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August 28, 2019

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Jeffrey Smiles v. PPL Electric Utilities Corporation
Docket No. C-2018-3003895

Dear Secretary Chiavetta:

Enclosed for filing is the Answer of PPL Electric Utilities Corporation to Jeffrey Smiles' Petition for Rehearing and/or Reconsideration in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "DR" with a long, sweeping underline that extends to the left and right.

Devin Ryan

DTR/dmc
Enclosures

cc: Honorable Elizabeth Barnes
Office of Special Assistant (*via e-mail only*)
Certificate of Service

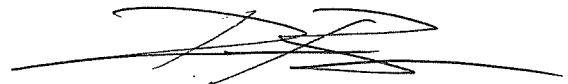
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA FIRST CLASS DELIVERY

Jeffrey Smiles
3049 Octagon Avenue
Sinking Spring, PA 19608

Date: August 28, 2019



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey Smiles,	:
	:
Complainant,	:
	:
v.	: Docket No. C-2018-3003895
	:
PPL Electric Utilities Corporation,	:
	:
Respondent.	:

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION TO
THE PETITION FOR REHEARING AND/OR RECONSIDERATION OF
JEFFREY SMILES**

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Date: August 28, 2019

Attorneys for PPL Electric Utilities Corporation

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PPL Electric Utilities Corporation (“PPL Electric” or the “Company”), pursuant to 52 Pa. Code §§ 5.61 and 5.572, hereby respectfully submits this Answer to the Petition for Rehearing and Reconsideration filed by Jeffrey Smiles (“Complainant”) on August 15, 2019. In its Petition, the Complainant requests rehearing and/or reconsideration because he alleges that he was denied due process due to, among other things, his failure to receive the Initial Decision of Administrative Law Judge Elizabeth H. Barnes (“ALJ”), which was served by Secretarial Letter dated July 12, 2019. As explained herein, the Complainant’s claim is entirely without merit. Therefore, the Petition should be denied.

I. INTRODUCTION AND BACKGROUND

PPL Electric is a public utility that provides electric distribution and provider of last resort services in Pennsylvania subject to the regulatory jurisdiction of the Commission. PPL Electric furnishes electric distribution, transmission, and provider of last resort electric supply services to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of 29 counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania.

On August 8, 2018, PPL Electric was served with the Formal Complaint filed by the Complainant.

On August 28, 2018, PPL Electric filed its Answer to the Complaint.

On September 10, 2018, a notice was issued scheduling a telephonic evidentiary hearing for March 8, 2019.

Also on September 10, 2018, the ALJ issued the Prehearing Order, which, among other things, directed the Complainant to serve his exhibits and written expert testimony and exhibits on or before January 10, 2019.

On February 7, 2019, PPL Electric served Interrogatories and Requests for Production of Documents on the Complainant – Set I via first class mail.

On February 19, 2019, a notice was issued rescheduling the telephonic evidentiary hearing for May 24, 2019. Like with the September 10, 2018 hearing notice, it stated:

If you have any hearing exhibits to which you will refer during the hearing, three (3) copies must be sent to the Administrative Law Judge and one (1) copy each must be sent to every other party. All copies must be received at least five (5) business days before the hearing.

On April 24, 2019, PPL Electric served its written direct testimony and exhibits.

On May 14, 2019, PPL Electric filed a Motion to Compel responses to Questions 4 and 7 of its first set of discovery requests that were propounded on the Complainant.

The Complainant never filed an Answer to PPL Electric's Motion to Compel.

On May 23, 2019, PPL Electric filed a Motion in Limine requesting that the Complainant be prohibited from presenting any expert witnesses, medical records, health and safety or privacy-related exhibits.

On May 24, 2019, the evidentiary hearing was held as scheduled.

On July 12, 2019, the ALJ's well-reasoned Initial Decision was issued by the Commission, which denied the Complainant's Complaint. Further, the Company's Motion to Compel and Motion in Limine were denied as moot.

Per the Secretarial Letter serving the Initial Decision, Exceptions were due by August 1, 2019.

On July 24, 2019, the Commission issued an Errata to the Initial Decision.

The Complainant never filed Exceptions to the Initial Decision.

On August 15, 2019, the Complainant filed: (1) a Petition for Rehearing and/or Reconsideration¹; and (2) a document titled “Notice and Petition for Judicial Determination of Jurisdiction.” These documents were served on PPL Electric via first class mail.²

On August 23, 2019, the Commission issued a Final Order dismissing the Complaint. The Initial Decision became final without further Commission action pursuant to 66 Pa. C.S. § 332(h) because the Complainant failed to file Exceptions to the Initial Decision.

For the reasons explained below, the Complainant’s Petition should be denied.

II. LEGAL STANDARDS

The Commission’s standard for reviewing petitions for rehearing³ and reconsideration following final orders is set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982) (emphasis added):

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 said that “[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and 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 or not addressed by the Commission.

¹ PPL Electric notes that the Petition was filed prematurely because it was filed before the issuance of the Final Order on August 23, 2019. As set forth in Section 5.572(c) of the Commission’s regulations, petitions for rehearing and reconsideration are to be filed within 15 days after the Commission order involved becomes final. See 52 Pa. Code § 5.572(c).

² Because the documents were sent via first class mail, three days were added to the responsive pleading deadlines. See 52 Pa. Code § 1.56(b).

³ See *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co. and West Penn Power Co. for Approval of their Default Serv. Programs*, 2012 Pa. PUC LEXIS 1533, at *4-5 (Order entered Sept. 27, 2012) (explaining that the *Duick* standard applies to “petitions for rehearing, reargument, and clarification” as well).

Consequently, for a petition to warrant rehearing and reconsideration by the Commission, it must demonstrate new and novel arguments that were raised below by the petitioner, but not previously considered by the Commission. The Commission has cautioned that the last portion of the operative language of the *Duick* standard -- “by the Commission” -- focuses on the deliberations of the Commission, not the arguments of the parties. *See Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597, p. 3 (Order entered May 22, 2014). Therefore, a petition for reconsideration cannot be used to raise new arguments or issues that should have been, but were not, previously raised.

A petition seeking relief under the *Duick* standard may properly raise any matter designed to convince the Commission that it should exercise its discretion to rescind or amend a prior order in whole or part. Importantly, however, the *Duick* standard does not permit a petitioner to raise issues and arguments considered and decided below such that the petitioner obtains a second opportunity to argue properly resolved matters. *Id.* Further, as explained by the Pennsylvania Supreme Court, petitions for reconsideration of a final agency order may only be granted judiciously and under appropriate circumstances because such action results in the disturbance of final agency orders. *City of Pittsburgh v. Pa. Dep’t of Transp.*, 490 Pa. 264, 416 A.2d 461 (1980).

As explained below, the Complainant’s Petition clearly fails to satisfy the standards for granting rehearing, reconsideration, or both.

III. ARGUMENT

A. THE COMPLAINANT'S REQUEST FOR REHEARING AND/OR RECONSIDERATION SHOULD BE DENIED

In his Petition, the Complainant generally alleges that he was denied due process because, among other things: (1) he did not know the Initial Decision was issued until July 24, 2019, when the Errata was issued; and (2) he had to participate in the evidentiary hearing when he had a migraine headache. (Petition, pp. 1-3.) As a result, the Complainant believes is entitled to rehearing, reconsideration, or both. (Petition, pp. 1-3.) The Complainant's Petition is without merit and should be denied for several reasons.

First, the Complainant waived all of the issues and arguments that he raises in the Petition because he failed to file Exceptions to the Initial Decision. The Commission has held that parties waive any arguments that they fail to raise in their Exceptions and properly preserve for appeal. *See Merritt v. Duquesne Light Co.*, 2011 Pa. PUC LEXIS 1197, at *9-10 (Order entered Mar. 31, 2011) (quoting *Generic Investigation Regarding Transp. Assessments*, Docket No. I-2008-2022003 (Order entered Aug. 26, 2008)). Indeed, “[i]n the interest of judicial economy,” the Commission “will not grant reconsideration based on an argument which that same party abandoned earlier in the proceedings.” *Id.*

Here, the Complainant never filed Exceptions to the Initial Decision, despite Exceptions being due by August 1, 2019. Even if the Complainant did not know that the Initial Decision was issued until July 24, 2019, when the Errata was issued, he still had time to prepare and file Exceptions or to request an extension of the due date for Exceptions. The Complainant did neither. Instead, he waited until August 15, 2019, to file the Petition for Rehearing and/or Reconsideration. Therefore, all of these issues and arguments have been waived.

Second, the Complainant's failure to obtain a copy of the Initial Decision is his own fault. The Commission did, in fact, send the Initial Decision to the Complainant via certified mail on July 12, 2019. Indeed, attached hereto as **Appendix A** is a copy of the Commission's envelope serving the Initial Decision on the Complainant.⁴ As seen on that envelope, the Complainant failed to sign for the package after several attempts. Ultimately, the package was returned to the Commission, and the Commission had to re-send the package by regular mail. Furthermore, the Initial Decision and the Secretarial Letter serving the Initial Decision have been publicly available since July 12, 2019, on the Commission's website.⁵ Thus, the Complainant was given a full and fair opportunity to obtain a copy of the Initial Decision and the Secretarial Letter.

Third, the Complainant was afforded due process during this proceeding. "The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness." *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citations omitted). "Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal." *Id.* (citations omitted).

Here, the Complainant was given the opportunity to present his evidence and testify about the issues at the evidentiary hearing on May 24, 2019. Moreover, the Complainant had the ability to cross-examine all of PPL Electric's witnesses. In fact, PPL Electric served its written testimony and exhibits on April 24, 2019, *i.e.*, one month before the hearing on May 24, 2019. Therefore, the Complainant had more than enough time to review the witnesses' testimony and exhibits in advance of the hearing and prepare questions to ask them on cross-examination.

⁴ This envelope is publicly available in the Commission's Secretary's Bureau.

⁵ http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=C-2018-3003895.

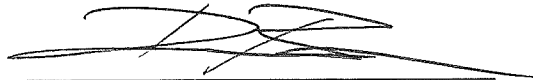
Additionally, even though PPL Electric did not answer his discovery requests prior to the hearing due to a clerical error, the ALJ agreed with PPL Electric that the Complainant could simply ask all of those questions at the evidentiary hearing. (Tr. 8.) Further, as explained previously, the Complainant's failure to obtain a copy of the Initial Decision is a product of his own doing. Thus, the Complainant was afforded due process throughout this proceeding.

For these reasons, the Complainant's Petition for Rehearing and/or Reconsideration is without merit and should be denied.

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission deny the Petition for Rehearing and/or Reconsideration filed by Jeffrey Smiles in its entirety.

Respectfully submitted,



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Date: August 28, 2019

Attorneys for PPL Electric Utilities Corporation

APPENDIX A

Copy of Commission's Envelope Serving the Initial Decision on Jeffrey Smiles



Commonwealth of PA
P.O. Box 3265
Harrisburg, PA 17105-3265

Return Service Requested

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
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VERIFICATION

I, KEVIN DURKIN, being the Project Manager on the Meter Replacement Project at PPL Electric Utilities Corporation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect PPL Electric Utilities Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 8/28/2019



Kevin Durkin