

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

Public Meeting held June 13, 2024

Commissioners Present:

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

Marcus Culver

F-2022-3037377

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Marcus Culver (Mr. Culver or Complainant) received by the Commission on December 28, 2023,¹ to the Initial Decision (I.D.) of Deputy Chief Administrative Law Judge (DCALJ) Christopher P. Pell,

¹ We note that the Exceptions do not contain a Certificate of Service. Accordingly, by Secretarial Letter dated December 28, 2023, the Commission served a copy of the Exceptions upon PGW to constitute service for purposes of 52 Pa. Code § 5.533.

which was issued on August 3, 2023, in the above-captioned proceeding. Philadelphia Gas Works (PGW or Company) filed Replies to Exceptions on January 10, 2024.

For the reasons discussed below, because Mr. Culver’s Formal Complaint (Complaint) was dismissed for his failure to appear at hearing and there is no record of the Complainant agreeing to service by electronic mail (email), in the interest of due process, we shall grant Mr. Culver’s Exceptions and afford him 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.

I. History of Proceeding

On December 15, 2022, Mr. Culver filed a Formal Complaint with the Commission against PGW.² In the Formal Complaint form,³ Mr. Culver indicated that PGW shut off his gas and that when he contacted PGW to reconnect his service, he was informed that he owed \$9,300 due to theft of service. Complaint at 3-4. The Complainant asserted that he was unaware of any theft of service. *Id.* at 4. As relief, Mr. Culver requested that his gas service be restored. *Id.* at 5.

On January 17, 2023, PGW filed an Answer to the Complaint. In its Answer, PGW averred that on August 13, 2018, PGW terminated gas service to the service address at the curb valve. Answer at 1. The Company further averred that on April 19, 2022, a PGW technician visited the service address and found the gas service on at the curb valve and, again, terminated service at the curb valve and installed an anti-

² This is a timely appeal from the Bureau of Consumer Services (BCS) determination at BCS No. 3880259 issued on December 13, 2022. An 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).

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

theft device. *Id.* According to PGW, Mr. Culver contacted the Company on October 5, 2022, to request gas service at the service address. *Id.* The Company stated that on October 10, 2022, a PGW technician visited the service address for a safety check/unbilled usage investigation and discovered evidence of theft. *Id.* PGW further stated that it is holding the Complainant responsible for the bypass charges at the service address. *Id.* at 2. Lastly, the Company requested that the Commission dismiss the Complaint. *Id.*

On January 19, 2023, the Commission issued a Call-In Telephone Hearing Notice (Hearing Notice) setting an initial call-in telephonic hearing for this matter to be held on March 10, 2023. The Hearing Notice, *inter alia*, named DCALJ Pell as the assigned presiding officer, provided a toll-free call-in number to the Parties, and included language concerning the effects on the case if a party failed to appear.

Thereafter, on January 20, 2023, DCALJ Pell issued a Prehearing Order for Telephone Hearing (Prehearing Order) that advised the Parties, *inter alia*, of the toll-free call-in number to participate in the hearing and included language concerning the effects on the case if a party failed to appear.

The Hearing Notice and Prehearing Order were sent by email to the email address that Mr. Culver provided on his Complaint form⁴ and, according to the DCALJ, were not returned to the Commission as undeliverable. *I.D.* at 3, 4.

⁴ Upon review of the Commission's case management system, there is no record of Mr. Culver creating an account on the Commission's eFiling system or of him electing to receive documents through eService. Mr. Culver 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 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

On March 3, 2023, PGW filed a Motion to Continue (Motion) the March 10, 2023 hearing scheduled in this matter due to the unavailability of a PGW witness. In the Motion, PGW noted that Mr. Culver objected to the Company's request for a continuance of the hearing.

On March 6, 2023, DCALJ Pell issued an Interim Order denying PGW's Motion, without prejudice, due to the Motion's lack of specificity.

On March 6, 2023, PGW filed an Amended Motion to Continue (Amended Motion) indicating the reason for the unavailability of its witness and the basis of Mr. Culver's objection to the Company's request for a continuance, which was a desire to avoid further delaying of the matter. On March 7, 2023, DCALJ Pell issued an Interim Order denying PGW's Amended Motion noting that the unavailability of PGW's witness was due to a business decision made by the Company and not due to a conflict beyond its control.

On March 8, 2023, PGW filed a Petition for Reconsideration (Petition) providing further explanation and additional information in support of the Company's request for a continuance.

On March 9, 2023, DCALJ Pell issued an Interim Order which granted PGW's Petition and continued the hearing scheduled for March 10, 2023. That same day, on March 9, 2023, a Hearing Cancellation Notice was issued cancelling the March 10, 2023 hearing.

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. Culver requesting or agreeing to be served notice of the proceedings related to his Complaint by email.

On March 24, 2023, the Commission issued a Rescheduled Initial Call-In Telephonic Hearing Notice (Rescheduled Hearing Notice) rescheduling the hearing for April 17, 2023. The Rescheduled Hearing Notice was sent by email to the email address that Mr. Culver provided on his Complaint form⁵ and, according to the DCALJ, was not returned to the Commission as undeliverable. I.D. at 4-6.

The hearing convened as scheduled on April 17, 2023. I.D. at 3. Graciela Christlieb, Esquire appeared with three (3) witnesses on behalf of PGW, prepared to present PGW's case. *Id.*; Tr. at 4. Mr. Culver did not call in to participate in the hearing at the scheduled time. I.D. at 3; Tr. at 4-5. Neither the presiding officer nor the Office of Administrative Law Judge (OALJ) received any contacts from Mr. Culver prior to the hearing about his availability nor did the Complainant call in for the hearing. *Id.* Accordingly, the hearing proceeded in Mr. Culver's absence. I.D. at 3; Tr. at 5. PGW's counsel moved to dismiss the Complaint, with prejudice, due to the Complainant's failure to appear at the hearing and prosecute his case. *Id.* The DCALJ took the motion under advisement. Tr. at 6.

The record closed on May 9, 2023. I.D. at 4.

On August 3, 2023, DCALJ issued an Initial Decision granting PGW's Motion to Dismiss Mr. Culver's Complaint, without prejudice, for failure of the Complainant to appear and prosecute his case despite being given notice and an opportunity to appear and be heard. I.D. at 3, 8.

On September 6, 2023, in accordance with 66 Pa. C.S. § 332(h), the Initial Decision became final without further Commission action. The Final Order, *inter alia*, dismissed the Complaint, without prejudice, and marked the proceeding closed.

⁵ *See, supra* notes 3-4.

On December 21, 2023, the Commission entered an Order exercising its right to, *sua sponte*, rescind the Final Order pursuant to 66 Pa. C.S. § 703(g) and allowing the Parties an opportunity to file Exceptions to the Initial Decision. On December 21, 2023, a Secretarial Letter was issued indicating that Exceptions were due within twenty (20) days of the date of the letter, as set forth in 52 Pa. Code § 5.533, or on January 10, 2024 and Replies to Exceptions were due within ten (10) days of the date when Exceptions were due or on January 20, 2024.

On December 28, 2023, Mr. Culver filed Exceptions to the Initial Decision. PGW filed Replies to Exceptions on January 10, 2024.

I. Discussion

A. 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).⁶

Pursuant to the Commission’s *Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered September 15, 2022), the Commission continued to permit electronic service by the Commission on all parties, regardless of whether a particular party agreed to electronic service, through April 3, 2023. An exception to this general waiver is where the Public Utility Code (Code) requires service by specified means, e.g., 66 Pa. C.S. § 702; or where our Regulations require a specific service type, e.g., 52 Pa. Code § 3.391. *Id.*

Section 702 of the Code entitled, “Service of Complaints on Parties,” states, in pertinent part, the following:

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.

66 Pa. C.S. § 702.

B. DCALJ’s Initial Decision

DCALJ Pell made nine (9) Findings of Fact and reached five (5) Conclusions of Law. I.D. at 4; 7-8. The Findings of Fact and Conclusions of Law are

⁶ We note 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 (Opinion and 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).

incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by the Opinion and Order.

In the Initial Decision, DCALJ Pell noted that the Complainant had adequate notice of the time and date of the hearing but neither appeared for the hearing nor did he explain his absence; therefore, it was appropriate to dismiss the Complaint. I.D. at 5.

DCALJ Pell indicated that on March 24, 2023, the Commission electronically served the Complainant a Rescheduled Hearing Notice of the April 17, 2023 hearing. I.D. at 5. The DCALJ stated that both the Rescheduled Hearing Notice and the January 20, 2023 Prehearing Order contained language warning the Complainant of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. *Id.*

DCALJ Pell explained that both the Rescheduled Hearing Notice and Prehearing Order were electronically served to the email address provided by the Complainant to the Commission and in accordance with the *Waiver of Service, supra*. I.D. at 5-6. As neither document was returned to the Commission as undeliverable, DCALJ Pell presumed that the documents, which were sent in the ordinary course of business, were received by the Complainant. *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 (Final Order entered April 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*)).

DCALJ Pell determined that the Complainant waived his opportunity to participate in the hearing by failing to appear. I.D. at 6. DCALJ Pell explained that as the party filing the Complaint, the Complainant bears the burden of proving by a

preponderance of the evidence that he is entitled to relief. *Id.* at 7 (*citing*, 66 Pa. C.S. § 332(a)). Ultimately, the DCALJ concluded that by failing to appear, the Complainant did not meet his burden of proof and dismissed the Complaint, without prejudice, in accordance with *Hoyt v. Columbia Gas of PA, Inc.*, Docket No. F-2022-3032680 (Opinion and Order entered April 20, 2023) (*Hoyt*). I.D. at 7.

C. Final Order

As noted above, on September 6, 2023, the Commission entered a Final Order (*September 2023 Final Order*) stating that, in accordance with the provisions of Section 332(h) of the Code, 66 Pa. C.S. § 332(h), the Initial Decision of DCALJ Pell issued on August 3, 2023, “has become final without further Commission action.” The *September 2023 Final Order, inter alia*, dismissed the Complaint, without prejudice, and marked the proceeding closed.

D. Rescission of Final Order

Also noted above, on December 21, 2023, the Commission entered an Order exercising its right to, *sua sponte*, rescind the *September 2023 Final Order*, pursuant to 66 Pa. C.S. § 703(g), due to the possibility of an issue with providing notice to the Parties in the proceeding (*December 2023 Rescission of Final Order*). Therefore, the Commission served, by certified mail and email, a copy of DCALJ Pell’s Initial Decision on all Parties of record and afforded them an opportunity to file Exceptions and Replies to Exceptions in accordance with the Secretarial Letter accompanying the Initial Decision. In the *December 2023 Rescission of Final Order*, the Commission noted that if Exceptions were timely filed, then it would consider the Exceptions and any responses thereto. However, if no Exceptions were timely filed, the Commission stated that the

matter would be handled in accordance with applicable law pursuant to Section 332(h) of the Code including that the matter may become final by operation of law.

E. Exceptions

Mr. Culver's Exceptions⁷ consist of a one-page typewritten letter. In his Exceptions, Mr. Culver reiterates the allegations made in his Complaint and requests that PGW's bypass charges be dismissed. Exceptions at 1. Lastly, Mr. Culver claims that he did not receive notice of the rescheduled hearing. *Id.*

F. Reply Exceptions

In its Reply Exceptions, PGW argues that Mr. Culver failed to identify any error in law or fact to support the reversal of the Initial Decision's finding that the Complainant waived his opportunity to participate in the hearing by failing to appear. PGW R. Exc. at 2. PGW notes that the party that failed to appear at the hearing has the burden of explaining why its failure to appear was unavoidable. *Id.* (citing 66 Pa. C.S. § 332(a)). The Company further contends that the Complainant failed to provide any

⁷ The Complainant's Exceptions do not conform with Section 1.54(a) of our Regulations, 52 Pa. Code § 1.54(a), requiring proof of service indicating the date and manner in which service was accomplished. Moreover, the Complainant's Exceptions fail to conform with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that each exception be numbered and identify the finding of fact and conclusion of law to which exception is taken and cite to the relevant pages of the Initial Decision. However, as noted above, to avoid prejudice to PGW, the Commission served a copy of the Exceptions on PGW by Secretarial Letter dated December 28, 2023. *See, supra* note 1. To ensure due process, consistent with the *December 2023 Rescission of Final Order* regarding a concern with the service of documents in this proceeding, and because PGW was given a meaningful opportunity to file Replies to Exceptions via service accomplished by the Secretarial Letter, we will consider the Complainant's Exceptions, as filed, to secure a just, speedy, and inexpensive determination in this proceeding. *See*, 52 Pa. Code § 1.2(a).

reason as to why he did not participate in the hearing or why a new hearing should be scheduled. PGW R. Exc. at 2. Specifically, PGW avers that “[t]here is no indication that the Complainant contacted anyone to try to explain his absence at the hearing or to follow-up to see what happened after the first hearing date was continued.” *Id.* at 3. Therefore, PGW requests that the Commission deny Mr. Culver’s Exceptions and adopt the Initial Decision. *Id.*

II. 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 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 Mr. Culver’s Exceptions. In the matter before us, the DCALJ ruled to dismiss the Complaint, without prejudice, finding that because Mr. Culver failed to appear for the hearing and did not contact the Commission to explain why his failure to appear was unavoidable, he waived the opportunity to participate in the hearing. I.D. at 5-6. The Initial Decision noted that both the Prehearing Order and Rescheduled Hearing Notice were electronically served to the email address provided by the Complainant to the Commission and that service was made in accordance with the *Waiver of Service*. *Id.* at 5. Further, the DCALJ found that because Mr. Culver, a *pro se* complainant, had not affirmatively agreed to accept electronic service via email, it was inconsistent with due process to dismiss his Complaint, with prejudice. *Id.* at 6-7 (*citing, Hoyt*).

At the outset, we note that in his Exceptions, Mr. Culver asserts that he did not receive notice of the rescheduled April 17, 2023 hearing. Exceptions at 1. Further, upon examination of the record in this proceeding, there is no indication that Mr. Culver requested or agreed to be served notice of the proceedings related to his Complaint electronically or by email. Therefore, we find the circumstances presented in this case to be similar to the considerations in the Commission's recent decision in *Hoyt* concerning due process and service.⁸

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

⁸ This case is also similar to other recent Commission decisions. *See, e.g., Simpkins v. PECO Energy Company – Electric*, Docket No. C-2022-3036798 (Opinion and Order entered September 21, 2023); *Baxter v. West Penn Power Company*, Docket No. C-2022-3032225 (Opinion and Order entered May 30, 2023); *Davenport v. PECO Energy Company*, Docket No. C-2022-3033480 (Opinion and Order entered May 31, 2023); *Everett v. Philadelphia Gas Works*, Docket No. C-2022-3034443 (Opinion and Order entered May 30, 2023); *Fahmy v. UGI Utilities, Inc.*, Docket No. F-2022-3036840 (Opinion and Order entered May 31, 2023); *Green v. UGI Utilities, Inc. (Gas Division)*, Docket No. C-2022-3033307 (Opinion and Order entered May 30, 2023); *Hairston v. West Penn Power Company*, Docket No. C-2022-3034322 (Opinion and Order entered May 30, 2023); *Miner v. Philadelphia Gas Works*, Docket No. F-2022-3035563 (Opinion and Order entered May 31, 2023); *Parker v. PECO Energy Company*, Docket No. F-2022-3034455 (Opinion and Order entered May 30, 2023); *Sablich v. PECO Energy Company*, Docket No. C-2022-3033148 (Opinion and Order entered May 30, 2023) (*Sablich*); and *Stopperich v. Duquesne Light Company*, Docket No. C-2022-3034514 (Opinion and Order entered May 31, 2023).

time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest.

Hoyt 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.” *Hoyt* 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, we agree with the DCALJ that it is not appropriate to dismiss this Complaint, with prejudice.

Next, in *Hoyt*, the Commission noted an exception to the *Waiver of Service*, *supra*, which is where applicable law requires a specific type of service. *Hoyt* at 3, note 3. Specifically, Section 702 of the Code requires that “[s]ervice in all hearings, investigations and proceedings pending before the commission. . . be made by registered or certified mail or by e-mail upon agreement by each party.” 66 Pa. C.S. § 702. The Commission further noted in *Hoyt* that there was no record of the complainant requesting or agreeing to be served notice of the proceedings related to his formal complaint by email. *Hoyt* at 3, note 3. As such, the Commission determined, *inter alia*, 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.* at 7-8.

In making this determination, the Commission distinguished *Hoyt* from *Zirkel* and *Morella*. *Hoyt* at 8. 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. *See, Zirkel; Morella*. 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 8.⁹

Similarly, here, the Prehearing Order and Rescheduled Hearing Notice were sent only by email to the Complainant. *See, I.D.* at 5. While the Initial Decision determined that such documents were served on the Complainant in accordance with the *Waiver of Service*, the Initial Decision appears to have overlooked the above-referenced exception to the *Waiver of Service* at Section 702 of the Code, 66 Pa. C.S. § 702. As stated above, Mr. Culver did not elect to receive documents through eService or otherwise agree to be served notice of the proceedings related to his Complaint by email.

Moreover, in support of the ALJ's conclusion that both the Prehearing Order and Rescheduled Hearing Notice must be presumed as sent to and received by Mr. Culver because neither document was returned to the Commission as undeliverable, the DCALJ cited to *Hu*, *Zirkel*, and *Morella*. *See, I.D.* at 6. However, as mentioned above, these cases are distinguishable because they involved matters in which the complainants affirmatively selected to receive electronic service, as required in our Regulations at 52 Pa. Code § 1.53(b)(3). Such is not the case here for Mr. Culver, who

⁹ For similar reasons, we have also determined that the case of *Hu* is distinguishable. *See, e.g., Sablich* at 7.

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 Prehearing Order and Rescheduled Hearing Notice in this case.

Further, there is no indication in the record that the Commission had any successful contact with the Complainant until the Commission served, by certified mail and email, the *December 2023 Rescission of Final Order* on the Complainant to which the Complainant responded by way of Exceptions. Additionally, Mr. Culver even argues in his Exceptions that he did not receive notice of the rescheduled hearing date. *See*, Exceptions at 1.

Therefore, following the Commission's decision in *Hoyt*, the Commission will not presume that the Complainant received the Prehearing Order or Rescheduled Hearing Notice. For these reasons, we find that Mr. Culver did not receive adequate notice of the rescheduled April 17, 2023 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. *Hoyt* at 8 (*citing*, 52 Pa. Code § 5.571(d)). As stated above, we find that this case is similar to *Hoyt*. Therefore, consistent with our determination in *Hoyt*, 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 will be remanded to the Office of Administrative Law Judge for further proceedings as warranted. Failure to timely file the hearing request will 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 will be without prejudice, consistent with *Hoyt*. *See*, *Hoyt* at 8.

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

III. Conclusion

For the reasons discussed herein, we will grant the Exceptions of Mr. Culver and adopt the Initial Decision of DCALJ Pell, as modified, consistent with this Opinion and Order; **THEREFORE**,

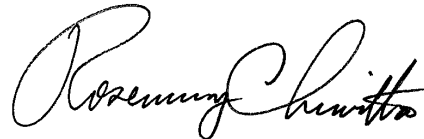
IT IS ORDERED:

1. That the Exceptions of Marcus Culver, filed on December 28, 2023, at Docket No. F-2022-3037377, are granted, consistent with this Opinion and Order.
2. That the Initial Decision of Deputy Chief Administrative Law Judge Christopher P. Pell, issued on August 3, 2023, at Docket No. F-2022-3037377, is adopted as modified, consistent with this Opinion and Order.
3. That Marcus Culver 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.
4. 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.

5. That if a written request for an evidentiary hearing is not timely filed, the Formal Complaint of Marcus Culver filed on December 15, 2022, at Docket No. F-2022-3037377, shall be dismissed, without prejudice, without further action of the Commission.

6. That the Commission's Secretary's Bureau serve a copy of this Opinion and Order on Marcus Culver by certified mail and electronic mail.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 13, 2024

ORDER ENTERED: June 13, 2024