**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held April 18, 2013

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer

Barbara Medaglia F-2012-2300999

v.

Metropolitan Edison Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Barbara Medaglia (Complainant), filed on October 12, 2012, to the Initial Decision (I.D.) of Special Agent David A. Alexander, issued on September 11, 2012, in the above-captioned proceeding.[[1]](#footnote-1) Reply Exceptions were not filed. For the reasons stated below, we shall grant the Complainant’s Petition for Reconsideration.

**History of the Proceeding**

On April 25, 2012, the Complainant filed a Formal Complaint (Complaint) with the Commission against Metropolitan Edison Company (Met-Ed) asking for a payment agreement that she could afford. The Complaint was a timely appeal of a decision of the Bureau of Consumer Services (BCS) on an informal complaint. By that Decision, which was issued on March 27, 2012, at BCS Case No. 2942372, the BCS determined that the Complainant was a level one customer, and ordered her to pay the regular budget amount of $151 and an arrearage payment of $56 per month for a total special budget amount of $207 per month.

On May 17, 2012, Met-Ed filed an Answer to the Complaint. In its Answer, Met-Ed indicated that the Complainant did not dispute the accuracy of any of her bills for electric service and that the Complainant had an account balance at that time of $3,295.30. Met-Ed further indicated that it had entered into three prior payment arrangements with the Complainant, all of by which she failed to abide. As a result, Met-Ed requested that the Complaint be dismissed with prejudice.

A telephonic hearing was convened on July 10, 2012, where the Complainant appeared, *pro se,* and introduced no exhibits for the record. Met-Ed was represented by counsel, who presented the testimony of one witness and introduced seven exhibits into the record. The record was closed on July 10, 2012. I.D. at 2.

As noted, on September 11, 2012, Special Agent Alexander’s Initial Decision was issued, whereby the Complaint was dismissed. The Complainant filed Exceptions on October 12, 2012.[[2]](#footnote-2) Met-Ed did not file Reply Exceptions.

**Discussion**

**The Complainant’s Exceptions**

We begin by considering the nature of the Complainant’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 October 1, 2012. Exceptions 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 Special Agent became final without further Commission action, and a Final Order was entered on November 9, 2012. However, it has since been discovered that the Complainant’s original timely-filed Exceptions, dated September 29, 2012, were returned to the sender and marked as “not deliverable” due to the use of the incorrect zip code for the Commission’s address.[[3]](#footnote-3) The Complainant then resubmitted her Exceptions on October 12, 2012, with the Commission’s correct mailing address. As a result of the procedural developments in this case, we will exercise our discretion and consider the Complainant’s Exceptions as a Petition for Reconsideration (Petition) of our November 9, 2012 Final Order.

**Legal Standards**

Before addressing the Petition, it is noted that any issue that we do not specifically discuss 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. Pennsylvania Public Utility Commission,* 625 A.2d 741 (Pa. Cmwlth. 1993).

The Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g) of the Code, 66 Pa. C.S. § 703(f) and (g), relating to rehearings, rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572(b) of our Regulations, 52 Pa. Code § 5.572(b), relating to petitions for relief following the issuance of a final decision. The standards for a petition for relief following the issuance of a final decision were addressed in *Duick v. PG&W*, 56 Pa. P.U.C. 553 (1982) (*Duick*).

*Duick* held that a petition for rehearing under Subsection 703(f) of the Code must allege newly-discovered evidence not discoverable through the exercise of due diligence prior to the close of the record. *Duick* at 558. A petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by us. *Duick* at 559.

We note that, pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572, our power to modify or rescind final orders is limited to certain circumstances. A petition to modify or rescind a final Commission order may only be granted judiciously and under appropriate circumstances, because such an order will result in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980); *City of Philadelphia v. Pa. PUC,* 720 A.2d 845 (Pa. Cmwlth. 1998); and *West Penn Power Company v. Pa. PUC,* 659 A.2d 1055 (Pa. Cmwlth. 1995).

In his Initial Decision, the Special Agent relied on Section 1405(a) of the Code, 66 Pa. C.S. § 1405(a), which authorizes the Commission to investigate payment disputes and to establish payment arrangements between a public utility and its customers. Regarding the length of payment agreements, the Special Agent cited 66 Pa. C.S. § 1405(b) which reads as:

**(b) Length of payment agreements.** The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment agreement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Two years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly income level exceeding 250% of the federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

The Special Agent concluded that pursuant to Section 1405(b), as the total household monthly income of the Complainant amounted to $2,627.33, the Complainant was a level two customer. As a result, the Special Agent found that the Complainant must resolve her unpaid balance within twenty-four months, pursuant to 66 Pa. C.S. § 1405(b)(2). The Special Agent recommended that the Complainant be required to make monthly payments on her account, consisting of her current bill plus one twenty-fourth of the balance accrued on her account beginning with the first billing due date following the entry of a final Commission Order in this case. The Special Agent further recommended that the Complaint be denied. I.D. at 4-6.

In the *November 2012 Order*, we adopted the Initial Decision of Special Agent Alexander and denied the Complaint.

In her Petition, the Complainant avers that she cannot afford more than a $151.00 per month payment on her account as she is on a fixed income and has other expenses to survive. The Complainant further avers that her husband has been hospitalized since September 20, 2012, after having a stroke. The Complainant expresses her concern that her husband may need to be in a nursing facility and if so, his social security check of $865.00 will be taken away leaving her with much less monthly income. She further requests that the Commission please contact her as to any further assistance she may be able to get. Petition at 1.

In reaching our determination on the Petition, we find that the Complainant has presented us with new information that may affect the amount of her required monthly payment under Section 1405(b) of the Code as directed in our *November 2012 Order*. If the Complainant’s total household income is in fact reduced as a result of this new information, the Complainant would be classified as a level one customer. As such, we find that the Complainant has met the standard under *Duick,* and we will grant her Petition for Reconsideration. Therefore, we shall remand this matter to the Office of Administrative Law Judge for such further proceedings as may be necessary, and the issuance of an Initial Decision Upon Remand.

**Conclusion**

Based on the foregoing discussion, we shall grant the Complainant’s Petition to the extent consistent with this Opinion and Order. We shall remand the matter to the Office of Administrative Law Judge for such further proceedings as may be necessary, and the issuance of an Initial Decision Upon Remand ; **THEREFORE**,

**IT IS ORDERED:**

1. That the Petition for Reconsideration filed by Barbara Medaglia on October 12, 2012, is granted, consistent with this Opinion and Order.

2. That this matter is remanded to the Office of Administrative Law Judge for such further proceedings as may be necessary, and the issuance of an Initial Decision Upon Remand.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 18, 2013

ORDER ENTERED: April 18, 2013

1. For the reasons discussed herein, we will consider the Complainant’s Exceptions as a Petition for Reconsideration of our Final Order, entered on November 9, 2012, at this Docket (*November 2012 Order*). [↑](#footnote-ref-1)
2. The Complainant filed the Exceptions with the Commission’s Secretary’s Bureau on October 12, 2012. However, the Exceptions did not include a Certificate of Service. By letter dated October 18, 2012, the Secretary’s Bureau notified Med-Ed that the Complainant had filed timely Exceptions, but had failed to serve a copy of the Exceptions on the other Parties to the case. The Secretary’s letter provided a copy of the Exceptions to Met-Ed, and October 18, 2012, was then deemed to be the filing date for the Exceptions in order to avoid prejudice to any Party. [↑](#footnote-ref-2)
3. The Complainant addressed her Exceptions with the Commission’s 400 North Street address but mistakenly utilized the 17105 zip code applicable to the Commission’s P.O. Box address. As a result, her Exceptions were returned to sender. [↑](#footnote-ref-3)