

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

**Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement**

**Public Meeting held November 9, 2023  
3037624-ALJ  
Docket No. C-2023-3037624**

v.

**Service Emporium Inc.**

**STATEMENT OF COMMISSIONER KATHRYN L. ZERFUSS**

On January 12, 2023, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Formal Complaint (Complaint) against Service Emporium Inc. (Service Emporium),<sup>1</sup> alleging that Service Emporium did not timely file assessment reports for the 2019 and 2020 calendar years and did not pay the amounts due for its 2020-2021 and 2021-2022 Fiscal Year Assessments within thirty days of receiving the assessment invoices, as the Public Utility Code requires. *See* 66 Pa. C.S. § 510(b),(c).

On January 13, 2023, the Commission emailed a copy of I&E's Complaint to Service Emporium at the email address on file with the Commission.<sup>2</sup> There is no record of Service Emporium filing an Answer to the Complaint. On February 14, 2023, the Commission emailed a Notice of Telephonic Hearing to Service Emporium. Thereafter, a Prehearing Order providing the date and time of the hearing was also sent by email to Service Emporium.

On March 15, 2023, I&E filed a Motion for Default Judgment (Motion) with the Commission and sent the Motion to Service Emporium by email. In the Motion, I&E requested that because Service Emporium did not file an Answer to the Complaint, the Commission enter an Order against Service Emporium that, *inter alia*,: (1) directs Service Emporium to pay a total of \$3,082, which consists of its outstanding assessment balance of \$1,810 and a civil penalty of \$1,272, and (2) cancels Service Emporium's Certificate of Public Convenience if it fails to pay the \$3,082 within thirty days of the entry of the Commission's Order in this matter. Service Emporium did not file a written response to the Motion.

The hearing convened as scheduled on April 6, 2023. Service Emporium did not appear at the hearing. I&E appeared with one witness and presented its case. By Initial Decision issued on June 28, 2023, the Administrative Law Judge granted I&E's Motion and, thereby, sustained

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<sup>1</sup> The Commission issued a Certificate of Public Convenience to Service Emporium on July 19, 2016, at Docket No. A-2015-2472602, for approval to transport household goods between points in the Commonwealth.

<sup>2</sup> There is no record of Service Emporium creating an account on the Commission's eFiling system or electing to receive documents through eService. There is also no record of Service Emporium requesting or agreeing to be served with documents in this proceeding by email.

the allegations in I&E's Complaint and directed Service Emporium to pay \$3,082 to the Commission within thirty days of the entry of a Commission Order. Unless Service Emporium paid this amount, its Certificate of Public Convenience would be revoked.

In this case, Service Emporium did not receive adequate notice of the Complaint filed against it, the scheduled hearing, or I&E's Motion in order to preserve Service Emporium's right to due process, because all of the documents in this proceeding were sent to Service Emporium by email. Accordingly, 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).<sup>3</sup> 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. Service on interested persons is sufficient to provide notice.

*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

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<sup>3</sup> 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); *Maureen Stopperich v. Duquesne Light Company*, Docket No. C-2022-3034514 (Order entered May 31, 2023); *Robert Adams v. Philadelphia Gas Works*, Docket No. C-2022-3035184 (Order entered June 20, 2023); *Ronald Baroni v. PECO Energy Company*, Docket No. C-2022-3032488 (Order entered June 20, 2023); *Anne Wilson v. PECO Energy Company*, Docket No. 2022-3033952 (Order entered August 14, 2023); and *McArthur Giles v. Philadelphia Gas Works*, Docket No. F-2022-3036835 (Order entered August 15, 2023); *Taska Taylor v. Pennsylvania Electric Company*, Docket No. C-2022-3036796 (Order entered August 28, 2023); and *Corrine Hales v. Pennsylvania Electric Company*, Docket No. F-2022-3934720 (Order entered August 28, 2023).

to *pro se* complainants unless record evidence shows that they are abusing the Commission's administrative process to avoid paying their utility bills." *Id.*

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 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.* In *Hoyt*, 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.

Similarly, here, Service Emporium did not elect to receive documents through eService or otherwise agree to be served by email in this proceeding. Therefore, following the Commission's decision in *Hoyt*, the Commission may not presume that Service Emporium received any of the documents in this case or conclude that it received adequate notice of the hearing to preserve due process. Although Service Emporium is not a *pro se* complainant, the Commission is required to provide due process to all parties appearing before it. Service Emporium is a small business with one owner who is the sole officer and shareholder. Service Emporium employs about eight drivers, twelve helpers, and three office/administrative staff. *See Verified Business Plan of Service Emporium*, at Docket No. A-2015-2472602. Service Emporium has the right to be notified of any of I&E's claims against it and to be afforded an opportunity to defend itself, particularly given that sustaining I&E's Complaint would result in the cancellation of Service Emporium's Certificate of Public Convenience and the imposition of civil penalties on Service Emporium. Small businesses like Service Emporium are the backbone of our economy and should not be on the receiving end of substantial penalties without having proper notice of the claims in the first instance. Accordingly, given the deficiency in service method of I&E pleadings and both the Hearing Notice and Prehearing Order, I believe that it would be in the public interest to afford Service Emporium an opportunity to file an Answer to the I&E Complaint and Motion and appear for an evidentiary hearing if it elects one. *See Hoyt* (the Commission provided the complainant with twenty days to file a written request for further hearing with the Commission's Secretary's Bureau and if the complainant filed such a request, the proceeding would be remanded to the Office of Administrative Law Judge for further proceedings as warranted).

For these reasons, I will be voting no.

**DATE: November 9, 2023**



**Kathryn L. Zarfuss, Commissioner**