

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROBERT STRYDIO,

Complainant,

v.

PPL ELECTRIC UTILITIES CORP.,

Respondent.

No. C-2017-2633043

**RESPONDENT PPL ELECTRIC UTILITIES CORP.'S OPPOSITION
TO COMPLAINANT'S PETITION FOR RESCISSION**

Respondent PPL Electric Utilities Corp. ("Respondent"), by and through its counsel, Gross McGinley, LLP, hereby opposes Complainant Robert Strydio's ("Complainant") Petition for Rescission as follows:

1.-58. Denied. After reasonable investigation, Respondent is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained herein. Therefore, the same are denied. To the extent that the allegations within this paragraph are conclusions of law, the same are denied. By way of further answer, Respondent specifically denies that just cause exists for the Public Utility Commission (the "PUC" and/or the "Commission") to exercise its discretion to re-open, re-examine, and/or re-investigate this matter. For these reasons, and the reasons set forth in the accompanying Brief, which is incorporated herein by reference, Complainant's Petition for Rescission should be denied and dismissed.

WHEREFORE, Respondent respectfully request that the Commission deny Complainant's Petition for Rescission.

Dated: July 1, 2019

Respectfully submitted,



By: _____

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No. C-2017-2633043

**BRIEF IN SUPPORT OF RESPONDENT PPL ELECTRIC UTILITIES CORP.'S
OPPOSITION TO COMPLAINANT'S PETITION FOR RESCISSION**

Respondent PPL Electric Utilities Corp. ("Respondent"), by and through its counsel, Gross McGinley, LLP, hereby opposes Complainant Robert Strydio's ("Complainant") Petition for Rescission as follows:

I. CONCISE STATEMENT OF THE CASE

On or about November 6, 2017, Complainant filed a formal Complaint. On November 9, 2017, Respondent was served with the Complaint. On or about November 29, 2019, Respondent filed its Answer to the Complaint.

In the Complaint, Complainant alleges that Respondent was threatening to shut off his electric service. Compl. at ¶ 4. Complainant also requested that the Public Utility Commission (the "Commission" and/or the "PUC") order a payment arrangement for him. *Id.* at ¶¶ 4 & 5.

In its answer, Respondent admitted that it provided electric utility service to Complainant and that a termination notice was issued for Complainant's service address for an unpaid balance. Ans. at ¶ 1. Respondent further alleged that on September 21, 2017, Respondent requested that Complainant agree to pay \$2,618 no later than September 27, 2017, and \$217.93

no later than October 10, 2017, to avoid a scheduled termination on September 28, 2017. *Id.* at ¶ 4. Respondent also alleged that it subsequently requested that Complainant began paying his current monthly bill plus \$170 per month toward arrearages, until all arrearages are paid in full. *Id.* Respondent further alleged that the Commission previously ordered a payment arrangement and indicated that it agreed with the terms of BCS Decision Number 3501369, which directed Complainant to pay his regular monthly budget bill plus \$170 per month toward arrearages, until all arrearages are paid in full. *Id.*

On January 25, 2018, Administrative Law Judge David Salapa convened an initial telephonic hearing, after first providing the parties with notice of the hearing by way of a Telephonic Hearing Notice and Prehearing Order. Complainant failed to appear at the time of the scheduled telephonic hearing and prosecute his claims. In light of this, Respondent made a Motion to Dismiss the Complaint.

On February 14, 2018, Judge Salapa issued his Initial Decision, which granted Respondent's Motion to Dismiss, and dismissed the Complaint with prejudice. On February 22, 2018, Complainant filed Exceptions to Judge Salapa's Initial Decision. On March 6, Respondent filed Replies to Complainant's Exceptions. On July 18, 2018, the Commission entered an Opinion and Order which denied Complainant's Exceptions.

Unbeknownst to Respondent, on March 22, 2019, Complainant filed a "Petition for Review of Informal Complaint" relative to the Commission's July 18, 2018 Opinion and Order (the "Petition"). The Commission chose to treat Complainant's filing as a Petition for Rescission. Despite filing his Petition with the Commission, Complainant failed to serve the Petition upon Respondent. On June 19, 2019, the Commission served Respondent with Complainant's Petition, and requested a response to be filed in accordance with 52 Pa. Code § 5.572(e).

II. STATEMENT OF QUESTIONS INVOLVED

Whether Complainant's Petition for Rescission should be denied and dismissed?

Suggested Answer: Yes.

III. ARGUMENT

Pursuant to the Commission's Rules of Administrative Practice and Procedure, any party to a proceeding before the Commission may file a petition for rescission. 52 Pa. Code § 5.572(d). In this regard, the Public Utility Code provides the Commission with the authority to rescind or amend any order made by it, following notice and the opportunity to be heard. 66 Pa.C.S.A. § 703(g); *see also Tranter v. PA Pub. Util. Comm'n*, 288 A.2d 837, 839 (Pa. Cmwlth. 1972).

However, the standard for granting special relief to reopen a prior final order of the Commission is a high one. *Simpson v. PPL Elec. Util. Corp.*, No. C-2017-2605855, 2019 WL 1081043, at *4 (Feb. 28, 2019). Further to this point, the Commission has the discretion whether to act on a petition for rescission or amendment, but because the relief of rescission or amendment under Section 703(g) [of the Public Utility Code] may result in the disturbance of final orders, it should be granted judiciously and only under appropriate circumstances. *W. Penn Power Co. v. PA Pub. Util. Comm'n*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995) (citing *City of Pittsburgh v. PA Dep't of Transp.*, 416 A.2d 461 (Pa. 1980)).

The burden of convincing the Commission to grant special relief is on the petitioner. Namely, in order to establish a proper basis for rescission, a petitioner must first establish the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law. *Feleccia v. PPL Elec. Util. Corp.*, No. C-20016210, 2003 WL 1901914 (Pa. P.U.C. Mar. 7, 2003) (citing *Duick v. PA Gas & Water Co.*, C-R0597001, 56 Pa. P.U.C. 553 (Dec. 17, 1982)).

The Commission must then determine whether, under the totality of the circumstances, it should exercise its discretionary authority to rescind. *Id.*

As noted above, whether to grant or deny a request for rescission is a matter of administrative discretion. The Commission decision in this regard will not be disturbed absent an abuse of discretion. *W. Penn Power Co.*, 659 A.2d at 1065 (citing *Georgia-Pacific Corp. v. Unemployment Comp. Bd. of Review*, 630 A.2d 948 (Pa. Cmwlth. 1993) and *J.A.M. Cab Co., Inc. v. PA Pub. Util. Comm'n*, 572 A.2d 1317 (Pa. Cmwlth. 1990)). An abuse of discretion occurs only where the Commission's decision demonstrates evidence of bad faith, fraud, capricious action or abuse of power. *Id.* (citation omitted).

As a preliminary note, a petitioner must act with due diligence in order for the Commission to even entertain a petition for rescission. *See, e.g., Feleccia, supra* (holding that the circumstances did not warrant rescission when the petitioner waited four months to challenge the Commission's Opinion and Order). Turning to this case, Complainant waited more than eight months after the Commission entered its July 18, 2018 Opinion and Order to file his Petition for Rescission. Complainant's delay amounts to more than twice the amount of delay that the Commission recognized was excessive in *Feleccia*. Given this, there can be no doubt that Complainant has failed to exercise due diligence. For this reason, the Commission should not exercise its rescission power in this case.

Second, as the petitioner in this case, it is Complainant's burden to establish the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law which would warrant the Commission exercising its rescission power. However, Complainant's Petition falls well short of proving any one of these. Specifically, the majority of his Petition consists of nothing more than a recitation of Complainant's work history in the commercial

aviation and power & stream generation industries, which is completely irrelevant to this proceeding. Complainant spends the remainder of his Petition discussing a phone call that he received from counsel for Respondent prior to the initial telephonic hearing. Despite Complainant's arguments in this regard, counsel for Respondent was directed to make the aforementioned phone call by the Administrative Law Judge in order to resolve the formal Complaint prior to the initial telephonic hearing. *See* December 18, 2017 Prehearing Order at ¶ 2. More importantly, however; at no point in his Petition does Complainant address, challenge, or call into question, the Administrative Law Judge's Findings of Fact and/or Conclusions of Law, or the Commission's Conclusion as contained within its Opinion and Order. In addition, Complainant fails to introduce any newly discovered evidence, a substantial change in circumstances, and/or an error of fact or law which would warrant the Commission affording him the special relief which he requests.

Based upon the circumstances presented in Complainant's Petition, there are no asserted facts or arguments which would justify disturbing the finality of the Commission's July 18, 2018 Opinion and Order. As such, the Commission should not exercise its rescission power in this case.

IV. CONCLUSION

For all of the foregoing reasons, Respondent respectfully request that the Commission deny Complainant's Petition for Rescission.

Dated: July 1, 2019

Respectfully submitted,



By: _____

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[PROPOSED] ORDER

AND NOW, this _____ day of _____, 2019, upon consideration of Complainant Robert Strydio's Petition for Rescission, and Respondent PPL Electric Utilities Corp.'s Opposition thereto, it is hereby **ORDERED** that Complainant's Petition is **DENIED**.

BY THE COMMISSION,

Rosemary Chiavetta
Secretary

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COMPLAINT DOCKET

NO. C-2017-2633043

CERTIFICATE OF SERVICE

This is to certify that the OPPOSITION TO COMPLAINANT'S PETITION FOR RESCISSION, with supporting BRIEF and PROPOSED ORDER, on behalf of PPL ELECTRIC UTILITIES CORPORATION was mailed to counsel/complainant of record on behalf of Respondents by first class United States mail, postage on this the 1st day of July, 2019.

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GROSS MCGINLEY, LLP



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