

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Althea Poe-Henderson	:
<i>Complainant</i>	:
	:
v.	: Docket No. F-2019-3010206
	:
Philadelphia Gas Works	:
<i>Respondent</i>	:

**ANSWER OF THE PHILADELPHIA GAS WORKS
TO COMPLAINANT’S PETITION FOR RESCISSION**

Pursuant to 52 Pa. Code § 5.572(e) as well as the Secretary’s letter dated June 24, 2020 and subsequent electronic service dated June 29, 2020, the Philadelphia Gas Works, (“PGW”) hereby files its Answer to the Complainant’s Petition for Rescission in the above referenced case.

I. History

On May 30, 2019, Althea Poe-Henderson (“Complainant” or “Ms. Poe-Henderson”) filed a formal complaint (“Complaint”) against PGW with the Pennsylvania Public Utility Commission (“Commission”) wherein she alleged, *inter alia*, that there were incorrect charges on her bill.

On June 19, 2019, PGW filed an answer denying the material allegations of the Complaint.

By Hearing Notice dated July 8, 2019, the parties were informed that the evidentiary hearing in this matter was scheduled for August 7, 2019. Due to a conflict with the Presiding Officer’s schedule, the August 7, 2019 hearing date was cancelled. The Complainant expressed a desire to have the hearing converted from an in-person hearing to a telephonic hearing. To accommodate the Complaint’s request, the hearing was rescheduled as a telephonic hearing.

By Hearing Notice dated August 2, 2019, the parties were informed that the evidentiary hearing in this matter was scheduled for 10:00 a.m. on September 6, 2019 via telephone. The Hearing Notice also informed the parties that “**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**” (Emphasis in original.)

The hearing convened as scheduled on September 6, 2019, at 10:00 a.m. PGW appeared via telephone, ready to proceed. Neither Complainant nor counsel for the Complainant appeared at the hearing. By 10:10 a.m. the Complainant had still not joined the telephonic hearing, so the Presiding Officer called the Complainant at the telephone number provided in her Complaint. What occurred next is outlined in the Presiding Officer's Initial Decision: "Ms. Poe-Henderson answered the phone. Id. I provided her with the dial-in information (toll-free telephone number and passcode) to join the hearing. Id. When Ms. Poe-Henderson failed to join the telephonic hearing by 10:20 a.m., I called her again. My call went unanswered. Id. I called her a third time. Id. This time, Ms. Poe-Henderson answered my call, but as soon as I identified myself, she hung up the phone. Id. I called her two more times to ascertain that my last call was not disconnected by accident and that she understood the reason for my call. Id. However, Ms. Poe-Henderson did not answer my calls."¹ At that time, PGW made an oral motion to dismiss the Complaint with prejudice.

On October 28, 2019, the Presiding Officer issued the Initial Decision in this matter wherein she granted PGW's motion to dismiss with prejudice. The Complainant did not file exceptions to the Initial Decision.

On December 13, 2019, the Commission entered a Final Order in this matter wherein it ordered that the instant Complaint is dismissed with prejudice.

On January 10, 2020, the Complainant filed exceptions to the Initial Decision. The Complainant did not serve PGW.

On June 24, 2020, PGW electronically received a letter from the Secretary of the Commission purporting to serve PGW with the Complainant's petition for reconsideration; however, the letter had no attachment and no filing from the Complainant was uploaded to the Commission's website. PGW brought the omission to the Commission's attention and on June 29, 2020, PGW was electronically served with a copy of the Complainant's exceptions to the Initial Decision.

PGW's answer to the Complainant's petition follows.

¹ Initial Decision, p.2.

II. Answer

Despite the Complainant referring to her filing as exceptions and the Secretary's June 24, 2020 letter referring to it as a petition for reconsideration, the fact that the filing came more than fifteen (15) days after the Final Order was entered in this case indicates that it is a petition for rescission under 52 Pa. Code § 5.572(d).

A petition to amend or rescind a final Commission order is wholly within the Commission's discretion. Because the granting of such a petition results in the disturbance of final orders, they should be granted judiciously and only under appropriate circumstances, such as where special relief is warranted. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980); *West Penn Power Co. v. Pa. P.U.C.*, 659 A.2d 1055 (Pa. Cmwlth. 1995)(*West Penn Power*); *Feleccia v. PPL Electric Utilities Corp.*, Docket No. C-20016210 (Order entered March 7, 2003) (*Feleccia*).

“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* at 2. Upon the filing of a petition for rescission, the Commission must review the petition to determine whether “under the totality of the circumstances, we should exercise our discretionary authority to rescind.” *Feleccia* at 2. As a matter soundly within the Commission's discretion, a decision to deny such a petition will only be overturned where a reviewing court finds an abuse of discretion “where the agency's decision demonstrates evidence of bad faith, fraud, capricious action or abuse of power.” *West Penn Power*, 659 A. 2d at 1065.

The instant Petition fails to establish a proper basis for rescission. The Complainant has not established the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law. The Complainant gives no explanation for her behavior on the day of the hearing and instead seems to be raising issues regarding various low income programs that were not part of her original complaint. The Complainant has failed to present any circumstances that would support the Commission disturbing its Order in this matter.

III. Conclusion

For the reasons stated above, the PGW requests that the Commission deny the Complainants' Petition for Rescission and leave the Final Order in this matter undisturbed.

Respectfully submitted,

July 9, 2020

/s/ Graciela Christlieb

Graciela C. Christlieb, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

VERIFICATION

I, Graciela Christlieb, hereby declare that I am counsel for the Philadelphia Gas Works. I am authorized to make this verification on its behalf. The facts set forth in the foregoing Reply are true and correct to the best of my knowledge, information and belief. I expect to be able to prove these facts at a hearing held in this matter. This verification is made subject to the penalties of 18 Pa. C.S. §4904, concerning false statements to authorities.

July 9, 2020

/s/ Graciela Christlieb

Graciela C. Christlieb, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Ms. Althea Poe-Henderson
8123 Forrest Avenue, 2nd Floor
Philadelphia, PA 19150

July 9, 2020

/s/ Graciela Christlieb
Graciela C. Christlieb, Esq.