

**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
Kathryn L. Zerfuss
John F. Coleman, Jr., Joint Statement

Taska Taylor

C-2022-3036796

v.

Pennsylvania Electric 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) Gail M. Chiodo, issued on April 6, 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 November 14, 2022, Taska Taylor (Complainant or Ms. Taylor) filed a Formal Complaint (Complaint) with the Commission against Pennsylvania Electric Company (Penelec or Company) at Docket No. C-2022-3036796. In the Complaint, Ms. Taylor alleged that Penelec is threatening to shut off her service or has already shut off her service, and that she would like a payment arrangement. Complaint at 2.

On December 5, 2022, Penelec filed an Answer to the Complaint. In its response, Penelec denied the material allegations of the Complaint and averred that the Complainant defaulted on a Commission-issued payment arrangement and three Penelec payment agreements. Answer at 2. As of December 1, 2022, the Complainant's account balance was \$11,079.48. *Id.*

On December 9, 2022, the Commission issued an Initial Call-In Telephonic Hearing Notice (Hearing Notice) setting a formal call-in telephonic hearing for this matter for February 9, 2023. The Hearing Notice was sent by electronic mail (email) to the email address the Complainant provided on her complaint form.¹ The Hearing Notice, *inter alia*, named the ALJ as the assigned presiding officer, provided a telephone

¹ There is no record of Ms. Taylor creating an account on the Commission's eFiling system or of her electing to receive documents through eService. Ms. Taylor 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 Ms. Taylor requesting or agreeing to be served notice of the proceedings related to her formal complaint by email.

number to the Parties and included language concerning the effects of the case if a party failed to appear. Hearing Notice at 1.

Also on December 9, 2022, a Prehearing Order was issued on both Parties. The Prehearing Order reminded the Parties of the hearing date and time, telephone number to call and instructions on how to participate in the hearing. Information including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence was also presented in the Prehearing Order. Prehearing Order at 1.

On February 9, 2023, the hearing convened as scheduled. I.D. at 2. Margaret A. Morris, Esquire, appeared with a witness on behalf of Penelec, prepared to present the Company's case. *Id.* The Complainant did not call in to participate in the hearing at the scheduled time. The presiding officer allowed additional time for Ms. Taylor to call in to the hearing conference number and Ms. Taylor did not appear. Neither the presiding officer nor the Commission received any contacts from the Complainant prior to the hearing about her availability nor did the Complainant call in for the hearing. Accordingly, the hearing proceeded in her absence. Penelec's counsel moved to dismiss the Complaint with prejudice due to the Complainant's failure to appear at the hearing and prosecute her case. *Id.* at 3.

The record closed on February 9, 2023.

On April 6, 2023, the Commission issued the Initial Decision of ALJ Chiodo, in which she granted Penelec's motion and dismissed the Complaint, with prejudice, for failure of the Complainant to appear and prosecute her case. I.D. at 6.

Discussion

Legal Standards

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).²

Recently the Commission found 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.” *Robert Hoyt v. Columbia Gas of PA, Inc.*, Docket No. F-2022-3032680 (Opinion and Order entered May 30, 2023) (*Hoyt*) at 7. Furthermore, the Commission stated that “[t]here is no need to close the door to this

² 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).

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.* at 7. In addition, 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.*

ALJ's Initial Decision

ALJ Chiodo made eleven (11) Findings of Fact and reached seven (7) Conclusions of Law. I.D. at 3-4, 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 noted that the Hearing Notice and the Prehearing Order were served electronically upon Ms. Taylor at the email address she provided on her Complaint form, and that neither document was returned to the Commission as undeliverable. Accordingly, the ALJ presumed the documents sent to the Complainant in the ordinary course of business were received by her. I.D. at 5, citing *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered December 19, 2019) (*Hu*); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*). The ALJ further noted that the Prehearing Order stated that failing to appear may result in the dismissal of the complaint. I.D. at 5.

The ALJ further stated that no communication had been received by the Office of Administrative Law Judge to explain the reason behind the Complainant's failure to appear. The ALJ determined that the Complainant waived her opportunity to

participate in a hearing on the matters raised in the Complaint and her absence was not unavoidable. I.D. at 6. Therefore, according to the ALJ, by failing to appear, Ms. Taylor did not meet her burden of proof. *Id.*

The ALJ determined that it was appropriate to dismiss Ms. Taylor's Complaint because the Complainant failed to provide good cause for her absence. I.D. at 6. ALJ Chiodo explained that the public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources. I.D. at 6. Accordingly, the ALJ dismissed the 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); *Little v. Pgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered February 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered March 14, 2019); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245(a).

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 the 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 Commission finds that this case is similar to our recent decision in *Hoyt*.³ In *Hoyt*, we 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. We found that “[t]here is no need to

³ 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 (Opinion and Order entered May 30, 2023); *Tauheed Davenport v. PECO Energy Company*, Docket No. C-2022-3033480 (Opinion and Order entered May 31, 2023); *Frank Everett v. Philadelphia Gas Works*, Docket No. C-2022-3034443 (Opinion and Order entered May 30, 2023); *Christine Fahmy v. UGI Utilities, Inc.*, Docket No. F-2022-3036840 (Opinion and Order entered May 31, 2023); *Robert Green v. UGI Utilities, Inc. (Gas Division)*, Docket No. C-2022-3033307 (Opinion and Order entered May 30, 2023); *Angela Hairston v. West Penn Power Company*, Docket No. C-2022-3034322 (Opinion and Order entered May 30, 2023); *Jerrod Miner v. Philadelphia Gas Works*, Docket No. F-2022-3035563 (Opinion and Order entered May 31, 2023); *Marcella Parker v. PECO Energy Company*, Docket No. F-2022-3034455 (Opinion and Order entered May 30, 2023); *Paul Sablich v. PECO Energy Company*, Docket No. C-2022-3033148 (Opinion and Order entered May 30, 2023) (*Sablich*); and *Maureen Stopperich v. Duquesne Light Company*, Docket No. C-2022-3034514 (Opinion and 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).

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, we find 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.*

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 8.⁴

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

⁴ For similar reasons, the Commission has also determined that the case of *Hu* is distinguishable. *See, e.g., Sablich* at 7.

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.

Conclusion

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

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge Gail M. Chiodo, issued on April 6, 2023, is modified, consistent with this Opinion and Order.

2. That Taska Taylor 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 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 Taska Taylor filed on November 14, 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 Taska Taylor by certified mail.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

Order Adopted: July 13, 2023

Order Entered: August 28, 2023