

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

Public Meeting held
September 21, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman, Statement
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Colby Simpkins

C-2022-3036798

v.

PECO Energy Company – Electric

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Recission (Petition)¹ filed by Colby

¹ As discussed further herein, the Petitioner’s letter filing took exception to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge (ALJ) Eranda Vero, but because the letter was not filed during the period for filing exceptions, we will treat the filing as a Petition for Rescission. For the sake of consistency, the “Exceptions” will be referred to herein as the Petition and the “Reply Exceptions” as an Answer to the Petition.

Simpkins (Petitioner or Mr. Simpkins) on July 13, 2023.² The Petition was filed in response to the Initial Decision of ALJ Vero, electronically served on the Parties on June 8, 2023, in the above-captioned proceeding. On July 19, 2023, PECO filed a timely Answer to the Petition. For the reasons discussed below, we shall grant the Petition and afford the Petitioner twenty (20) days to file a written request with the Commission’s Secretary’s Bureau for a further hearing, consistent with the discussion in this Opinion and Order.

History of the Proceeding

On November 3, 2022, Mr. Simpkins filed a Formal Complaint (Complaint) with the Commission against PECO.³ Complaint at 1. In the Complaint, Mr. Simpkins indicated that PECO is threatening to, or already has, shut off electric service. Mr. Simpkins also stated that he disagrees with “the total amount of \$7,767.12” because he “pay[s] every month.” *Id.* at 2. As relief, Mr. Simpkins requested: (1) that someone determine why his bill is so high; and (2) a payment arrangement. *Id.* at 3.

On December 5, 2022, PECO filed an Answer to the Complaint (Answer), which admitted, in part, and denied, in part, various material allegations in the Complaint. PECO averred, *inter alia*, that the Company provides electric service to Mr. Simpkins, who has a past due balance of \$7,467.12. PECO elaborated that in April 2022, the Petitioner contacted the Company inquiring about high billing and was advised by a

² By letter dated July 13, 2023 (*July 2023 Secretarial Letter*), the Commission’s Secretary: (1) issued a notice to the Parties indicating that there was no Certificate of Service or other indication that the Petition was served on the Parties; and (2) enclosed the Petition, in order to constitute service under 52 Pa. Code § 5.533. Therefore, pursuant to 52 Pa. Code § 5.535, PECO Energy Company (PECO or Company) was given until July 23, 2023, to file a response.

³ We note that the Formal Complaint form utilized by Mr. Simpkins requires that the “Customer (Complainant)” provide an email address. *See*, Complaint at 1.

customer service representative that the billed usage was based on actual meter readings. Answer at 1-2. Further, PECO asserted that the Petitioner's total outstanding balance of \$7,888.48 will continue to increase because he fails to pay his bills in-full and on-time each month. Moreover, PECO stated that as a courtesy, the Company will conduct a meter investigation at the property. *Id.* at 2-3. Attached to the Answer and labeled as "Exhibit 2" is a copy of an informal Bureau of Consumer Services (BCS) decision (Informal Decision) at BCS Case No. 3827115, dated as closed December 5, 2022. *See*, Exhibit 2 to Answer. PECO noted that the Informal Decision concluded, *inter alia*, that the bills are based on actual meter readings and, therefore, the balance is correct. Answer at 2, 14.

By Hearing Notice dated January 24, 2023 (Hearing Notice), an Initial Call-In Telephonic Hearing was scheduled for March 23, 2023, at 10:00 a.m. The Hearing Notice was sent by electronic mail (email) to the email address provided in the Complaint.⁴ The Hearing Notice, *inter alia*, provided: (1) the date and time of the hearing; (2) a toll-free call-in phone number to participate in the hearing; and (3) language concerning the effects on the case if a party fails to appear at the hearing.

⁴ Upon review of the Commission's case management system, there is no record that Mr. Simpkins: (1) created an account on the Commission's electronic filing (eFiling) system; or (2) elected to receive documents through the Commission's electronic service (eService) system. Mr. Simpkins provided his email address in the contact information section of the formal 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 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) (*Waiver of Service*). There is no record of Mr. Simpkins requesting or agreeing to be served notice of the proceedings related to his Complaint by email.

Furthermore, ALJ Vero issued and electronically served a Prehearing Order, dated February 22, 2023 (Prehearing Order), which also included: (1) the date and time of the hearing; (2) a toll-free call-in phone number to participate in the hearing; and (3) language concerning the effects on the case if a party fails to appear at the hearing.⁵ The Prehearing Order, like the Hearing Notice, was sent to the email address provided in the Complaint and was not returned to the Commission as undeliverable. I.D. at 2.

On March 23, 2023, at 10:00 a.m., the telephonic hearing was held as scheduled. PECO was present at the hearing and represented by counsel. Mr. Simpkins was not present at the start of the hearing. The ALJ provided an additional fifteen minutes for Mr. Simpkins to call-in to the hearing but he failed to do so. I.D. at 2. Consequently, PECO's counsel moved to dismiss the case for failure to prosecute. I.D. at 2; Tr. at 6. The ALJ explained that she would leave the record open until the end of the Commission's business day, at 4:30 p.m., and if Mr. Simpkins was not heard from by that time, then she would close the record and issue an initial decision granting PECO's motion to dismiss.⁶ Tr. at 6-7.

The hearing produced a transcript consisting of eight pages.⁷ The record was closed on April 6, 2023. I.D. at 3.

On June 8, 2023, by a Secretarial Letter (*June 2023 Secretarial Letter*), the Commission issued the Initial Decision of ALJ Vero dismissing the Complaint.⁸

⁵ We note that the Initial Decision indicated that the Prehearing Order was issued on February 22, 2022. However, the Prehearing Order is dated February 22, 2023.

⁶ Consequently, the ALJ granted PECO's Motion to Dismiss. I.D. at 2.

⁷ We note that, upon review of the hearing transcript, no witnesses were presented at the hearing and no exhibits were introduced into the record. Tr. at 1-7.

⁸ The *June 2023 Secretarial Letter* directed Exceptions to be filed within twenty (20) days of the date of the Secretarial Letter and Replies to Exceptions to be filed within ten (10) days of the due date for filing Exceptions.

According to the ALJ, as of the date the Initial Decision was issued, Mr. Simpkins had not contacted the Commission regarding “why his failure to appear at the hearing was unavoidable.” I.D. at 2.

The *June 2023 Secretarial Letter* stated that Exceptions were due within twenty (20) days of the date of this letter. As such, Exceptions were to be filed with the Commission on or before June 28, 2023. No Exceptions were filed by that due date.

On July 13, 2023, the Petitioner filed a letter stating that he was taking exception to the Initial Decision. Although the Petitioner’s letter is undated, the envelope was postmarked July 11, 2023, and the letter is marked as received by the Secretary’s Bureau on July 13, 2023. Also, as noted above, the Commission’s *July 2023 Secretarial Letter* served the late-filed letter on PECO and established a due date of July 23, 2023, for PECO to file a response. As previously noted, on July 19, 2023, PECO timely filed its response to the Petitioner’s letter.

Discussion

We begin by considering the nature of the Petitioner’s filing, because the analysis to be applied depends on the type of filing before us. In this case, Exceptions to the Initial Decision were due on June 28, 2023, but were not received by the Commission by the required due date. Therefore, in accordance with Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h), the decision of the ALJ became final without further Commission action on June 28, 2023, and although a Final Order was not entered stating as much, the Initial Decision nonetheless became final by operation of law. The Petitioner, who is unrepresented, filed a letter labeled as “Exceptions Decision” on July 13, 2023, which was a total of fifteen days beyond the date that the Initial Decision became the final action of the Commission. Because the Petitioner is appearing *pro se*, and because his filing was made well past the date the Initial Decision became final in

this case, we will exercise our discretion under 52 Pa. Code § 1.2(a), which requires that our Regulations be liberally construed, to secure the just, speedy, and inexpensive determination of every action or proceeding to which they are applicable, and consider the Petitioner’s filing on July 13, 2023, as a Petition for Rescission of the Commission’s final decision. 52 Pa. Code § 5.572(d). Consequently, we will treat the “Reply Exceptions” filed by PECO on July 19, 2023, as an Answer to the Petition for Rescission. 52 Pa. Code § 5.572(e).

Legal Standards

By the terms of Section 703(g) of the Code, the Commission has the power to amend or rescind its own orders at any time, subject only to the requirements of due process. Section 703(g) of the Code states:

The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

66 Pa. C.S. § 703(g); *see also Department of Highways v. Pa. PUC*, 185 Pa. Super. 418, 138 A.2d 143 (1958). In exercising Commission authority to amend or rescind an order pursuant to Section 703(g) of the Code, the Supreme Court of Pennsylvania has stated: “Because such relief may result in disturbance of final orders, it must be granted judiciously and only under appropriate circumstances.” *See, City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980); *see also, West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1056 (Pa. Cmwlth. 1995) (*West Penn Power*); *see also, Feleccia v. PPL Electric Utilities Corp.*, Docket No. C-20016210 (Order entered March 7, 2003) (*Feleccia*).

Parties are permitted by Commission Regulation to file a petition for rescission or amendment of a final order at any time and are required to serve a copy thereof upon each party to the proceeding. 52 Pa. Code § 5.572 (a), (b), (d). Answers to petitions are due within ten days after service. *Id.* § 5.572(e).

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), citing *Fusaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978) (*Schneider*). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider*, citing *Township of Middleton v. The Institute District of the County of Delaware*, 293 A.2d 885 (Pa. Cmwlth. 1972), *aff'd*, 450 Pa. 282, 299 A.2d 599 (Pa. Cmwlth. 1973). 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 of interest. *See*, 66 Pa. C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a).

ALJ's Initial Decision

In the Initial Decision, ALJ Vero made twelve Findings of Fact and reached seven Conclusions of Law. I.D. at 3-4, 7. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The ALJ initially noted that Mr. Simpkins, as the party seeking affirmative relief from the Commission, bears the burden of proof in this proceeding. I.D. at 4 (citing 66 Pa. C.S. § 332(a)). The ALJ also noted that the Commission, as an administrative agency, is required to provide due process to the parties appearing before them, and that this requirement is satisfied when the administrative agency provides the notice and opportunity to be heard. I.D. at 4 (citing *Schneider*).

In her analysis, the ALJ noted that a Hearing Notice and a Prehearing Order were electronically served to the email address provided in the Complaint and neither document was returned to the Commission as undeliverable. Therefore, the ALJ presumed that Mr. Simpkins received these documents. I.D. at 4 (citing *Binghua Hu v. PECO Energy Company*, Docket No. C-2019-3012075 (Order entered December 19, 2019) (*Hu*); *Bruce Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017) (*Zirkel*); *Andrea Morella v. PECO Energy Company*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*)).

The ALJ also noted that “[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing.” I.D. at 5 (citing *Strydio v. PPL Electric Utilities Corporation*, Docket No. C-2017-26334043 (Order entered July 18, 2018), at 6; *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002); *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993)).

The ALJ also noted that Mr. Simpkins was notified but did not appear at the scheduled telephonic hearing, and the Hearing Notice and the Prehearing Order advised that the case could be dismissed for failure to participate in the hearing. The ALJ added that the Code and the Commission’s Regulations provide that after being notified

of a scheduled hearing, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing. Accordingly, the ALJ found that by failing to appear, Mr. Simpkins waived the opportunity to participate in the hearing. I.D. at 5 (citing 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245(a); *Jefferson v UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995) (*Jefferson*)).

The ALJ also stated that, by failing to appear and proffer any evidence to support his complaint, Mr. Simpkins failed to meet his burden of proof. The ALJ explained that because Section 332(a) of the Code, 66 Pa. C.S. § 332(a), places the burden of proof upon the proponent of any request for relief, Mr. Simpkins bears the burden of proving, by a preponderance of the evidence, that he is entitled to relief and, therefore, the Complaint should be dismissed. I.D. at 5 (citing *Jefferson*; *Hanna El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Order entered June 30, 2016) (*El-Ayazra*); 52 Pa. Code § 5.245).

Finally, the ALJ also addressed whether the Complaint should be dismissed *with* prejudice. Specifically, the ALJ noted that although there are no facts on the record to suggest that Mr. Simpkins' failure to appear was unavoidable, there are also no facts on the record that Mr. Simpkins ever abused the administrative process. I.D. at 5-6 (citing *Amanda Polk Herr v. West Penn Power Company*, Docket No. C-2021-3028202 (Order entered September 15, 2022); *Myesha Brown v. PECO Energy Company*, Docket No. C-2019-3009486 (Order entered April 22, 2022); *Stephen Little v. Pittsburgh Water & Sewer Authority*, Docket No. F-2021-3027107 (Order entered February 7, 2022); 66 Pa. C.S. § 332(a); 52 Pa. Code § 5.245(a)). The ALJ referred to the Commission's recent decision in *Robert Hoyt v. Columbia Gas of Pennsylvania, Inc.*, Docket No. F-2022-3032680 (Order entered April 20, 2023) (*Hoyt*), in which the Commission determined that contrary to the decision in *Waiver of Service*, dismissal of a formal complaint *with* prejudice, where a *pro se* complainant failed to appear at a hearing and

the complainant did not affirmatively agree to accept service via email, is inconsistent with due process. Accordingly, the ALJ found that dismissal of the Complaint *without* prejudice is appropriate. I.D. at 6.

Petition and Answer

In his single-page, handwritten Petition,⁹ the Petitioner states, in relevant part, the following:

I'm wriling to inform about the decision on my [PECO] they keep sending me shut-off notices n I pay the monthly bill there's noway my balance should be that high I been going through this for sometime now I keep calling [the Commission] about it n I'm sorry I didn't get back because I just e-mail n I Know It's late I apologize deeply but i need some help with this matter please i need my electric I need help with this matter please I been calling about this matter constantly please I just some help with this badly. [sic]

Petition at 1.

In its Answer to the Petition, PECO counters that the Petitioner is attempting to litigate the facts of the case and does not allege that the ALJ: (1) made an error of law; (2) abused her discretion; or (3) utilized an incorrect email address. Further, PECO contends that the Petitioner fails to state any good cause of action that would warrant opening the record or a further hearing. Moreover, PECO argues that the Petitioner does not set forth that the Company violated any regulation, statute, or order.

⁹ We acknowledge that the format of the Petition does not strictly comply with Section 5.572(a) of our Regulations, which requires that each paragraph be numbered and identify the finding or order involved, the points relied upon, and cite to the relevant pages of the Initial Decision. 52 Pa. Code § 5.572(a). Nevertheless, we will accept the Petition as filed, in order to secure a just, speedy, and inexpensive determination in this proceeding, particularly as the Petitioner is appearing *pro se*. See, 52 Pa. Code § 1.2(a) and (d).

Accordingly, PECO asserts that the ALJ's Initial Decision is well-reasoned with ample support from the record. Answer to the Petition at 4.

PECO also argues that because the Petitioner's letter filing taking exception to the Initial Decision was untimely filed and fails to state good cause for the untimeliness, the Petitioner is not entitled to a further hearing and, accordingly, the Petitioner's letter filing should be dismissed.¹⁰ *Id.* at 5 (citing 52 Pa. Code § 5.533(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. The Commission is 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).

Upon consideration of the record in this proceeding, we will grant the Petition. In the matter before us, the ALJ ruled to dismiss the Complaint, *without* prejudice, finding that because Mr. Simpkins failed to appear for the hearing and did not contact the Commission to explain why his failure to appear was unavoidable, he had waived the opportunity to participate in the hearing. *I.D.* at 5; 52 Pa. Code § 5.245(a). Further, the ALJ found that, by Mr. Simpkins' failing to appear at the hearing and to present evidence in support of his Complaint, he failed to meet his burden of proving, by a preponderance of the evidence, that he is entitled to relief. *I.D.* at 5; 66 Pa. C.S. § 332(a). Moreover, the ALJ found that because Mr. Simpkins had not affirmatively

¹⁰ As discussed, *supra*, because the Petitioner's letter filing taking exception to the Initial Decision was not filed during the period for filing exceptions, the filing is treated herein as a Petition for Rescission.

agreed to accept electronic service via email, it is inconsistent with due process to dismiss his Complaint *with* prejudice. I.D. at 6. *See*, Hoyt.

We note that in his Petition, the Petitioner does not assert that he did not receive notice of the hearing. Nevertheless, considering that the Petitioner is a *pro se* complainant, we will not limit our examination to the issues raised in the Petition. Notwithstanding, this Commission's decision must be supported by substantial evidence in the record. Upon examination of the record in this proceeding, there is no indication that Mr. Simpkins requested or agreed to be served notice of the proceedings related to his Complaint electronically or by email.

We find the circumstances presented here to be similar to the considerations in the Commission's recent decisions including *Hoyt*.¹¹ In *Hoyt*, the Commission explained:

[B]oth the Hearing Notice and the Prehearing Order were sent only by email to the Complainant. *Pro se* complainants, such as Mr. Hoyt, 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

¹¹ This case is also similar to other recent Commission decisions. *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); *Angelina 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); and *Maureen Stopperich v. Duquesne Light Company*, Docket No. C-2022-3034514 (Order entered May 31, 2023).

the complaint form, cannot be presumed to know that notice of proceedings will be provided by email.

Hoyt at 7. In the instant case, Mr. Simpkins provided his email address in the contact information section of his formal complaint form, as required. However, there is no record that Mr. Simpkins, operating in a *pro se* status: (1) created an account on the Commission's eFiling system; or (2) elected to receive documents through the Commission's eService system. Moreover, in support of the ALJ's conclusion that both the Hearing Notice and Prehearing Order must be presumed as sent to and received by Mr. Simpkins because neither document was returned to the Commission as undeliverable, the ALJ cited to *Hu, Zirkel, and Morella*. See, I.D. at 4. However, these three cases are distinguishable because they involved matters in which the complainants affirmatively selected eService and/or had active eFiler status, as required in our Regulations at Section 1.53(b)(3). See, *Hu* (Initial Decision issued October 31, 2019) at 8; *Zirkel* (Initial Decision issued February 8, 2017) at 2; *Morella* (Initial Decision issued December 7, 2016) at 2; 52 Pa. Code § 1.53(b)(3). Such is not the case here for Mr. Simpkins, who provided his email address because the formal complaint form instructed that the complainant was required to do so. Therefore, *Hu, Zirkel, and Morella* do not support a presumption of receipt of the Hearing Notice and the Prehearing Order in this case.

Under the circumstances here involving Mr. Simpkins' *pro se* status and his lack of affirmative agreement to electronic service or service via his email address, and consistent with our recent decisions in *Hoyt* and other cases noted *supra.*, it is in the public interest to afford the Petitioner an opportunity for an evidentiary hearing, if the Petitioner elects one.¹² Accordingly, the Petitioner shall be provided twenty (20) days to file a written request for a further hearing with the Commission's Secretary's Bureau.

¹² The Commission may reopen the record after the presiding officer has issued a decision if conditions of fact or law have changed or the public interest so requires the opening of the proceeding. 52 Pa. Code § 5.571(d).

If the Petitioner files such a request, the proceeding would be remanded to the Commission's Office of Administrative Law Judge for further proceedings as warranted. If the Petitioner does not file such a request for a further hearing, the Complaint would remain dismissed and the matter would remain closed without further action of the Commission, consistent with the Initial Decision which became final pursuant to Section 332(h) of the Code, on June 28, 2023.

Accordingly, we will grant the Petition and modify the ALJ's Initial Decision, consistent with the discussion in this Opinion and Order.

Conclusion

For the reasons discussed herein, we will grant the Petition for Rescission filed by Colby Simpkins, consistent with the discussion in this Opinion and Order;

THEREFORE,

IT IS ORDERED:

1. That the Petition for Rescission of the Initial Decision of Administrative Law Judge of Eranda Vero, filed by Colby Simpkins on July 13, 2023, at Docket No. C-2022-3036798, is granted, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Eranda Vero issued on June 8, 2023, is modified, consistent with this Opinion and Order.

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

4. That if a written request for an evidentiary hearing is timely filed, this 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.

5. That if a written request of an evidentiary hearing is not timely filed, the Formal Complaint of Colby Simpkins, filed on November 3, 2022, at Docket No. C-2022-3036798, 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 Colby Simpkins by Certified Mail through the United States Postal Service.

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: September 21, 2023

ORDER ENTERED: September 21, 2023