

**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

Monique Washington

F-2022-3036012

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 27, 2023, Administrative Law Judge (ALJ) Marta Guhl issued an Initial Decision (I.D.) in the above-captioned proceeding. No exceptions were filed to the Initial Decision. On May 30, 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 September 22, 2022, Monique Washington (Ms. Washington or Complainant) filed a Formal Complaint (Complaint) with the Commission against PECO Energy Company (PECO or Company).<sup>1</sup> In the Formal Complaint form, Ms. Washington indicated that there were incorrect charges on her bill and requested a payment arrangement. Complaint at 2.

On October 31, 2022, PECO filed an Answer denying the material allegations of the Complaint.

On November 9, 2022, the Commission issued an Initial Call-In Telephonic Hearing Notice (Hearing Notice) which scheduled the hearing on January 17, 2023 and assigned ALJ Marta Guhl. The Hearing Notice advised the parties of the date and time of the hearing and included the following warning to the Parties 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 issue(s) 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.

Hearing Notice at 1.

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<sup>1</sup> This is a timely appeal from the Bureau of Consumer Services (BCS) determination at BCS No. 3840966 issued on August 19, 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 December 13, 2022, ALJ Guhl issued a Prehearing Order which included, *inter alia*, the same cautionary language concerning failure to appear along with various procedural requirements and instructions on how to request a continuance.

The hearing convened as scheduled on January 17, 2023. Counsel for PECO was present however, the Complainant failed to call into the hearing. Counsel for PECO moved that the Complaint be dismissed with prejudice for lack of prosecution. Tr. at 5.

The record closed on January 30, 2023.

On April 27, 2023, ALJ Guhl issued an Initial Decision granting PECO's Motion to Dismiss Ms. Washington's Complaint.

On May 30, 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.

## **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 recession or amendment.

The standards for granting recission, 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 recission 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 Guhl made twelve (12) Findings of Fact and reached seven (7) Conclusions of Law. I.D. at 3-4; 6-7. 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 Guhl noted that the Commission served the Hearing Notice on the Complainant electronically on November 9, 2022, regarding the January 17, 2023 hearing. I.D. at 4. The ALJ explained that the Hearing Notice informed the Parties of the date and time for the hearing and provided instructions on how to call in to the hearing. *Id.* The Hearing Notice also advised the Complainant that failure to appear may result in dismissal with prejudice. *Id.*

The ALJ also pointed out that the Prehearing Order dated December 13, 2022 was also served electronically on the Complainant and that neither the Hearing Notice nor the Prehearing Order were returned as undeliverable. I.D. at 4. The Initial Decision explained that both the Hearing Notice and Prehearing Order were served on the Complainant electronically, at the email address provided by her. *Id.* ALJ Guhl acknowledged that documents sent in the ordinary course of business were presumed to be received by the Complainant. *Id.* (citing, *Hu v. PECO Energy Co.*,

Docket 5 No. C-2019-3012075 (Order entered December 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered January 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered November 16, 2016).

ALJ Guhl determined that the Complainant's absence was not unavoidable and therefore waived the opportunity to participate in the hearing by failing to appear. I.D. at 5. Furthermore, the ALJ reasoned, by failing to appear, the Complainant did not meet her burden of proof. *Id.* at 6.

ALJ Guhl concluded that because the Complainant failed to appear and did not meet her burden of proof it was appropriate to grant PECO's Motion to Dismiss the Complaint. I.D. at 6. The ALJ dismissed the Complaint without prejudice. *Id.* (citing, *Hoyt v. Columbia Gas of Pa., Inc.*, Docket No. F-2022-3032680 (Order adopted April 20, 2023)).

### **C. Final Order**

As noted above, on May 30, 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 Guhl issued April 27, 2023, "has become final without further Commission action." The Final Order, *inter alia*, dismissed the Complaint without prejudice 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 30, 2023, at Docket No. F-2022-3036012, 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 fluid and cursive, written over a light blue horizontal line.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: December 21, 2023

ORDER ENTERED: December 21, 2023