

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Verdell Reese

v.

Philadelphia Gas Works

Public Meeting March 2, 2017

2508207-OSA

Docket No. F-2015-2508207

MOTION OF COMMISSIONER JOHN F. COLEMAN, JR.

Before the Commission are Exceptions and Reply Exceptions to the Initial Decision of January 28, 2016 dismissing the above-captioned Formal Complaint for failure to prosecute and meet the burden of proof. The Formal Complaint was a timely appeal of a Bureau of Consumer Services (BCS) decision on an informal complaint involving the same parties and subject matter. The Complainant alleged that Philadelphia Gas Works (PGW) had terminated service over an unpaid balance and requested that service be restored, the entire past due amount be expunged from her account, and that a payment arrangement be established for all service going forward. An in-person evidentiary hearing was scheduled for this matter for January 12, 2016.

The Complainant was sent the standard hearing notice with the date, time, and location of the hearing. The notice also informed that the case would be dismissed if the Complainant did not appear at the scheduled hearing and that any requests to change the hearing date must be submitted five days in advance of the hearing date. The Complainant also was sent the standard prehearing order, which reaffirmed the date, time, and location of the hearing and which reaffirmed the procedures for requesting a change of the hearing date. Neither the notice nor prehearing order was returned as undeliverable.

On January 12, 2016, PGW appeared at the evidentiary hearing but the Complainant was not present. No request for continuance was submitted by the Complainant. PGW moved to have the case dismissed with prejudice for failure to prosecute and meet the burden of proof, which the ALJ granted. The Initial Decision was returned as undeliverable, at which time the Commission learned that the Complainant had moved from the service address on record. Accordingly, the Commission extended the time period for filing Exceptions via Secretarial Letter to March 21, 2016. No timely exceptions were filed, and a Final Order dismissing the case with prejudice was issued on March 22, 2016. A late Exception was submitted by the Complainant on March 23, 2016, and PGW filed a Reply Exception on April 5, 2016. For purposes of affording this *pro se* Complainant full due process, I will move that we accept this late filed Exception as a Petition for Reconsideration.

A review of pleadings shows that the Complainant's service was terminated on April 1, 2015 for failure to pay undisputed, past due amounts. The total arrearage at this time amounted to approximately \$25,000. It is unclear how such a large arrearage came about. The parties do agree that the Complainant filed for bankruptcy at some point, and that a significant portion of this arrearage was removed from her account at that time. However, the bankruptcy claim was later dismissed, and this amount was transferred back to her active account.

In her Petition for Reconsideration, the Complainant reiterates that she has significant, permanent health problems, is elderly, and a retiree living on a fixed income. She restates her request for relief that service be restored, her entire \$25,000 arrearage be expunged, and that a payment arrangement be established for new service going forward. However, the Complainant did not offer an explanation for why she did not attend the January 12, 2016, evidentiary hearing or request a continuance.

The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 1982 Pa. PUC LEXIS 4, *12-13:

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.

Under the standards of *Duick*, a Petition for Reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. 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 the Commission. *Id.* at *13.

In my view, the Complainant does not identify any "new or novel" arguments that would excuse her from her obligation to attend the evidentiary hearing. The Complainant identified her age, retiree status and permanent, significant health problems in the Formal Complaint, and reiterates them in her Petition for Reconsideration. However, even under the most liberal construction, I do not believe the Petition for Reconsideration can be reasonably construed as alleging that health problems led to the Complainant's inability to appear at the hearing. Rather, as previously stated, the Complainant in her Petition for Reconsideration does not offer an explanation for why she did not attend the hearing.

The Commission routinely adjudicates complaints filed by persons of advanced age or who suffer from disability or significant health problems. The Commission's practices and procedures do not provide these individuals with an automatic dispensation from attending or otherwise participating in scheduled hearings. Instead, we do have a process whereby these individuals may request continuances or special accommodations (e.g. telephonic hearing), which are normally granted. The Complainant did not avail herself of those options. The establishment of a new precedent that excuses the chronically ill, elderly or retired from participation in evidentiary hearings as a matter of course would substantially prejudice the interests of the public, including both other customers and utilities, in the timely resolution of disputes, which in aggregate affect utility rates and service.

The Commission has, on rare occasions, reversed or otherwise modified these Initial Decisions where the record showed that the Complainant had made a good faith effort to participate in the evidentiary hearing.¹ There is no evidence that the Complainant made a good faith effort to attend the hearing. By not attending the hearing, the Complainant took the risk that her Complaint would be dismissed, as explained in the Pre-Hearing Notice and Prehearing Order.

Upon review, I am satisfied that this Complainant has been afforded robust due process. The Complainant initially filed an Informal Complaint that was reviewed and decided by our BCS. As part of this process, an offer of settlement was proposed to the customer that would have allowed service to be restored for substantially less than the past due amount. However, that offer was not accepted by the Complainant who subsequently filed a Formal Complaint.² Once the Formal Complaint was filed, the Commission sent all the standard notices for the scheduling of the hearing. When we learned that the Initial Decision was returned, it was resent to Complainant's new address, and additional time was provided to her for the filing of an Exception. While the Exception was filed late, the Commission accepted it, and advanced the case to this Public Meeting for disposition.

It is true that, under *Duick*, the Commission may consider "any matter" raised by a party that might cause us to exercise our discretion to modify a decision. However, that discretion must be exercised prudently. Based on the totality of the circumstances, I must conclude that it would be an abuse of our discretion to modify or otherwise set aside the Initial Decision. Accordingly, I move that the Petition for Reconsideration be denied and the Initial Decision be affirmed in its entirety.

THEREFORE, I MOVE THAT:

1. The Initial Decision of Administrative Law Judge Darlene D. Heep to dismiss the Complaint with prejudice be affirmed.
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

DATE: March 2, 2017


JOHN F. COLEMAN, JR.
COMMISSIONER

¹ *Wiggins v. PECO Energy Company*, C-2010-2190335 (Order entered October 27, 2011).

² The Complainant filed her Informal Complaint with BCS on May 29, 2015. The customer was offered the opportunity to resolve the Informal Complaint and have service restored for a payment of \$1,066.23. For whatever reason, no payment in this amount was made by the Complainant to PGW. As the informal complaint was not resolved, BCS issued a final decision on September 11, 2015. BCS determined that because the Complainant's income was 336% of the Federal Poverty Level, Section 1407(c)(2)(i) of the Public Utility Code controlled, and that she was required to pay the entire arrearage to have service restored.