

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held April 14, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
John F. Coleman, Jr., Vice Chairman  
Ralph V. Yanora

Rashid El Malik

F-2020-3018838

v.

PECO Energy Company and  
Reliant Energy Northeast LLC  
t/a NRG Residential Solutions

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration and Clarification (Petition) filed by Rashid El Malik (Complainant or Petitioner) on December 27, 2021, seeking reconsideration and clarification of the Opinion and Order entered on December 16, 2021 (*December 2021 Order*), relative to the above-captioned proceeding. On January 6, 2022, Reliant Energy NorthEast LLC t/a NRG Residential Solutions (NRG Residential or Company) filed an Answer to the Petition (Answer). For the reasons set forth below, we shall deny the Petition.

## I. History of the Proceeding

On January 30, 2020, the Complainant filed a Formal Complaint (Complaint) against his natural gas distribution company and electric distribution company (EDC), PECO Energy Company (PECO), and an electric generation supplier (EGS) and natural gas supplier (NGS), NRG Residential, averring that the Respondents engaged in “slamming”<sup>1</sup> of his residential electric and natural gas accounts.<sup>2</sup> Specifically, the Complainant alleged that he never authorized PECO or NRG Residential to switch his electric generation supplier and natural gas supplier from PECO to an EGS and NGS. The Complainant sought damages and a civil penalty.

PECO filed an Answer to the Complaint on March 10, 2020. In the Answer, PECO averred that it processed a switch request NRG Residential submitted to it. PECO also averred that it is not a party to the contracts between the Complainant and NRG Residential and that NRG Residential, not PECO, is the proper Respondent in this proceeding.

On March 12, 2020, PECO filed Preliminary Objections requesting that the Complaint against PECO be dismissed on legal insufficiency grounds. Specifically, PECO stated that the Complaint does not allege any facts that could be construed as a violation by PECO of any statute, regulation, or order. PECO reiterated its position that the supplier switch contracts are between the Complainant and NRG Residential and that PECO followed its Commission-approved Tariff in processing the switches.

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<sup>1</sup> “Slamming” is an unauthorized change made to a customer’s supply service. *HIKO Energy LLC v. Pa. PUC*, 163 A.3d 1079, 1090 (Pa. Cmwlth. 2017).

<sup>2</sup> The Complaint is a timely appeal of the Bureau of Consumer Services’ (BCS) decision dated December 27, 2019, at BCS Case No. 3689289. Appeal of a BCS informal complaint decision is a *de novo* review conducted by either an Administrative Law Judge (ALJ) or a special agent. 52 Pa. Code § 56.173(a).

On May 26, 2020, the Complainant filed an Answer to PECO's Preliminary Objections and agreed to withdraw PECO from this proceeding.

On May 27, 2020, NRG Residential filed an Answer to the Complaint denying the material allegations contained therein.

On June 5, 2020, the Complainant filed a revised Answer to PECO's Preliminary Objections and rescinded his removal of PECO as a Respondent party in this proceeding.

ALJ Conrad A. Johnson conducted a telephonic hearing on July 1, 2020. The Complainant appeared *pro se*. The Complainant testified and presented the testimony of his wife, Rosalind El Malik. The Complainant offered Complainant Exhibits 1-8, and Complainant Exhibits 1-6, and 8 were admitted into evidence. PECO presented the testimony of two witnesses, Carol Reilly, and Anna Mae Migliaccio, and offered PECO Exhibits 1-3, which were admitted into evidence. NRG Residential presented the testimony of one witness, Spencer Halstead, and offered two exhibits, which were admitted into evidence. At the hearing, the ALJ denied PECO's Preliminary Objections. Tr. at 62. The record was closed by Interim Order dated July 30, 2020.

By Initial Decision served on December 1, 2020, the ALJ granted, in part, and denied, in part, the Complaint. The ALJ found that the Complainant was entitled to a full refund of charges for electric generation supply service and for natural gas supply service due to the two unauthorized switches.<sup>3</sup> However, the ALJ also found that the Complainant did not meet his burden to show that a civil penalty should be assessed against NRG Residential. Additionally, the ALJ directed that PECO shall, in the future,

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<sup>3</sup> The Commission has the authority to direct EGSs to refund charges for electric generation supply service and to direct NGSs to refund charges for natural gas supply service when switches are not authorized. 52 Pa. Code §§ 57.177(b) and 59.97(b).

include notice of a ten-day waiting period in which the order switching natural gas suppliers may be cancelled in the confirmation letter it sends to ratepayers pursuant to 52 Pa. Code § 59.93.

The Complainant and PECO filed Exceptions to the Initial Decision on December 11, 2020, and December 18, 2020, respectively, and both the Complainant and PECO filed Replies to Exceptions on December 21, 2020. NRG Residential filed Replies to Exceptions on December 31, 2020.

In the *December 2021 Order*, we denied the Complainant's Exceptions, granted PECO's Exceptions, and adopted the ALJ's Initial Decision as modified. As previously noted, the Complainant filed the instant Petition on December 27, 2021, and NRG Residential filed an Answer to the Petition on January 6, 2022.

By Order entered January 13, 2022, we granted the Petition pending further review of, and consideration on, the merits.

On January 14, 2022, the Petitioner filed a response to NRG Residential's Answer to the Petition.<sup>4</sup>

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<sup>4</sup> We will not consider the Petitioner's response because our Regulations at 52 Pa. Code § 5.572 do not permit the filing of responses to Answers to Petitions for Reconsideration.

## II. Discussion

### A. Legal Standards

Initially, we note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Public Utility Code (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 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 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 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.

## **B. December 2021 Order**

In the *December 2021 Order*, we found that the Complainant failed to satisfy his burden of proving that NRG Residential had engaged in slamming or otherwise acted improperly in the switching of the Complainant’s electric or natural gas service. We agreed with the ALJ that no evidence was presented regarding who signed the enrollment forms on behalf of the Complainant or regarding NRG Residential engaging in other improper acts of unauthorized switches to support a finding that the Company had a pattern of unauthorized enrollments warranting the imposition of a civil penalty. While we agreed that there was insufficient evidence to impose a civil penalty on NRG Residential, we referred the matter to the Commission’s Bureau of Investigation and Enforcement (I&E) for such further action as it may deem appropriate. *December 2021 Order* at 11. In so doing, we noted that the Commission takes seriously allegations of slamming, and in the instant case, the Complaint contained allegations that other customer accounts may have been switched without the customer’s authorization and NRG Residential acknowledged that the sales representative who completed the

Complainant's enrollment had a similar complaint lodged against him before this incident. *Id.* at 11-12 (citing Complaint, Exhibits A & B; PECO Exh. 3).

We also found that the Complainant failed to meet his burden of proving that PECO violated the Code or the Commission's Regulations in how it processed the electric and natural gas supplier switches. We stated that the record fully supports the following findings:

(1) that PECO followed its Commission-approved Tariff procedures and our Regulations in how it processed both switches (Tr. at 42-43, 66-68, 70-73, 81-82; I.D. 4-5); (2) that PECO received notification of the switches on January 21, 2019, and not January 23, 2019 (Tr. at 68, 70-73; I.D. at 4-5); (3) that the information provided by NRG Home to complete the natural gas switch was accurate and matched PECO's records (Tr. at 70-71, 99-100, 102-03); and (4) as discussed further below, that PECO's 6-day waiting period provides sufficient customer notice under current Commission rulings.

*December 2021 Order* at 12.

Further, in addressing PECO's Exceptions, we found that PECO is exempt from the ten-day waiting period requirement of 52 Pa. Code § 59.93(2) pursuant to the Commission's *Final Order, Interim Guidelines Regarding Standards for Changing a Customer's Electricity Generation Supplier*, Docket No. M-2011-2270442 (Order entered October 25, 2012) (*PUC Final Order*), which waived the applicability of 52 Pa. Code § 59.93(2)'s requirement for a ten-day waiting period and held that five days is "sufficient notice for customers and time to act to prevent an unauthorized switch." *Id.* at 12-13 (citing *PUC Final Order* at 45, 48-49). Accordingly, we granted PECO's Exceptions and reversed the ALJ's holding that PECO violated 52 Pa. Code § 59.93(2) by using a six-day waiting period for its natural gas switches. *December 2021 Order* at 13.

### C. Petition and Answer

The Petitioner avers that he satisfied the requisite burden of proof in this case, specifically, that he satisfied his burden of proving that NRG Residential switched his electric and natural gas supplier without his consent and that PECO provided NRG Residential with his private information to facilitate the switch. Petition at 2. The Petitioner also disagrees with the ALJ's conclusion that the evidence did not demonstrate that NRG Residential engaged in a pattern of unauthorized enrollments and, therefore, a civil penalty was not warranted. *Id.* at 3 (citing I.D. at 12). The Petitioner argues that the record supports a finding that NRG Residential engaged in unauthorized enrollments involving the Petitioner as well as other individuals. In support of his arguments that NRG Residential has engaged in a pattern of switching customers without consent, the Petitioner relies on a prior Settlement Agreement filed with the Commission on September 29, 2020, by I&E and Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business (2020 Settlement). Petition at 3-4; *see Pa. PUC, Bureau of Investigation and Enforcement v. Reliant Energy Northeast LLC d/b/a Reliant Energy, et al.*, Docket No. M-2020-3006647 (Order entered March 25, 2021 approving the 2020 Settlement). Further, the Petitioner states that contrary to the conclusion in the *December 2021 Order*, the record did contain evidence demonstrating who initiated the switch of the Petitioner's electric and natural gas supplier. The Petitioner believes the switch was initiated by one of NRG Residential's representatives who previously had a similar unauthorized enrollment complaint filed against him. Petition at 5-6.

The Petitioner also requests clarification of footnote number 5 in the *December 2021 Order*. That footnote provides as follows:

Although the ALJ concluded that no pattern of unauthorized enrollments by NRG Residential was established at the hearing, we note that in a separate Commission proceeding, BCS received approximately six informal complaints between April and September 2018, submitted by residential customers alleging that their electricity accounts were switched to receive electric generation service supplied by NRG Home without their authorization. A review by BCS of the informal complaints determined that the alleged unauthorized enrollments were set up by agents who used an eligible customer list at public retail locations, such as big box stores. BCS became concerned that NRG Home agents were improperly using the eligible customer list, which contains customer information, to switch customers to NRG Home without the customers' consent. Therefore, BCS referred the matter to the Commission's Bureau of Investigation and Enforcement (I&E). This investigation ultimately resulted in a Settlement Agreement filed with the Commission on September 29, 2020, by I&E and Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business (collectively, Company). The Settlement Agreement, which, *inter alia*, assessed the Company a civil penalty of \$175,000, was approved by the Commission on March 25, 2021. *See Pa. PUC, Bureau of Investigation and Enforcement v. Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business*, Docket No. M-2020-3006647 (Order entered March 25, 2021). We note that although this order that we issued in March involves NRG Residential as an EGS rather than an NGS, we are concerned about the allegations raised in this proceeding and about the similarities between the cases. Therefore, we will take this opportunity to

remind EGSs and NGSs in the Commonwealth to conduct their businesses in a proper and lawful manner.

*December 2021 Order* at 7 n.5. Here, the Petitioner appears to continue his argument that the Commission should have used the 2020 Settlement as evidence in this case to support the Petitioner's allegation that NRG Residential has engaged in a continuous pattern of slamming on the basis that the facts in the instant proceeding are similar to those in the 2020 Settlement proceeding. Petition at 6.

In its Answer, NRG Residential avers that the Commission correctly found in the *December 2021 Order* that the Petitioner failed to carry his burden of proof to show that NRG Residential violated the Commission's Regulations in switching his electric and natural gas supplier accounts. NRG Residential also avers that the Petitioner does not raise any new and novel arguments not previously heard or considerations that appear to have been overlooked by the Commission, because the Petitioner essentially raises the same issues in the Petition that he raised in his Exceptions. Answer at 1.

First, NRG Residential states that the only new argument the Petitioner raises concerns the 2020 Settlement, which the Petitioner relies on in support of his argument that the record supports his allegations that NRG Residential engaged in unauthorized enrollment and a pattern of switching customers without their consent. NRG Residential asserts that the Commission did not overlook the 2020 Settlement in the *December 2021 Order*, but, rather, the Commission acknowledged the 2020 Settlement, expressed concerns about the similarities between this proceeding and the allegations raised during the I&E investigation in the 2020 Settlement proceeding, and referred this matter to I&E for such further action as deemed appropriate. Answer at 4. NRG Residential continues that in reaching a determination on the Complaint in this proceeding, the Commission properly limited its decision to the record in this proceeding. NRG Residential submits that while the 2020 Settlement is a public document, it is not

part of the evidentiary record and cannot be relied on in this case. NRG Residential avers that any concerns the Petitioner has expressed regarding other customers' experiences can be addressed through the Commission's referral to I&E. *Id.* at 5.

Additionally, NRG Residential argues that the 2020 Settlement is irrelevant to the Petitioner's claims that the Company committed any regulatory violations in handling the Complainant's enrollments, because the results of the I&E investigation over a six-month period in 2018 are of no consequence to the Petitioner's claims concerning switches in January 2019. *Id.* NRG Residential points out that the Settlement cannot be used as evidence of wrongdoing by the Company, because the 2020 Settlement expressly states that the allegations in that proceeding were not the subject of any hearing and there has been no order, findings of fact, or conclusions of law rendered and that NRG Residential has not made any concessions or admissions of fact or law. *Id.* at 6.

Second, NRG Residential states that the Petitioner did not satisfy his burden of proof because he did not introduce any evidence to support his allegation that an NRG Residential representative signed the enrollment forms that resulted in his electric and natural gas supplier accounts being switched from PECO to NRG Residential. NRG Residential avers that in support of his claim that the Commission has already rejected, the Petitioner relies only on the fact that the sales agent involved in his enrollments had a similar complaint lodged against him and that NRG Residential has since provided that employee with additional training. *Id.* NRG Residential submits that this does not mean the agent engaged in wrongdoing in this instance, and as NRG Residential witness, Spencer Halstead, testified during the hearing, NRG Residential received enrollment forms with the Petitioner's signature indicating the switches were authorized. *Id.* at 6-7. NRG Residential notes that Mr. Halstead stated that a family member or other representative who knew the Petitioner's address and telephone number could have identified himself or herself as the Petitioner or as otherwise authorized to make the switch. *Id.* at 7 (citing Tr. at 100-101, 104-107). According to NRG

Residential, despite the lack of evidence against it in this case, NRG Residential voluntarily agreed to refund the supply charges the Petitioner paid and the Petitioner has been made whole as a result. Answer at 7.

Third, NRG Residential states that it provided evidence to demonstrate that the enrollment forms authorized the switch from PECO to NRG Residential. NRG Residential argues that the Petitioner failed to present evidence to show that NRG Residential switched his electric and natural gas accounts without authorization or that the Company engaged in a pattern of slamming. *Id.* NRG Residential also argues that an argument involving other customers' experiences would have been inappropriate since the Petitioner may not represent others' interests. *Id.* (citing *Painter v. Aqua PA, Inc.*, Docket No. C-2011-2239556 (Order entered May 22, 2014), at 2 n.1). NRG Residential avers that the only evidence concerning other allegations about unauthorized switches was an answer NRG Residential's witness provided in response to the Petitioner's question asking whether the Company has received other requests to switch an account that were not requested by the customer. Answer at 7-8. NRG Residential submits that its witness responded that some customers have made this allegation (Tr. at 109-110), nevertheless, NRG Residential contends that this answer does not show that the Company engaged in any wrongdoing in switching the Petitioner's accounts. Answer at 8.

#### **D. Disposition**

Under the circumstances in this case, we find that the Petitioner has not satisfied the standards for reconsideration. A petition for reconsideration is governed by *Duick*, which essentially requires the Commission to perform a two-step analysis. First, the Commission must determine whether the Petitioner has offered any new arguments that were not addressed by the Commission in its previous order. The Commission will not reconsider its previous decision based on arguments that have already been made. Second, the Commission must evaluate any new argument or evidence and decide

whether modification of its previous order is warranted. However, the Commission will not necessarily modify a prior order just because a petitioner offers a new argument that was not addressed by the Commission in its previous order.

The Petitioner has not raised any arguments that are “new and novel” or that the Commission has not previously addressed. In the *December 2021 Order*, we directly addressed the arguments that the Petitioner raises in his Petition, as he raised the same issues in his Exceptions, namely, that: (1) he satisfied his burden of proving that NRG Residential switched his electric and natural gas supplier without his consent and that PECO improperly provided NRG Residential with his private information to facilitate the switch (Complainant Exc. at 5, 6; Complainant R. Exc. at 1); (2) the evidence demonstrated that NRG Residential engaged in a pattern of unauthorized enrollments and, therefore, a civil penalty was warranted (Complainant Exc. at 6, 7); and (3) the evidence demonstrated that the Petitioner’s electric and natural gas suppliers were switched by one of NRG Residential’s representatives who previously had a similar unauthorized enrollment complaint filed against him (Complainant Exc. at 7). In evaluating the record, the Exceptions, and the Replies thereto, we found that the Petitioner failed to satisfy his burden of proving that NRG Residential had engaged in slamming or otherwise acted improperly in the switching of the Complainant’s electric or natural gas supplier and failed to satisfy his burden of proving that PECO violated the Code or the Commission’s Regulations in how it processed the electric and natural gas supplier switches. *December 2021 Order* at 11, 12.

We also discussed the Petitioner’s allegations that other customer accounts may have been switched without the customer’s authorization and that NRG Residential acknowledged that its sales representative who completed the enrollment in this case had previously had a similar complaint lodged against him. *Id.* at 11. In so doing, we referred the matter to I&E for such further action as it may deem appropriate. *Id.* at 12.

The Petitioner has not provided us with any basis to overturn our decision in the *December 2021 Order*.

Further, while the Petitioner raises a new argument in his Petition regarding his reliance on the 2020 Settlement in support of his claim that NRG Residential engaged in a pattern of switching customers without their consent, we considered the 2020 Settlement in the *December 2021 Order* and stated that we were concerned about the allegations raised in this proceeding and about the similarities between the cases and reminded EGSs and NGSs in Pennsylvania to conduct their businesses in a proper and lawful manner. *December 2021 Order* at 7 n.5. We did not, however, rely on the prior Settlement in reaching any conclusions on the merits in this proceeding, as it would not have been appropriate to do so. The Settlement contained standard language indicating that the “underlying allegations were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered” and that “NRG Home has made no concession or admission of fact or law.” Settlement ¶ 35. Moreover, we have previously stated that we generally do not rely on as precedential or cite to any specific language or settlement terms in prior settlement agreements to reach decisions on the merits in other proceedings. *See Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2020-3018835 (Order on Reconsideration entered April 15, 2021), at 18. For all of these reasons, we shall deny the Petition.

### **III. Conclusion**

Based on our review of the record, the Parties’ positions, and the applicable law, we shall deny the instant Petition; **THEREFORE,**

**IT IS ORDERED:**

That the Petition for Reconsideration and Clarification filed by Rashid El Malik on December 27, 2021, seeking reconsideration and clarification of the Opinion and Order entered on December 16, 2021, is denied, consistent with the discussion in this Opinion and Order.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: April 14, 2022

ORDER ENTERED: April 14, 2022