

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

Public Meeting held December 7, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

M-2022-3012079

v.

Columbia Gas of Pennsylvania, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Reconsideration (Petition) filed by Richard C. Culbertson (Mr. Culbertson) on August 17, 2023. On August 28, 2023, Columbia Gas of Pennsylvania, Inc. (Columbia Gas) filed an Answer to the Petition (Columbia Gas' Answer). Also, on August 28, 2023, the Commission's Bureau of Investigation and Enforcement (I&E) filed an Answer to the Petition (I&E's Answer). For the reasons set forth herein, we will deny the Petition.

Background

On July 31, 2019, a natural gas explosion occurred at 100 Park Lane in Washington, Washington County, Pennsylvania (100 Park Lane). I&E immediately commenced an informal investigation of the natural gas explosion at 100 Park Lane. Thereafter, I&E and Columbia Gas (collectively, the Parties) filed the Original Joint Petition for Approval of Settlement (Original Settlement) on March 4, 2022. On July 18, 2022, Mr. Culbertson filed comments regarding the Original Settlement. On December 27, 2022, the Commission adopted an Opinion and Order that denied the Original Settlement. The Parties filed a revised settlement on February 27, 2023 (Revised Settlement). Mr. Culbertson filed comments to the Revised Settlement on April 5, 2023, and April 13, 2023. On August 3, 2023, the Commission entered an Opinion and Order approving the Revised Settlement between I&E and Columbia Gas (*August 2023 Order*). Mr. Culbertson filed the Petition on August 17, 2023. On August 28, 2023, I&E and Columbia Gas filed answers to the Petition.

Discussion

Legal Standards

In considering the Petition for Reconsideration, we note that any issue or argument that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, 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.

In exercising Commission authority to amend or rescind an order pursuant to Section 703(g) of the Code, the Supreme Court of Pennsylvania has stated: “Because such relief may result in disturbance of final orders, it must be granted judiciously and only under appropriate circumstances.” *See City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980).

The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982) (*Duick*):

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.

Duick, 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Pub. Serv. Comm'n*, 179 A. 850, 854 (Pa. Super. 1935)).

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. *Duick*, 56 Pa. P.U.C. at 559.

Petition

In the Petition, Mr. Culbertson claims that the Commission violated 66 Pa. C.S. § 331 by issuing the *August 2023 Order* without holding a hearing. Petition at 5. Next, Mr. Culbertson avers the Commission has no authority, under the Public Utility Code or the Commission’s Regulations, to conduct an informal investigation. Further, Mr. Culbertson asserts the informal investigation did not identify root causes of the explosion and generally was not a thorough investigation. Petition at 5-6. Lastly, Mr. Culbertson claims the informal investigation should be publicly available as part of the record. Petition at 6-7. Mr. Culbertson also discusses several other issues including: issues he has with Columbia Gas’ service to a property he owns; the 2018 Columbia Gas of Massachusetts incident; Columbia Gas firing an employee after testifying in a rate case; his own testimony in previous rate cases involving Peoples Natural Gas Company LLC and Columbia Gas. Petition at 8-13. For relief, Mr. Culbertson requests the Commission hold a hearing consistent with the Code. Additionally, Mr. Culbertson

requests the Commission take action to restore the public's confidence in the Commission and Columbia Gas. Petition at 16-17.

Columbia Gas' Answer to the Petition

In Columbia Gas' Answer, it argues the Petition raises new issues that Mr. Culbertson could have raised in his previous comments. Columbia Gas notes the first new issue is Mr. Culbertson's allegation that the *August 2023 Order* violates 66 Pa. C.S. § 331 because no hearing was held before the Commission issued the *August 2023 Order*. The Company states the second new issue Mr. Culbertson raises is that the *August 2023 Order* is the result of an informal investigation, which Mr. Culbert claims is illegal because the Code does not define an informal investigation. In response, Columbia Gas asserts that in his comments, Mr. Culbertson never requested a hearing or argued that informal investigations are illegal. Since Mr. Culbertson did not previously raise these issues when given the opportunity, Columbia Gas claims the Petition should be denied. Columbia Gas Answer at 3-4.

Columbia Gas submits that if Mr. Culbertson raised the issue of holding a hearing before the Commission enters an order, it is legally unsupported. The Company notes by Orders entered June 16, 2022, and April 20, 2023, and published in the *Pennsylvania Bulletin*, the Commission sought comments in this proceeding before issuing a final Opinion and Order. Therefore, Columbia Gas avers Mr. Culbertson was notified that the Commission was proceeding without a hearing. As noted above, the Company explains Mr. Culbertson could have sought a hearing in his comments, however he failed to do so. Lastly, Columbia Gas observes neither Mr. Culbertson's comments nor the Petition dispute material fact in this proceeding that would warrant the Commission holding a hearing. Columbia Gas Answer at 4.

Next, Columbia Gas argues Mr. Culbertson incorrectly claims that there is no statutory or regulatory authority for an informal investigation. The Company cites Section 3.113 of the Commission’s regulations that establishes “The Commission staff may conduct informal investigations or informal proceedings in appropriate circumstances regarding the condition and management of a public utility or other person subject to its jurisdiction.” 52 Pa. Code § 3.113(a). Therefore, Columbia Gas asserts Mr. Culbertson’s argument that the *August 2023 Order* is illegal as a result of I&E’s informal investigation is baseless. Columbia Gas Answer at 4-5.

Finally, Columbia Gas declares the Petition does not satisfy the *Duick* standard. The Company notes the petition raises several arguments that he previously raised in this proceeding. Therefore, Columbia Gas asserts these arguments are not new and were previously considered and rejected by the Commission in the *August 2023 Order*. Further, Columbia Gas notes the Petition raises issues which have been addressed in either this proceeding or other proceedings. As a result, the Company maintains the Petition fails to meet the *Duick* standard for reconsideration. Columbia Gas Answer at 5-6.

I&E’s Answer to the Petition

I&E claims that the Petition should be denied on any one of four separate grounds. First, I&E alleges Culbertson is not a party that is permitted to file a Petition for Reconsideration under the Commission’s regulations. I&E notes the Commission’s Regulations requires that a person who wishes to intervene must file a petition to intervene with the Commission. 52 Pa. Code § 5.71. Furthermore, I&E identifies that to be eligible to intervene, a person must either claim a right to intervene or have an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. 52 Pa. Code § 5.72. I&E observes that Mr. Culbertson’s interest in this case appears to be that of a concerned citizen. Were any

concerned citizen granted the ability to make themselves a party to any proceeding, I&E argues the Commission's rules of procedure would be upended. I&E's Answer at 4-5.

Second, I&E contends the Petition does not comply with Section 5.572 of the Commission's Regulations, noting that a petition for reconsideration must "specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired." 52 Pa. Code § 5.572. I&E avers the Petition does not have numbered paragraphs on several pages, does not specify findings in the *August 2023 Order* that the Petition is disputing and does not contain record references. I&E's Answer at 5-6.

Third, I&E claims the Petition makes a legal argument that the Commission has no authority to approve the Settlement because there was no hearing and invokes the federal sentencing guidelines. Mr. Culbertson asserts Section 331 of the Code requires a hearing be held, however I&E argues this ensures that if a party so desires, a hearing will be held before the Commission issues an order. Here, I&E notes neither party wanted a hearing because the Parties chose to settle the matter. Finally, I&E discuss the federal sentencing guidelines are inappropriate because the Commission is not a federal court, and I&E is not empowered to bring federal criminal charges against any party, and Columbia Gas has not been convicted of a federal crime in this matter. I&E's Answer at 6-8.

Fourth, I&E states the Petition should be denied because the Settlement is in the public interest, as articulated by I&E and Columbia Gas in the Settlement and in the Commission's *August 2023 Order*. I&E notes the Commission went through the 10 *Rosi* standards and the Commission recognized that the corrective actions will benefit all of Columbia Gas' customers. I&E's Answer at 9.

Disposition

As mentioned, Petitions for Reconsideration are governed by *Duick*, which essentially requires a two-step analysis. First, we determine whether a party has offered new or novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. We will not reconsider our previous decision based on arguments that have already been considered. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. The second step of the *Duick* analysis is, therefore, to evaluate the new or novel argument or overlooked consideration, in order to determine whether to modify our previous decision.

Based on our review of the Petition for Reconsideration, the record, and the applicable law, we will deny the Petition, consistent with this Opinion and Order. First, we shall address the Petition's new argument that the Commission violated 66 Pa. C.S. § 331 by issuing the *August 2023 Order* without holding a hearing. We note Section 331 of the Code does not require a hearing before the Commission enters an order, rather the Commission must afford the Parties a hearing:

In conducting the investigations the commission may proceed, either with or without a hearing, as it may deem best, but it shall make no order without affording the parties affected thereby a hearing.

66 Pa. C.S. § 331(a).

At no point in this proceeding did Columbia Gas, I&E or Mr. Culbertson request a hearing nor did the Commission deny the Parties or Mr. Culbertson a hearing. Here, the Parties entered into the Revised Settlement instead of proceeding to a hearing.

Therefore, the *August 2023 Order* approving the Revised Settlement did not violate the Code or overlook the lack of a hearing.

Next, we shall address the Petition's new argument that the *August 2023 Order* is illegal since Title 66 does not mention informal investigations. As noted in Section 3.113, Title 66 confers authority to the Commission to promulgate regulations necessary for the discharge of its duties under the Code. 66 Pa. C.S. §§ 501, 504-506, 1301 and 1501. The Commission's Regulations at Section 3.113 describes informal investigations:

The Commission staff may conduct informal investigations or informal proceedings in appropriate circumstances regarding the condition and management of a public utility or other person subject to its jurisdiction. The informal investigations are typically undertaken to gather data or to substantiate allegations of potential violations of the act and may be conducted with or without hearing.

52 Pa. Code § 3.113(a).

Here, Section 3.113 clearly allows the Commission to conduct informal investigations, as I&E conducted in this proceeding. Moreover, and particularly in light of the first new argument of the Petition, Section 3.113 also permits informal investigations to be conducted without a hearing. Accordingly, we find Mr. Culbertson's argument that informal investigations are illegal, and therefore making the *August 2023 Order* illegal, to be meritless.

Finally, Mr. Culbertson raises arguments in his Petition which have been previously addressed in either this proceeding or other proceedings. As noted by Columbia Gas and I&E, these arguments are not new and were previously considered and rejected by the Commission. Columbia Gas Answer at 5-6, I&E Answer at 8-9.

Consequently, Mr. Culbertson's other arguments in the Petition fail to meet the *Duick* standard for reconsideration.

Conclusion

Based on our review of the Petition, the record, and the applicable law, we find that Mr. Culbertson has not presented any grounds on which to reconsider the *August 2023 Order*. Accordingly, we shall deny Mr. Culbertson's Petition, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reconsideration, filed by Richard C. Culbertson on August 17, 2023, at Docket No. M-2022-3012079, is denied, consistent with this Opinion and Order.
2. That this proceeding be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 7, 2023

ORDER ENTERED: December 7, 2023