

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120

Ron Carson
v.
PECO Energy Company

Public Meeting November 14, 2013
2337615-OSA
Docket No. C-2012-2337615

MOTION OF
VICE CHAIRMAN JOHN F. COLEMAN, JR.

Before the Commission for disposition is the Complainant's Petition for Reconsideration of the decision to dismiss his Complaint filed against PECO Energy Company (PECO) following an evidentiary hearing. The decision dismisses the Complainant's request for a payment agreement because the Commission is without authority under Chapter 14 of the Public Utility Code to grant him another agreement.¹ As detailed in the Initial Decision (ID), the Complainant defaulted on a prior Commission-issued payment agreement and has experienced an increase in household income since the prior Commission-issued agreement.

To begin, exceptions to the ID were due on September 5, 2013 but were not received by the Commission by that due date. Therefore, in accordance with Section 332(h) of the Public Utility Code, the ID became final without further Commission action on September 5, 2013. The Complainant filed his "Exceptions" on September 6, 2013, which was one day after the due date and one day after the ID became final by operation of law. However, the Complainant's filing was made within the fifteen-day window during which a party may seek reconsideration of a final Commission decision.² Due to this timing, I believe it is appropriate to treat Complainant's filing as a Petition for Reconsideration of the Commission's decision and PECO's Replies to Exceptions as an Answer to the Petition for Reconsideration.

In his Petition, the Complainant requests that the Commission set aside the ID so that he can obtain counsel and re-prosecute his case. In its Answer to the Petition, PECO argues that Complainant's filing does not allege any error of law or abuse of discretion and should be denied. PECO further argues that the Complainant has waived his right to obtain legal counsel.

The standards for granting reconsideration are set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1982). A petition for reconsideration is likely to succeed only when it raises "new or novel arguments" not previously heard or raises considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559. Upon review, I do not believe that the Complainant has satisfied *Duick*. Specifically, I do not believe that the Complainant's alleged confusion surrounding the nature of his hearing and his desire to obtain counsel, both of which were raised for the first time at the hearing, warrant granting reconsideration.

¹ The ALJ found that, during the course of the proceeding, the Complainant withdrew all claims except the request for a payment agreement. We note that Complainant is not precluded from hiring an attorney and filing another Complaint raising the claims that were withdrawn.

² See 52 Pa. Code § 5.572(c).

The Complainant was adequately informed about the nature of the hearing and the rules regarding obtaining counsel. The Complainant admitted to receiving and reading the Hearing Notice dated February 4, 2013, which was approximately six weeks prior to the hearing. Specifically, the Hearing Notice stated in plain English that the Complainant needed to appear on the hearing date and present his case, or he may lose. The Hearing Notice was equally clear that as an individual, the Complainant did not need to be represented by an attorney but that if he obtained counsel, his attorney should file a Notice of Appearance before the hearing date. Similar language regarding legal representation also appeared in the Prehearing Order in this matter dated February 26, 2013. Thus, the Complainant had ample time to hire an attorney or, in the alternative, request a continuance prior to the hearing to hire an attorney.

The Commission satisfied the Complainant's procedural due process rights here by providing him with a timely Hearing Notice and by scheduling the matter for an in-person evidentiary hearing, which occurred on March 19, 2013. Once timely notice and the opportunity to be heard were provided, it was then the responsibility of the parties to be present and participate in the hearing, which is what happened here.³ For these reasons, I do not believe the Commission should exercise its discretion and reconsider its decision in this case.

THEREFORE, I MOVE THAT:

1. The Petition for Reconsideration be denied, consistent with this Motion.
2. The Commission's Office of Special Assistants draft an appropriate Order consistent with this Motion.

Date: November 14, 2013


JOHN F. COLEMAN, JR.
VICE CHAIRMAN

³ *Craig Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993) and 52 Pa. Code § 5.245(a).