

**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

Marcus Culver

F-2022-3037377

v.

Philadelphia Gas Works

**OPINION AND ORDER**

**BY THE COMMISSION:**

This matter comes before the Public Utility Commission (Commission) on *sua sponte* reconsideration. On August 3, 2023, Deputy Chief Administrative Law Judge (DCALJ) Christopher P. Pell issued an Initial Decision (I.D.) in the above-captioned proceeding. No exceptions were filed to the Initial Decision. On September 6, 2023, the Commission issued a Final Order in accordance with Section 332(h) of the Code, 66 Pa. C.S. § 332(h). However, we will exercise 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) as will be discussed, *infra*, consistent with this Opinion and Order.

## I. History of the Proceeding

On December 15, 2022, Marcus Culver (Mr. Culver or Complainant) filed a Formal Complaint (Complaint) with the Commission against Philadelphia Gas Works (PGW or Company).<sup>1</sup> In the Formal Complaint form, Mr. Culver indicated that PGW shut off his gas, he contacted PGW to reconnect his service but was informed he owed \$9,300 due to theft of service. Complaint at 3-4. The Complainant asserted that he was unaware of any theft of service. *Id.* at 4. As relief, Mr. Culver requested that his gas service be restored. *Id.*

On January 17, 2023, PGW filed an Answer to the Complaint. In its Answer, PGW explained that on August 13, 2018, PGW terminated gas service to the service address at the curb valve. Answer at 1. On April 19, 2022, a PGW technician visited the service address and found the gas service on at the curb valve and again terminated service at the curb valve and installed an anti-theft device. *Id.* On October 5, 2022, the Complainant contacted PGW to request gas service at the service address. *Id.* On October 10, 2022, a PGW technician visited the service address for a safety check/unbilled usage investigation and discovered evidence of theft. *Id.* Finally, in its Answer, PGW states that it is holding the Complainant responsible for the bypass charges at the service address. *Id.* at 2.

On January 19, 2023, the Commission issued an Initial Call-In Telephonic Hearing Notice (Hearing Notice) which scheduled the hearing on March 10, 2023, and

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<sup>1</sup> This is a timely appeal from the Bureau of Consumer Services (BCS) determination at BCS No. 3880259 issued on December 13, 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).

assigned DCALJ Pell. 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.

On January 20, 2023, DCALJ Pell 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. *See*, Prehearing Order. Both the Hearing Notice and Prehearing Order were electronically served to the Complainant to the email address he provided to the Commission and neither were returned as undeliverable.

On March 6, 2023, DCALJ Pell issued an Interim Order denying without prejudice, PGW’s Motion to Continue filed on March 3, 2023. On March 7, 2023, DCALJ Pell issued an Interim Order denying PGW’s Amended Motion to Continue filed on March 6, 2023. On March 9, 2023, DCALJ Pell issued an Interim Order which granted PGW’s Petition for Reconsideration filed on March 8, 2023, and continued the hearing scheduled for March 10, 2023.

On March 24, 2023, the Commission issued a Rescheduled Initial Call-In Telephonic Hearing Notice (Rescheduled Hearing Notice) rescheduling the hearing for April 17, 2023.

The hearing convened as scheduled on April 17, 2023. Counsel for PGW was present. The Complainant did not call in for the hearing.

At the hearing, Counsel for PGW moved that the Compliant be dismissed for lack of prosecution. Tr. at 5.

The record closed on May 9, 2023.

On August 3, 2023, DCALJ Pell issued an Initial Decision granting PGW's Motion to Dismiss Mr. Culver's Complaint without prejudice.

On September 6, 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*).

The standards for granting rescission, amendment 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 Pell made nine (9) Findings of Fact and reached five (5) Conclusions of Law. I.D. at 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, DCALJ Pell noted that the Complainant had adequate notice of the time and date of the hearing but neither appeared for the hearing nor did he explain his absence; therefore, it was appropriate to dismiss the Complaint. I.D. at 5.

DCALJ Pell indicated that on March 24, 2023, the Commission electronically served the Complainant a Rescheduled Hearing Notice of the April 17, 2023 hearing. I.D. at 5. The DCALJ stated that both the Rescheduled Hearing Notice and the January 20, 2023 Prehearing Order contained language warning the Complainant of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. *Id.*

DCALJ Pell explained that both the Rescheduled Hearing Notice and Prehearing Order were electronically served to the email address provided by the Complainant to the Commission and in accordance with *Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered September 15, 2022). I.D. at 5-6. As neither document was returned to the Commission as undeliverable, DCALJ Pell presumed that the documents, which were sent in the ordinary course of business, were received by the Complainant. *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*)).

DCALJ Pell determined that the Complainant waived his opportunity to participate in the hearing by failing to appear. I.D. at 6. DCALJ Pell explained that as the party filing the Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief. *Id.*; 66 Pa. C.S. § 332(a). Ultimately, by failing to appear, the Complainant did not meet his burden of proof and the ALJ dismissed the Complaint without prejudice in accordance with *Hoyt v. Columbia Gas of Pa., Inc.*, Docket No. F-2022-3032680 (Order adopted April 20, 2023).

### **C. Final Order**

As noted above, on September 6, 2023, the Commission entered a Final Order (*September 2023 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 Pell issued on August 3, 2023, “has become final without further Commission action.” The *September 2023 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 *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 6, 2023, at Docket No. F-2022-3037377, 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