for the hearing in this case despite notice of the hearing having been provided to her. I.D. at 3-4.

The ALJ asserted that the Prehearing Order and Hearing Notice were both served on Ms. Davenport at the email address she provided on her Complaint form, and neither were returned to the Commission as undeliverable. According to the ALJ, notice served to a party with no notification that service has failed is presumed received. I.D. at 5, 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 April 7, 2017) (*Zirkel*). The ALJ stated that the Hearing Notice and the Prehearing Order instructed the Parties that if they fail to participate in the hearing, the hearing may proceed without them, and a decision may be entered against the non-appearing party. I.D. at 5.

The ALJ explained that no one appeared on behalf of Ms. Davenport at the time of the hearing, nor did anyone ever request a postponement or continuance of the hearing. As such, the ALJ considered Ms. Davenport to have had notice of the hearing and an opportunity to be heard in this proceeding but chose not to appear. Therefore, the ALJ opined Ms. Davenport's due process rights 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); see also, 52 Pa. Code § 5.245(a).

The ALJ dismissed the Complaint, with prejudice. I.D. at 5-6, citing *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered February 7, 2022); *Williams v. PECO Energy Company*, Docket No. C-2018-3000734 (Opinion and Order entered March 14, 2019); 52. Pa Code § 5.245(a)-(c).

## **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.<sup>4</sup> There is no need to close the door to this venue to *pro se* complainants unless record evidence

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<sup>4</sup> 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).

shows that they are abusing the Commission's administrative process to avoid paying their utility bills.<sup>5</sup> 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 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.<sup>6</sup> 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

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<sup>5</sup> See, e.g., *Amanda Polk Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Order entered September 15, 2022).

<sup>6</sup> See, *Hu*; and *Zirkel*.

elects one.<sup>7</sup> 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.

### **Conclusion**

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

#### **IT IS ORDERED:**

1. That the Initial Decision of Administrative Law Judge Steven K. Haas issued on January 17, 2023, is adopted as modified, consistent with this Opinion and Order.

2. That Tauheed Davenport 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.

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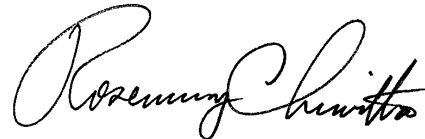
<sup>7</sup> The Commission may reopen the record after the presiding officer has issued a decision if conditions of fact or of law have changed or the public interest so requires the reopening of the proceeding. 52 Pa. Code § 5.571(d).

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 Tauheed Davenport on June 27, 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 Tauheed Davenport by certified mail.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with a large initial "R".

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: April 20, 2023

ORDER ENTERED: May 31, 2023