

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

Public Meeting held December 21, 2023

Commissioners Present:

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

Allison Lyn Gaiser

C-2022-3036684

v.

West Penn Power Company

OPINION AND ORDER

BY THE COMMISSION:

This matter comes before the Public Utility Commission (Commission) on *sua sponte* reconsideration. On June 27, 2023, Deputy Chief Administrative Law Judge (DCALJ) Mark A. Hoyer issued an Initial Decision (I.D.) in the above-captioned proceeding. No exceptions were filed to the Initial Decision. On August 15, 2023, the Commission issued a Final Order in accordance with Section 332(h) of the Code, 66 Pa. C.S. § 332(h). However, we have exercised our right to *sua sponte* rescind the Final Order pursuant to Section 703(g) of the Public Utility Code (Code), 66 Pa. C.S. § 703(g).

I. History of the Proceeding

On October 31, 2022, Allison Lyn Gaiser (Ms. Gaiser or Complainant) filed a Formal Complaint (Complaint) with the Commission against West Penn Power Company (West Penn or Company). In the Formal Complaint form, Ms. Gaiser indicated that there were incorrect chares on her bill and that she was “signed up with Eligo” but claimed she never signed up with Eligo. Complaint at 2. As relief, Ms. Gaiser requested to be refunded any additional charges, the lowest rate possible from West Penn and paper statements only. *Id.* at 3.

On November 29, 2022, West Penn filed an Answer and New Matter to the Complaint. In its Answer, West Penn denied the Complainant’s allegation that she received incorrect charges on her bill and further denied allegations pertaining to her enrollment with Eligo as her electric supplier. Answer at 1-4. In New Matter, West Penn explained that the Complainant is disputing the charges and the billing and business practices of Eligo. *Id.* at 5. West Penn stated that any finding of a refund due and owing to the Complainant based on electric generation supplier (EGS) directly relate to Eligo and not West Penn. *Id.*

On January 4, 2023, the Commission issued an Initial Call-In Telephonic Hearing Notice (Hearing Notice) via U.S. First-Class Mail which scheduled the hearing for March 14, 2023, and assigned DCALJ Hoyer.

On January 5, 2023, DCALJ Hoyer issued a Prehearing Order via U.S. First-Class Mail which included, *inter alia*, the date and time of the hearing as well as

call-in instructions for participating in the hearing. Also included in the Prehearing Order was the following warning regarding the failure to appear:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed ‘with prejudice’ which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

Prehearing Order at 1.

On March 14, 2023, the hearing convened, as scheduled. Counsel for West Penn was present. The Complainant did not call-in for the hearing and did not request a continuance. During the hearing, Counsel for West Penn moved that the Complaint be dismissed for lack of prosecution. Tr. At 7.

The record closed on April 4, 2023.

On June 27, 2023, DCALJ Hoyer issued an Initial Decision granting West Penn’s Motion to Dismiss Ms. Gaiser’s Complaint.

On August 15, 2023, in accordance with 66 Pa. C.S. § 332(h), the Initial Decision became final without further Commission action. The Final Order, *inter alia*, dismissed the Complaint and marked the proceeding closed.

II. Discussion

A. Legal Standards

1. Commission's Power to Amend or Rescind Orders

By the terms of Section 703(g) of the Code, the Commission has the power to amend or rescind its own orders at any time, subject only to the requirements of due process. Section 703(g) of the Code states:

The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

66 Pa. C.S. § 703(g); *see also*, *Department of Highways v. Pa. PUC*, 185 Pa. Super. 418, 138 A.2d 143 (1958). 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); *see also*, *West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1056 (Pa. Cmwlth. 1995) (*West Penn Power*); *see also*, *Feleccia v. PPL Electric Utilities Corp.*, Docket No. C-20016210 (Order entered March 7, 2003) (*Feleccia*).

Requests for such relief must be consistent with Section 5.572(d) of our regulations, 52 Pa. Code § 5.572 (d), relating to petitions for relief following the issuance

of a final decision. Under Section 5.572(d), a party may seek relief from a final Commission order at any time by petition for rescission or amendment.

The standards for granting rescission, amended and/or reconsideration have been established under the holding of *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (*Duick*). The standards for granting reconsideration, involving rescission and amendment of a prior Commission Order, include the raising of “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*.

2. Due Process

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (*Schneider*), citing, *Fusaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider*, 479 A.2d at 15.

B. DCALJ’s Initial Decision

DCALJ Hoyer made ten (10) Findings of Fact and reached six (6) Conclusions of Law. I.D. at 2-3; 5-6. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by the Opinion and Order.

In the Initial Decision, DCALJ Hoyer noted that the Complainant had adequate notice of the time and date of the hearing but neither appeared for the hearing

nor did she explain her absence therefore it was appropriate to dismiss the Complaint with prejudice. I.D. at 4.

DCALJ Hoyer indicated that on January 4, 2023, the Commission issued a Hearing Notice that scheduled this matter for a telephonic hearing to be held on March 14, 2023. I.D. at 4. The DCALJ also noted that a Prehearing Order issued on January 5, 2023 advised the parties of the date and time of the scheduled hearing, contained a warning on the failure to appear, and also provided instructions on how to request a continuance. *Id.* Both the Hearing Notice and Prehearing Order were served on the Complainant via U.S. First-Class Mail to the address provided by the Complainant to the Commission and neither were returned as undeliverable. *Id.* DCALJ Hoyer stated that both documents were presumed to be received by the Complainant and that Ms. Gaiser had adequate notice of the scheduled hearing. *Id.* (citing, *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982)).

The Initial Decision explained that as the proponent of a rule or order, the Complainant has the burden of demonstrating that the facts alleged in her Complaint are true and that she is entitled to the relief she requested. I.D. at 5; 66 Pa. C.S. § 332(a). DCALJ Hoyer reasoned that by not appearing for the hearing to present evidence, Ms. Gaiser failed to meet this burden of proof. I.D. at 5. DCALJ Hoyer stated that the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so and ultimately dismissed the Complaint. *Id.*

C. Final Order

As noted above, on August 15, 2023, the Commission entered a Final Order stating that, in accordance with the provisions of Section 332(h) of the Code, 66 Pa. C.S.

§ 332(h), the Initial Decision of DCALJ Hoyer issued June 27, 2023, “has become final without further Commission action.” The Final Order, *inter alia*, dismissed the Complaint and marked the proceeding closed.

III. Disposition

It has come to the attention of the Commission that there may have been an issue with providing notice to the Parties in this proceeding. As stated, *supra*, due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Therefore, out of an abundance of caution and to ensure due process we will rescind the *August 2023 Final Order* issued in this proceeding and provide the Parties with an opportunity for additional proceedings to ensure that this potential notice issue is resolved by fully affording the Parties their due process rights, specifically providing notice and the opportunity to appear and be heard, with respect to this matter, consistent with this Opinion and Order. Accordingly, we will re-serve a copy of the Initial Decision issued in this proceeding on all Parties of record and afford them an opportunity to file Exceptions and Replies to Exceptions in accordance with the Secretarial Letter accompanying the Initial Decision. If Exceptions are timely filed, we will consider the Exceptions and any responses thereto. However, if no Exceptions are timely filed, then the matter may be handled in accordance with applicable law pursuant to Section 332(h) of the Public Utility Code including that the matter may become final by operation of law.

IV. Conclusion

Based on the foregoing discussion, we will rescind the *August 2023 Final Order* issued in this proceeding and re-serve a copy of the Initial Decision to all Parties of record, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Final Order entered on August 15, 2023, at Docket No. C-2022-3036684 is rescinded, consistent with this Opinion and Order.
2. That the Commission's Secretary's Bureau shall serve a copy of this Opinion and Order on the Parties of record.
3. That the Commission's Secretary's Bureau shall re-serve a copy of the Initial Decision issued in this proceeding on all Parties of record along with a Secretarial Letter providing instructions for the filing of Exceptions and Reply Exceptions.
4. That, if the Parties file timely Exceptions in accordance with the Secretarial Letter accompanying the re-served Initial Decision, the Commission will consider the Exceptions and any Replies thereto.
5. That, if the Parties do not timely file Exceptions in accordance with the Secretarial Letter, then the matter may be handled in accordance with applicable law.

6. That, if the matter becomes final by operation of law, the Secretary's Bureau shall mark the proceeding at this docket closed.

BY THE COMMISSION,

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

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 21, 2023

ORDER ENTERED: December 21, 2023