

**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

Delia Kent

F-2022-3036839

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

This matter comes before the Public Utility Commission (Commission) on *sua sponte* reconsideration. On June 21, 2023, Administrative Law Judge (ALJ) Darlene Davis Heep issued an Initial Decision (I.D.) in the above-captioned proceeding. No exceptions were filed to the Initial Decision. On July 27, 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 16, 2022, Delia Kent (Ms. Kent or Complainant) filed a Formal Complaint (Complaint) with the Commission against Philadelphia Gas Works (PGW or Company).¹ In the Formal Complaint form, Ms. Kent indicated that PGW was threatening to shut off her service or had already shut it off. Complaint at 2. As relief, Ms. Kent requested that her gas service be restored and for a payment arrangement. *Id.* at 3.

On December 7, 2022, PGW filed an Answer to the Complaint. In its Answer, PGW stated that it had established service for Ms. Kent at the service address in 2009 and terminated service in May 2022 due to non-payment. Answer at 1.

On December 13, 2022, the Commission issued an Initial Call-In Telephonic Hearing Notice (Hearing Notice) which scheduled the hearing for February 3, 2023, and assigned ALJ Heep. The Hearing Notice was electronically served on the Complainant and was not returned as undeliverable.

On December 16, 2022, ALJ Heep issued a Prehearing Order which included, *inter alia*, the date and time for the hearing along with instructions on how to participate in the hearing. Like the Hearing Notice, the Prehearing Order was also electronically served on the Complainant and was not returned as undeliverable.

The hearing convened as scheduled on February 3, 2023. The Complainant appeared *pro se* and Counsel for PGW was present. During the hearing, Counsel for

¹ This is a timely appeal from the Bureau of Consumer Services (BCS) determination at BCS No. 3873025 issued on October 31, 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).

PGW requested a continuance to allow the Complainant to apply for various assistance programs. Tr. at 6. ALJ Heep granted the continuance requested by PGW. Tr. at 7.

On February 7, 2023, a Further Call-In Telephonic Hearing Notice (Further Hearing Notice) was issued, scheduling a hearing for March 24, 2023. On the same day, a Prehearing Order was issued for the March 24, 2023, hearing. Both the Further Hearing Notice and Prehearing Order were electronically served on the Complainant to the email address provided to the Commission and neither were returned as undeliverable.

On March 24, 2023, the hearing reconvened as scheduled. Counsel for PGW was present but the Complainant failed to call in to the hearing. A brief recess was taken to allow the Complainant time to call in. Tr. at 13. Upon return, Complainant had still not dialed into the hearing. *Id.* Counsel for PGW moved to dismiss the Complaint for failure to prosecute. Tr. at 14-15.

The record closed on March 28, 2023.

On June 21, 2023, ALJ Heep issued an Initial Decision granting PGW's Motion to Dismiss Ms. Kent's Complaint.

On July 27, 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 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 Heep made twenty-six (26) Findings of Fact and reached seven (7) Conclusions of Law. I.D. at 3-6; 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, ALJ Heep noted that the Commission served the Hearing Notices and the Prehearing Orders on the Complainant electronically to the email address Ms. Kent provided to the Commission. I.D. at 6. ALJ Heep explained that

the Complainant appeared for the February 3, 2023 hearing, but did not appear for the March 24, 2023 hearing. *Id.* Since the documents regarding the March 24, 2023 hearing were sent to the same email address as the documents for the first hearing and were not returned undeliverable, ALJ Heep determined that the Complainant received notice of the March 24, 2023 hearing. *Id.* (*citing, Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered December 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered January 27, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016- 2553416 (Final Order entered November 16, 2016) (*Morella*)).

The Initial Decision states that the Complainant has not contacted the Commission or the ALJ to explain why her failure to attend the further hearing was unavoidable therefore, the Complainant waived her opportunity to participate in the hearing by failing to appear. I.D. at 7 (*citing, 52 Pa. Code § 5.245(a); Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995)).

ALJ Heep determined that as the party filing the Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that it is entitled to relief. I.D. at 8 (*citing, Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950)*). Furthermore, the ALJ reasoned, by failing to appear, the Complainant did not meet her burden of proof and it is appropriate to dismiss the Complaint without prejudice in accordance with *Everett v. Phila. Gas Works*, Docket No. C-2022- 3034443 (Opinion and Order entered May 30, 2023). *Id.*

C. Final Order

As noted above, on July 27, 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 Heep issued June 21, 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 *July 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 *July 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 July 27, 2023, at Docket No. F-2022-3036839, 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, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 21, 2023

ORDER ENTERED: December 21, 2023