

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

Barbara Dickey

Public Meeting held November 7, 2024

3028761-ALJ

v.

Docket No. C-2021-3028761

Pennsylvania Electric Company

STATEMENT OF COMMISSIONER KATHRYN L. ZERFUSS

On September 13, 2021, Barbara Dickey (Complainant) filed a Formal Complaint against Pennsylvania Electric Company (Penelec or Company), requesting that the smart meter at her home be removed because she had been experiencing health problems since it was installed.¹ On December 4, 2023, Penelec filed an Answer and New Matter denying the material allegations in the Complaint.

On February 12, 2024, a Telephonic Prehearing Conference Notice (Prehearing Notice) was sent by electronic mail (email); however, it was sent to an incorrect email address that was different than the email address the Complainant provided on her complaint form. A Prehearing Conference Order providing the date and time of the hearing was sent by email to the Complainant at the email address the Complainant provided on her complaint form.² The prehearing conference convened as scheduled on March 18, 2024. Counsel for Penelec appeared; however, the Complainant did not call in for the prehearing conference.

¹ By Order entered November 4, 2020, the Commission directed that any formal complaint filed with the Commission on or after November 4, 2020, challenging an electric distribution company's deployment of smart meter technology is to be stayed until the Commission takes further action to lift the stay. *Smart Meter Procurement and Installation*, Docket No. M-2029-2092655 (Order entered November 4, 2020). Subsequently, by Order entered November 9, 2023, the Commission lifted its November 4, 2020 Order and directed, among other things, that smart meter formal complaints pending before the Commission proceed as directed by the presiding Administrative Law Judge.

² In addition to the Prehearing Notice being served to the incorrect email address, there is no record of the Complainant creating an account on the Commission's eFiling system or of her electing to receive documents through eService or through email. The Complainant 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. Service of the Hearing Notice and Prehearing Order occurred after the expiration of the Commission's Order permitting a temporary waiver of the service requirements Regulations at 52 Pa. Code §§ 1.53 and 1.54, which was in place from September 15, 2022 to April 3, 2023. *See*, *Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered September 15, 2022).

By Order dated March 28, 2024, the ALJ issued a Rule to Show Cause Why the Formal Complaint Should Not be Dismissed (Show Cause Order), directing Ms. Dickey to respond by April 19, 2024. The Show Cause Order also stated that failure to timely respond would result in dismissal of the Complaint. The Show Cause Order was sent by email to the Complainant, and she did not respond. By Initial Decision, issued on July 26, 2024, the ALJ dismissed the Complaint.

I submit that this case should be handled in the same manner as the Commission's decisions in *Robert Hoyt v. Columbia Gas of PA, Inc. (Hoyt)*, Docket No. F-2022-3032680 (Order entered May 30, 2023), and *Hoyt's progeny*, in order to provide Ms. Dickey with the opportunity to proceed with her Complaint.³ Ms. Dickey 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. Consistent with the Commission's decision in *Hoyt*, the Commission may not presume that the Complainant received the Prehearing Notice, Prehearing Conference Order, or the Show Cause Order or reach a conclusion that Ms. Dickey received adequate notice of the hearing to preserve due process.

Providing Ms. Dickey with an opportunity for an evidentiary hearing if she elects one is in the public interest. *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). As an administrative agency, the Commission must provide due process equally to all parties appearing before it. There is no justification for deviating from our prior decisions in *Hoyt* and its progeny, in which the

³ 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) (*Sablich*); and *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).

Commission satisfied its constitutional obligation to provide customer complainants with a fair opportunity for a hearing, under the circumstances in this case.

For these reasons, I will be voting no.

DATE: November 7, 2024

A handwritten signature in black ink, reading "Kathryn L. Zerfuss". The signature is written in a cursive style with a prominent flourish at the end.

Kathryn L. Zerfuss, Commissioner

