

**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

Michael Hickson

F-2022-3036853

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

This matter comes before the Public Utility Commission (Commission) on *sua sponte* reconsideration. On April 24, 2023, Administrative Law Judge (ALJ) Eranda Vero issued an Initial Decision (I.D.) in the above-captioned proceeding. No exceptions were filed to the Initial Decision. On May 26, 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 November 14, 2022, Michael Hickson (Mr. Hickson or Complainant) filed a Formal Complaint (Complaint) with the Commission against PECO Energy Company (PECO or Company).¹ In the Formal Complaint form, Mr. Hickson did not state the reason for the Complaint but instead checked the “Other” box and indicated that he had attached documents. Complaint at 2. The documents attached to the Complaint appear to be copies of a pleading he filed with the United States District Court, Eastern District of Pennsylvania. *See* Complaint Attachments. The attached pleading alleges a violation of the Commerce Clause and Seventh Amendment to the United States Constitution. *Id.*

Complainant requested that the Commission “Address open case # 22-CV-2053” as relief. Complaint at 3.

On December 6, 2022, PECO filed an Answer and Preliminary Objections to the Complaint. The Preliminary Objections requested that the Commission dismiss the Complaint against PECO for lack of Commission jurisdiction. Preliminary Objections at 1. PECO’s Preliminary Objections contained a Notice to Plead, requiring the Complainant to file a response within ten (10) days of service and warned that if no response was filed, a decision may be rendered against the Complainant. *See* Preliminary Objection’s Notice to Plead. No response to PECO’s Preliminary Objections was filed.

¹ This is a timely appeal from the Bureau of Consumer Services (BCS) determination at BCS No. 3853523 issued on September 29, 2022. An appeal of a BCS informal complaint decision is a *de novo* review conducted by either an ALJ or a special agent. 52 Pa. Code § 56.173(a).

On February 10, 2023, ALJ Vero issued an Interim Order denying PECO's Preliminary Objections and directed the Complainant to file an amendment to his Complaint by no later than February 28, 2023. Interim Order at 5.

The Complainant failed to amend his Complaint by the February 28, 2023 deadline.

On March 2, 2023, PECO filed a Motion to Dismiss (Motion) Mr. Hickson's Complaint. The Motion contained a Notice to Plead directing the Complainant to file a response within ten (10) days of service.² See, Motion's Notice to Plead. Mr. Hickson failed to file a response to the Motion.

On April 24, 2023, ALJ Vero issued an Initial Decision granting PECO's Motion to Dismiss Mr. Hickson's Complaint.

On May 26, 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 without prejudice and marked the proceeding closed.

² Pursuant to 52 Pa. Code § 5.102(b), an answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion.

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. ALJ’s Initial Decision

ALJ Vero made eleven (11) Findings of Fact and reached five (5) Conclusions of Law. I.D. at 3-4; 7-8. 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, ALJ Vero noted that Mr. Hickson’s Complaint failed to conform to the Commission’s requirements regarding complaints because it did not provide detail regarding the reason for the Complaint. I.D. at 5. The ALJ also stated

that the Complainant failed to request relief from the Commission other than his request for the Commission to address a case pending before the Federal District Court.

Id. at 5-6.

ALJ Vero reasoned that due to the lack of details in the Complaint, PECO was deprived of the opportunity to understand and respond in a meaningful way to the Formal Complaint. I.D. at 6. ALJ Vero acknowledged the fact that the Complainant was *pro se* and denied PECO's Preliminary Objections in order to allow the Complainant to amend his Complaint by February 28, 2023. *Id.*

The Complainant did not file an amended complaint as instructed by the Interim Order and as such, continued to deprive PECO of the opportunity to understand and respond in a meaningful way. I.D. at 6. The ALJ stated that Mr. Hickson's reference in his Complaint to a Federal Court proceeding, where violations of the Commerce Clause and the Seventh Amendment were alleged, fall outside the Commission's jurisdiction. *Id.* at 6-7 (*citing*, 66 Pa. C.S. § 701).

ALJ Vero concluded that because there was no genuine issue as to a material fact, PECO was entitled to judgment as a matter of law. I.D. at 6. The ALJ dismissed the Complaint without prejudice to allow the Complainant the opportunity to cure the substantive defects of his pleading through refiling. *Id.*

C. Final Order

As noted above, on May 26, 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 ALJ Vero issued April 24, 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 *May 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 *May 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 May 26, 2023, at Docket No. F-2022-3036853, 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