

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

Anne Wilson

**Public Meeting held July 13, 2023
3033952-ALJ
Docket No. C-2022-3033952**

v.

PECO Energy Company

MOTION OF COMMISSIONER KATHRYN L. ZERFUSS

On July 18, 2022, Anne Wilson (Complainant) filed a Formal Complaint alleging that PECO Energy Company (PECO or Company) was threatening to terminate her electric service and that there were incorrect charges on her bill. For relief, Ms. Wilson requested fair, accurate billing. On August 11, 2022, PECO filed an Answer denying the material averments in the Complaint and stating that the charges and billing for the Complainant were correct.

On October 27, 2022, a Notice of Telephonic Hearing (Hearing Notice) was sent by electronic mail (email) to the email address the Complainant provided on her complaint form.¹ Thereafter, a Prehearing Order providing the date and time of the hearing was sent by email to the Complainant. The hearing convened as scheduled on January 11, 2022. Counsel for PECO appeared with two witnesses; however, the Complainant did not call in for the hearing. PECO made an oral motion to dismiss the Complaint with prejudice due to the Complainant's failure to appear. By Initial Decision, issued on April 5, 2023, the ALJ dismissed the Complaint with prejudice.

¹ 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. From September 15, 2022, to April 3, 2023, the Commission had in place an extended temporary waiver of the service requirements 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.

I submit that this case is similar to the Commission's recent decision in *Robert Hoyt v. Columbia Gas of PA, Inc.*, Docket No. F-2022-3032680 (Order entered May 30, 2023).² In *Hoyt*, the Commission explained:

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. 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.

Id. at 4–5 (internal citations omitted).

First, in *Hoyt*, the Commission determined that “[t]he practice of dismissing complaints 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.” *Id.* at 7. The Commission found that “[t]here 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.” *Id.* The same reasoning applies here in this case because there is no evidence of abuse of administrative process. For that reason, I submit that it is not appropriate to dismiss this Complaint with prejudice.

Second, the Commission determined in *Hoyt* that when the Commission serves the hearing notice by email, not returned as undeliverable, to a complainant who did not elect to receive notice through the Commission’s eFiling or eService system or otherwise agree to service by email, the Commission may not presume that the complainant received notice of the hearing for purposes of satisfying due process. *Id.*

² This case is also on point with other recently entered Orders. *See, e.g., Janet Baxter v. West Penn Power Company*, Docket No. C-2022-3032225 (Order entered May 30, 2023); *Tauheed Davenport v. PECO Energy Company*, Docket No. C-2022-3033480 (Order entered May 31, 2023); *Frank Everett v. Philadelphia Gas Works*, Docket No. C-2022-3034443 (Order entered May 30, 2023); *Christine Fahmy v. UGI Utilities, Inc.*, Docket No. F-2022-3036840 (Order entered May 31, 2023); *Robert Green v. UGI Utilities, Inc. (Gas Division)*, Docket No. C-2022-3033307 (Order entered May 30, 2023); *Angela Hairston v. West Penn Power Company*, Docket No. C-2022-3034322 (Order entered May 30, 2023); *Jerrod Miner v. Philadelphia Gas Works*, Docket No. F-2022-3035563 (Order entered May 31, 2023); *Marcella Parker v. PECO Energy Company*, Docket No. F-2022-3034455 (Order entered May 30, 2023); *Paul Sablich v. PECO Energy Company*, Docket No. C-2022-3033148 (Order entered May 30, 2023) (*Sablich*); and *Maureen Stopperich v. Duquesne Light Company*, Docket No. C-2022-3034514 (Order entered May 31, 2023).

In making this determination, the Commission distinguished *Hoyt* from *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Order entered January 27, 2017); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Order entered November 16, 2016). In *Zirkel* and *Morella*, the Commission determined that due process is satisfied and the complainant is presumed to have received notice of the date and time of a scheduled hearing when the Commission serves electronic notice on the Complainant in accordance with the Complainant's selection to receive electronic service of all documents and the record contains no notification that the notice failed to be delivered electronically to the email address provided by the Complainant. *Id.* The Commission determined that *Zirkel* and *Morella* do not apply when a complainant does not select eService but simply provides an email address because the complaint form stated that one was required. *Hoyt* at 8. ³

Similarly, here, the Complainant did not elect to receive documents through eService or otherwise agree to be served notice of the proceedings related to her formal complaint by email. Therefore, following the Commission's decision in *Hoyt*, the Commission may not presume that the Complainant received the Hearing Notice or Prehearing Order. For these reasons, I submit that the Complainant did not receive adequate notice of the hearing to preserve due process.

Lastly, in *Hoyt*, the Commission determined that it was in the public interest to afford a complainant an opportunity for an evidentiary hearing if the complainant elects one. As stated above, I submit that this case is similar to *Hoyt* and, as such, the Complainant should be provided twenty days to file a written request for 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, any dismissal of the Complaint should be without prejudice.

THEREFORE, I MOVE THAT:

1. The Initial Decision of Administrative Law Judge Darlene Davis Heep, issued on April 5, 2023, is modified, consistent with this Motion.
2. The Complainant be provided an opportunity to file a written request for an evidentiary hearing within twenty (20) days of the entry of our Order in this matter.
3. 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. If a written request for an evidentiary hearing is not timely filed, the Complaint shall be dismissed, without prejudice, without further action of the Commission.

³ For similar reasons, the Commission has also determined that the case of *Hu v. PECO Energy Company*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019), is distinguishable. *See, e.g., Sablich* at 7.

5. The Office of Special Assistants prepare an Order consistent with this Motion.
6. The Secretary's Bureau serve a copy of the Order on the Complainant by certified mail.

DATE: July 13, 2023


Kathryn L. Zarfuss, Commissioner