

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

Public Meeting held July 13, 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

McArthur Giles

F-2022-3036835

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) Katrina L. Dunderdale, issued on April 18, 2023, in the above-captioned proceeding. Exceptions were not filed in this matter. However, the Commission has exercised its 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.

I. History of Proceeding

On November 9, 2022, McArthur Giles (Complainant or Mr. Giles) filed a Formal Complaint (Complaint) with the Commission against Philadelphia Gas Works (PGW or Company) alleging that PGW had disconnected his natural gas service and requesting an amendment to a previous payment arrangement. Complaint at 2. For relief, Mr. Giles stated he wanted restoration of services and a reduction in the monthly payment required to restore his services and repay past due account balances. *Id.* at 3.¹

On December 7, 2022, PGW filed an Answer to the Complaint (Answer). In its Answer, the Company admitted that the Complainant's natural gas service had been terminated on August 25, 2022, for non-payment of monthly bills. Answer at 1. PGW requested the Commission dismiss the Complaint and deny all relief requested by the Complainant. *Id.* at 2.

On December 13, 2022, the Commission issued an initial telephonic Hearing Notice (Hearing Notice) setting a formal call-in telephonic hearing for February 17, 2023. The Hearing Notice was sent by electronic mail (email) to the email address the Complainant provided on his complaint form.²

¹ The Complaint is an appeal of a decision of the Bureau of Consumer Services (BCS), at Case No. 3868356. 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).

² There is no record of the Complainant creating an account on the Commission's eFiling system or of his 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. 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.

On December 14, 2022, the ALJ issued a Prehearing Order advising the Parties, *inter alia*, of the toll-free call-in number to participate in the hearing and included language concerning the deadline for continuances and effects on the case if a party failed to appear. Both the Hearing Notice and the Prehearing Order were sent to Mr. Giles 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.

On February 17, 2023, the hearing convened as scheduled. Anita J. Murray, Esquire, appeared on behalf of PGW, with Jessica Antonetti, a Customer Review Officer at PGW, as a witness. *Id.* Neither the Complainant, nor any attorney representing the Complainant, called in to participate in the hearing. *Id.* Due to the Complainant's failure to appear, PGW moved the ALJ to dismiss the Complaint with prejudice for failure to appear and prosecute. *Id.* After confirming the Complainant's unpaid balance, the ALJ took PGW's motion under advisement. *Id.*; Tr. at 5-6.

The record closed at the conclusion of the telephonic hearing on February 17, 2023, pursuant to 52 Pa. Code §5.431(a).

On April 18, 2023, the Commission issued the Initial Decision of ALJ Dunderdale, in which she granted PGW's motion and dismissed the Complaint, with prejudice, for failure of the Complainant to appear and prosecute his case. I.D. at 1, 3, 7.

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.

II. Discussion

A. Legal Standards

As an administrative agency of the Commonwealth, the Commission must ensure due process is afforded to parties appearing before it. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984). Due process requires that parties be afforded notice and the opportunity to appear and be heard. *Schneider*, 479 A.2d at 15 (Pa. Cmwlth. 1984). The core requirement of due process is that parties be granted an 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 interested parties. *See* 66 Pa. C.S. §703(a)-(b). Service on interested parties is sufficient to provide notice. 52 Pa. Code §5.201(a).³

B. ALJ's Initial Decision

ALJ Dunderdale made six 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 Findings of Fact and Conclusions of Law, except as reversed or modified by this Opinion and Order, either expressly or by necessary implication.

³ The Commission notes, as discussed in the Initial Decision, that once a hearing is scheduled and the parties noticed, 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).

The ALJ stated that Mr. Giles, as the party seeking relief from the Commission, bears the burden of proof in this matter. According to the ALJ, Mr. Giles failed to appear for his scheduled hearing, despite having notice served upon him via email by the Commission. I.D. 3-4.

The ALJ noted the Hearing Notice and Prehearing Order were both served upon Mr. Giles electronically, via the email address provided on his Complaint form. I.D. at 4. Additionally, the ALJ stated that neither document was returned to the Commission as undeliverable. *Id.* Accordingly, the ALJ presumed the Hearing Notice and Prehearing Order were received and that the Complainant was provided notice. *Id.*, citing *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Opinion and Order entered December 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*). The ALJ further noted the Hearing Notice clearly outlined the procedure for calling into the hearing and provided the Commission's toll-free conference bridge number. I.D. at 5.

According to the ALJ, Mr. Giles had notice of the hearing and an opportunity to be heard in this matter but chose not to appear and participate in the hearing. I.D. at 4, citing *Senter v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); *Mumma v. PPL*, Docket No. C-00014869 (Order entered Jan. 24, 2002). Therefore, because no request or explanation was offered by Mr. Giles to explain his failure to appear, he failed to take advantage of his opportunity to prosecute the Complaint and failed to sustain the burden of proof. I.D. at 5. Consequently, the ALJ dismissed the Complaint, with prejudice. I.D. at 5-7, citing *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered April 22, 2022); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292, 52 Pa. Code § 5.245.

C. Disposition

We advise the Parties that, as a preliminary matter, any issue 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 the 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 the Commission's independent review of the record in this case, we shall adopt the Initial Decision, as modified, consistent with the following discussion.

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) (*Hoyt*).⁴ 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

⁴ 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); *Jerrold 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*); *Maureen Stopperich v. Duquesne Light Company*, Docket No. C-2022-3034514 (Order entered May 31, 2023); *Ronald Baroni v. PECO Energy Company*, Docket No. C-2022-3032488 (Order entered June 20, 2023); and *Robert Adams v. Philadelphia Gas Works*, Docket No. C-2022-3035184 (Order entered June 20, 2023).

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, 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.*

In making this determination, the Commission distinguished *Hoyt* from *Zirkel* and *Morella*. 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 8.⁵

Similarly, here, the Complainant did not elect to receive documents through eService or otherwise agree to be served notice of the proceedings related to his 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, we find 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, this case is similar to *Hoyt* and, as such, the Complainant should be provided twenty (20) 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.

⁵ For similar reasons, the Commission has also determined that the case of *Hu* is distinguishable. *See, e.g., Sablich* at 7.

III. Conclusion

Upon review of the record, we shall adopt the Initial Decision of ALJ Dunderdale, as modified, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Katrina L. Dunderdale, issued on April 18, 2023, is modified, consistent with this Opinion and Order.
2. That 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. 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 Complaint shall be dismissed, without prejudice, without further action of the Commission.

5. That the Secretary's Bureau serve a copy of this Opinion and Order on McArthur Giles by certified mail.

BY THE COMMISSION,

A handwritten signature in black ink, reading "Rosemary Chiavetta". The signature is written in a cursive, flowing style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

Order Adopted: July 13, 2023

Order Entered: August 15, 2023