

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Kisha Dorsey
v.
Philadelphia Gas Works

Public Meeting held February 6, 2014
2313679-OSA
Docket No. F-2012-2313679

MOTION OF COMMISSIONER GLADYS M. BROWN

Before the Commission for consideration and disposition is the Petition for Reconsideration (Petition), filed by Kisha Dorsey (Complainant), on December 10, 2013, seeking reconsideration of our Opinion and Order entered November 22, 2013 (*November 2013 Order*), relative to the above-captioned proceeding.

The Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1982):

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that: "Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them . . . what we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission."

Duick, 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)).

In her Petition, the Complainant presents arguments regarding her income level and ability to pay. These issues were presented at the hearing and considered in our *November 2013 Order*; they are not appropriately reconsidered here. Next, the Complaint disputes the amount of her past due balance. The Administrative Law Judge below found that as of the date of the hearing, the Complainant's account balance was \$6,737.08, which included \$1,042.92 in CAP/CRP arrears. (FoF No. 23-24). Our *November 2013 Order* affirmed this finding. The Complainant

now argues that the past due balance is incorrect but offers no evidence in support of this argument.¹ A customer cannot establish a case merely by stating his personal beliefs or by posing questions without offering concrete proof. *Robert W. Ellis v. PECO Energy Co.*, C-2011-2256958, 2013 Pa. PUC LEXIS 333, *19 (May 17, 2013). "Mere bald assertions, personal opinions or perceptions do not constitute evidence." *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987). *The Mid-Atlantic Power Supply Assoc. v. Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. Ct. 2000); see also *Steffy's Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, R-00994808C0001 (March 3, 2000).

Finally, the Complainant alleges that health issues have deterred her from making timely payments. The Complainant argues that her poor health contributed to the arrearage. She states that because her health has improved, she is now able to comply with a payment arrangement. This argument is a "new and novel" one consistent with the standards established in Subsections 703(f) or 703(g), Section 5.572, or *Duick*, because it was not considered below. However, outside of the provision for medical certifications, neither the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq.*, nor the Commission's regulations 52 Pa. Code §§ 1.1 *et seq.*, permit the Commission to consider a customer's health when setting an initial payment arrangement.² As such, we cannot grant the Complainant the relief requested.

THEREFORE, I MOVE THAT:

1. The Opinion and Order be modified consistent with this Motion.
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

February 6, 2014
Date


Gladys M. Brown, Commissioner

¹ A bald assertion of error or that a given case is controlling, without analysis, discussion, argument, or application to the law and facts in a case in controversy, is not persuasive. Bald assertions of error or inconsistency do not meet the standards established in Subsections 703(f) or 703(g), Section 5.572, or *Duick*, which form the predicate for a petition for reconsideration. *Petition of UGI Utilities, Inc. -- Electric Division to Expand Participation in UGI-ED's Customer Assistance Program*, P-2008-2066579 *et al.*, 2010 Pa. PUC LEXIS 383 *6 (February 17, 2010).

² PGW's Answer to the Complaint averred that the Complainant has exhausted all medical certifications under the current arrearage. (Answer at 2).