

Email Correspondence Re: Complainant Failure to Appear at March 26, 2024 Hearing

From: Ashton, Arlene
Sent: Friday, April 5, 2024 3:08 PM
To: ettelegna1@verizon.net; Scott, Khadijah:(PECO) <khadijah.scott@exeloncorp.com>;
ettelegna1@yahoo.com
Cc: McNeal, Pamela <pmcneal@pa.gov>
Subject: RE: [External] Re: ERIC BANKS v. PECO Energy Company C 2023- 3043759
Importance: High

Mr. Banks,

Thank you for your response to my email below.

As indicated in my original email, **any change of service information must be completed in accordance with Commission regulation 1.53.**

This office (OALJ) is not authorized or able to change your method of service; **only you can do that.**

You should also be aware that in the context of a consumer complaint, **the Commission does not communicate with parties via certified mail.**

If you have any questions regarding service of documents by the Commission or changes to your eService account you may contact the Office of the Commission Secretary.

You may contact the PA Public Utility Commission at:

[1-800-692-7380](tel:1-800-692-7380) or www.puc.pa.gov

It is your responsibility to engage counsel and have them appear at the hearing.

For reference, copies of the Prehearing Order and Notice of Further Hearing previously served on you are attached hereto.

ALJ Ashton

From: ettelegna1@verizon.net <ettelegna1@verizon.net>
Sent: Friday, April 5, 2024 10:32 AM
To: Scott, Khadijah:(PECO) <khadijah.scott@exeloncorp.com>; ettelegna1@yahoo.com; Ashton, Arlene <aashton@pa.gov>
Cc: McNeal, Pamela <pmcneal@pa.gov>
Subject: [External] Re: ERIC BANKS v. PECO Energy Company C 2023- 3043759

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Good Morning

Thank You

My responses are below:

Mr. Banks, you are directed to confirm via reply to this message:

1. That you have received copies of the Notice of Hearing and Prehearing Order previously issued in this matter and to you at your yahoo.com address.

Eric Banks Response: No, I did not receive copies of the said Notice of Hearing and Prehearing order previously issued in the matter and at yahoo.com. If necessary, I could possibly raise the funds to have a third party dump my computer to try and find the said emails that were sent related to the missed hearing. Of course, this will take sometime.

2. Whether you wish to continue to receive correspondence at that address. Note that any change of service information must be completed in accordance with Commission regulation 1.53.

Eric Banks Response: Yes, I would like to continue receiving correspondence at ettelegna1@yahoo.com. In addition, I would like to also receive correspondence at: ignat114@aol.com as well by certified mail at: 2030 Upland Way, Philadelphia, PA. 19131.

Finally, Mr. Banks, in your message below, you state that you are "considering seeking council" [sic]. The complaint in this matter was filed on October 20, 2023, therefore, you have had ample time (i.e. more than 5 months), to engage counsel to represent you in this matter. If you intend to engage counsel, you should do so without further delay. No further continuance will be granted to you for that purpose.

Eric Banks Response: Respectively your Honor, I am destitute and I thought by now that I would have raised the money for Counsel. I am seeking counsel or co-counsel because I may not know all of the logistics of the code system and I was just recently informed that because I am a disabled senior that I am entitled to senior counseling services.

On Thursday, April 4, 2024 at 11:05:50 AM EDT, Ashton, Arlene <aashton@pa.gov> wrote:

CAREFULLY READ THIS MESSAGE IN FULL; RESPOND AS DIRECTED IN THE MESSAGE

Attorney Scott and Mr. Banks,

My legal assistant, Pamela Mc Neal forwarded to me the emails below sent by each of you.

Mr. Banks, in your message, you indicate that you did not receive the Notice and Prehearing Order previously sent to you by Office of Administrative Law Judge (OALJ). However, it appears that:

- You enrolled in the Commission's eService program and specified that correspondence should be sent to you at <mailto:ettelegna1@yahoo.com>
- On the complaint form, you listed your email address at <mailto:ettelegna1@vyahoo.com>, adding a "v" before yahoo.com.
- None of the electronic correspondence sent to the Complainant by OALJ using the email address associated with eService was returned as undeliverable
- PECO representatives have communicated with you via email exchange to/from <mailto:ettelegna1@yahoo.com>; none of the PECO emails directed to the email address ettelegna1@yahoo.com were returned as undeliverable

It is well established that Notice electronically sent to a party's last known address and not returned is presumed to have been received *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

While I agree with the statement of facts and law made by Ms. Scott in her email, I am also cognizant of Mr. Banks' status as a pro se complainant. I note, too, that Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa. Cmwlth. 1984).

Section 5.571 of the Commission's regulations permits a presiding officer to reopen the record where an initial decision has not been issued. In addition, Section § 1.2(a), (d) of the Commission's regulations provides that a presiding officer may disregard an error or defect of procedure which does not affect the substantive rights of the parties, in order to secure the just, speedy and inexpensive determination of action, as well as proving for a liberal construction of this provision with particularity in proceedings involving pro se litigants).

Accordingly, I will instruct the scheduler for this case to schedule a Further Hearing in this matter, as soon as my schedule allows.

Mr. Banks, you are directed to confirm via reply to this message:

1. That you have received copies of the Notice of Hearing and Prehearing Order previously issued in this matter and to you at your yahoo.com address.
2. Whether you wish to continue to receive correspondence at that address. Note that any change of service information must be completed in accordance with Commission regulation 1.53.

Finally, Mr. Banks, in your message below, you state that you are " considering seeking council" [sic]. The complaint in this matter was filed on October 20, 2023, therefore, you have had ample time (i.e. more than 5 months), to engage counsel (i.e. to represent you in this matter. If you intend to engage counsel, you should do so without further delay. No further continuance will be granted to you for that purpose.

ALJ Ashton

From: McNeal, Pamela <pmcneal@pa.gov>
Sent: Wednesday, April 3, 2024 9:19 AM
To: Ashton, Arlene <aashton@pa.gov>
Subject: FW: [External] RE: [EXTERNAL]ERIC BANKS. C 2023- 3043759

GM

Please see email.

TY

From: Scott, Khadijah:(PECO) <<mailto:Khadijah.Scott@exeloncorp.com>>
Sent: Wednesday, April 3, 2024 9:15 AM
To: McNeal, Pamela <<mailto:pmcneal@pa.gov>>
Cc: <mailto:ettelegna1@yahoo.com>; <mailto:ettelegna1@verizon.net>
Subject: [External] RE: [EXTERNAL]ERIC BANKS. C 2023- 3043759

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Good morning Ms. McNeal,

Please be advised that PECO objects to the reopening of the record in this matter. On January 31, 2024, Your Honor issued an Initial Telephonic Hearing Notice to both parties, specifying the date and time of the hearing. On February 6, 2024, Your Honor issued a Prehearing Order for Telephonic Hearing to both parties, specifying the date and time of the hearing. On March 18, 2024, PECO's administrative assistant, Amy Botak, emailed PECO's proposed exhibits to the Complainant, via the email provided in the Complaint, <mailto:ettelegna1@yahoo.com>. PECO's email specifically specified the date and time of the hearing. The email was not returned. It is also important to note that counsel for PECO has communicated with the Complainant via email exchange via this email address. Emails from the Complainant to PECO have been received from <mailto:ettelegna1@yahoo.com> and all emails directed to the email address <mailto:ettelegna1@yahoo.com> were not returned. The Complainant, now one week after the hearing, simply states that he did not receive any notification of the hearing date. He has not provided any facts to support a rationale that his absence from the hearing was unavoidable, as required by the Commission. The regulations are clear that "any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable." 66 Pa. CS. §332(f). A remedy to address the Complainant's absence is already available to the Complainant. If the Complainant is unsatisfied with the final disposition of the Court, he may file Exceptions to the Initial Decision with the Secretary of the Commission.

Thank you,

Khadijah

Working Remotely
Khadijah Scott, Esquire
Assistant General Counsel
(she/her/hers)
PECO, an Exelon Company
2301 Market Street, 23rd floor
Philadelphia, PA 19103
(267) 533-1830 (work phone)
(215) 568-3389 (fax)
<mailto:khadijah.scott@exeloncorp.com>

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From: <mailto:ettelegna1@verizon.net> <<mailto:ettelegna1@verizon.net>>
Sent: Tuesday, April 2, 2024 5:16 PM
To: <mailto:PMCNEAL@PA.GOV>; Scott, Khadijah:(PECO) <<mailto:Khadijah.Scott@exeloncorp.com>>
Subject: [EXTERNAL]ERIC BANKS. C 2023- 3043759

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<https://aka.ms/LearnAboutSenderIdentification>

EXTERNAL MAIL. Do not click links or open attachments from unknown senders or unexpected Email.

To : The Honorable Judge ALJ ASHTON

FROM: ERIC BANKS

RE: MISSED HEARING

Your Honor,

I did not receive a notice via email, mail or text regarding that was sent out on 1/31/2024 for a video hearing that was scheduled for 3/26/2024.

So I am requesting that you vacate the dismissal that was entered on 3/26/2024, and reschedule an in person hearing as soon as your schedule allows.

I am also considering seeking council.

Sincerely,

Eric Banks

Thank You.

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