

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

Public Meeting held May 18, 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

Ronald Baroni¹

C-2022-3032488

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) Dennis J. Buckley, issued on February 21, 2023, in the above-captioned proceeding. Exceptions have not 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 Although the Initial Decision identifies the Complainant as Robert Baroni, we note that the correct name is Ronald Baroni.

66 Pa. C.S. § 332(h). For the reasons stated below, we shall modify the Initial Decision consistent with the discussion in this Opinion and Order.

History of the Proceeding

On May 13, 2022, Ronald Baroni (Complainant or Mr. Baroni) filed a Formal Complaint (Complaint) with the Commission alleging that PECO Energy Company (PECO or Company) had refused to accept a medical certification for his son and was threatening to terminate electric service. Mr. Baroni requested that PECO be required to accept the certification and that the Commission establish a payment arrangement, lowering the reinstatement amount for his account. Complaint at 2-3.

On June 1, 2022, PECO filed an Answer and New Matter to the Complaint (Answer).² In its Answer, PECO asserted that the Complainant is not eligible for a payment arrangement as the Complainant had defaulted on three previous payment arrangements, and the Complainant's account consisted entirely of Customer Assistance Program (CAP) arrears. PECO argued that pursuant to 66 Pa. C.S. § 1405(c), the Commission has no jurisdiction to give the Complainant a payment arrangement on the CAP arrearage. PECO further asserted that the Complainant has had multiple medical certifications accepted but has not complied with 52 Pa. Code § 56.116, regarding his duty to make payments on current bills. PECO averred that the Complainant has not made a payment on his account since October 2019. Answer at 2-4. In its New Matter, PECO asserted, *inter alia*, that the Complainant was recertified in the CAP program on March 24, 2022, and is actively enrolled in the CAP program. PECO argued that the Complainant is, therefore, not eligible for a payment arrangement under 66 Pa. C.S. § 1405(c) and requested that the Complaint be dismissed. Answer at 5-6.

² The Complainant did not file an Answer or responsive pleading to PECO's New Matter.

By an Interim Order Setting Resolution Conference dated July 7, 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 Mr. Baroni's Complaint.

On September 27, 2022, a Hearing Notice was issued rescheduling a telephonic evidentiary hearing previously scheduled for September 28, 2022, to December 7, 2022. The Hearing Notice was sent by electronic mail (email) to the email address the Complainant provided on his complaint form.³ The Hearing Notice, *inter alia*, named ALJ Buckley 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 27, 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. Baroni 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 2.

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.

On December 7, 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 his case.⁴ *Id.* at 4-5.

The record closed on December 21, 2022.

On March 21, 2023, the Commission issued the Initial Decision of ALJ Buckley, 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, 3, & 9.

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*

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

66 Pa. C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice.
52 Pa. Code § 5.201(a).⁵

ALJ's Initial Decision

ALJ Buckley made twelve Findings of Fact and reached eight Conclusions of Law. I.D. at 3-4, 7-8. 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.

According to the ALJ, no one appeared on behalf of Mr. Baroni at the date and time set for the hearing in this case despite notice of the hearing having been provided to him. I.D. at 4-5. The ALJ stated that the Prehearing Order and Hearing Notice were both issued on the Complainant at the email address he provided on his 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*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*). 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 5-6.

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 January 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).

As such, the ALJ considered Mr. Baroni 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 Mr. Baroni's due process rights have been fully protected. I.D. at 5-6, citing *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

Therefore, the ALJ dismissed the Complaint, with prejudice. I.D. at 7, citing *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (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.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 provided to 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 him. 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.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 stated

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, *Hu; Zirkel; and Morella.*

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, we shall provide the Complainant twenty (20) days to file a written request for a further hearing with the 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, any 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 Buckley, 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 Dennis J. Buckley issued on March 21, 2023, is adopted as modified, consistent with this Opinion and Order.

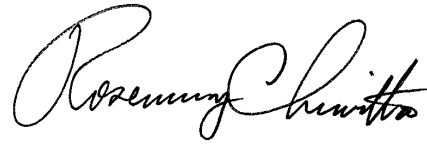
2. That Ronald Baroni be provided an opportunity to file a written request for an evidentiary hearing within twenty (20) days of the entry of this Opinion and Order.

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 for an evidentiary hearing is not timely filed, the Formal Complaint filed by Ronald Baroni on May 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 Ronald Baroni 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: May 18, 2023

ORDER ENTERED: June 20, 2023