

**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

Bernard S. McKenzie

C-2023-3037982

v.

Pennsylvania Electric Company

OPINION AND ORDER

BY THE COMMISSION:

This matter comes before the Public Utility Commission (Commission) on *sua sponte* reconsideration. On August 8, 2023, Special Agent Michael J. Mroczka issued an Initial Decision (I.D.) in the above-captioned proceeding. No exceptions were filed to the Initial Decision. On September 8, 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 January 27, 2023, Bernard J. McKenzie (Mr. McKenzie or Complainant) filed a Formal Complaint (Complaint) with the Commission against Pennsylvania Electric Company (Penelec or Company). In the Formal Complaint form, Mr. McKenzie requested a payment arrangement. Complaint at 2.

On February 21, 2023, Penelec filed an Answer denying the material allegations of the Complaint. In its Answer, Penelec alleged that the Complainant is enrolled in the Company's Pennsylvania Customer Assistance Program (PCAP). Answer at 1-2. The Answer also alleges that if the Complainant requested to be removed from PCAP, he would be ineligible for a subsequent payment arrangement because he defaulted on a previous Commission-issued payment arrangement. *Id.* at 2. Finally, the Answer requested that the Complaint be dismissed with prejudice. *Id.* at 5.

On February 23, 2023, the Commission issued an Initial Call-In Telephonic Hearing Notice (Hearing Notice) which scheduled the hearing for March 29, 2023 and assigned Special Agent Michael Mroczka to the matter.

On March 20, 2023, Special Agent Mroczka issued a Prehearing Order which included, *inter alia*, the date and time of the hearing and procedures applicable to the proceeding.

The hearing convened as scheduled on March 29, 2023. The Complainant appeared *pro se* and Counsel for Penelec was present. During the hearing, Mr. McKenzie informed Special Agent Mroczka that he did not receive Penelec's proposed exhibits via electronic mail. Tr. at 8. Penelec requested a continuance to serve the exhibits via first

class mail. Tr. at 10-11. Special Agent Mroczka granted the continuance and scheduled a further hearing on April 17, 2023. Tr. at 12.

On April 17, 2023, the hearing reconvened, as scheduled. The Complainant appeared *pro se*, testified on his own behalf, and offered no exhibits for the record. Counsel appeared on behalf of Penelec and presented the testimony of one witness and identified nine exhibits that were admitted into the record. I.D. at 2-3.

The record closed on May 11, 2023.

On August 8, 2023, Special Agent Mroczka issued an Initial Decision dismissing Mr. McKenzie's Complaint.

On September 8, 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. Special Agent's Initial Decision

Special Agent Mroczka made twelve (12) Findings of Fact and reached six (6) Conclusions of Law. I.D. at 3-4; 8-9. 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, Special Agent Mroczka noted that Chapter 14 of the Public Utility Code governs Commission-issued payment arrangements. I.D. at 5. The Special Agent determined that although Mr. McKenzie's gross monthly income and household size would qualify him for a five-year payment arrangement under 66 Pa. C.S. § 1405(b), Mr. McKenzie's participation in Penelec's PCAP makes him ineligible for a payment arrangement under 66 Pa. C.S. § 1405(c). *Id.* at 7.

Additionally, Special Agent Mroczka points out that even if Mr. McKenzie's arrears were not PCAP arrearages, he would still be ineligible for a Commission-issued payment arrangement because he was granted a previous payment

arrangement and defaulted for non-payment. I.D. at 7. Furthermore, the Special Agent explains if the Complainant had not been enrolled in PCAP or if he were to withdraw from PCAP with no PCAP arrearages, he must show that he experienced a “change of income” to receive a subsequent Commission-issued payment arrangement. *Id.*; 66 Pa. C.S. § 1405(d).

In the Initial Decision, Special Agent Mroczka states that Mr. McKenzie’s monthly household income at the time of his prior Commission-issued payment arrangement was \$772 and his current monthly income is \$914, representing an increase of \$142 per month since his 2020 payment arrangement. I.D. at 8. Since Mr. McKenzie’s monthly household income has increased instead of decreased, the Special Agent determined he would not be eligible for a second or subsequent Commission-issued payment arrangement had he not been enrolled in PCAP in accordance with 66 Pa. C.S. §§ 1403; 1405(d). *Id.*

Special Agent Mroczka denied the Complainant’s request for a Commission-issued payment arrangement and dismissed the Complaint. I.D. at 8.

C. Final Order

As noted above, on September 8, 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 Special Agent Mroczka issued August 8, 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 *September 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 *September 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 September 8, 2023, at Docket No. C-2023-3037982, 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.

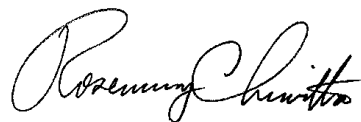
3. That the Commission's Secretary's Bureau shall re-serve a copy of the Initial Decision issued in this proceeding on all Parties of record along with a Secretarial Letter providing instructions for the filing of Exceptions and Reply Exceptions.

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,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 21, 2023

ORDER ENTERED: December 21, 2023