

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held February 1, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss, Concurring in Result Only
John F. Coleman, Jr.

Laura Andracchio Johnson and
Charles Johnson

C-2022-3032695

v.

Duquesne Light Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration (Petition) filed by Laura Andracchio Johnson (Ms. Johnson) and Charles Johnson (Mr. Johnson) (collectively, the Complainants) on December 31, 2023, seeking reconsideration of the Order entered on December 21, 2023 (*December 2023 Order*), relative to the above-captioned proceeding. For the reasons stated below, we shall deny the Petition, consistent with this Opinion and Order.

I. History of Proceeding¹

On May 13, 2022, the Complainants filed a Complaint with the Commission against Duquesne Light Company (Duquesne), averring that they sued Duquesne for negligent and reckless conduct because Duquesne failed to notify them and/or former property owners about two routes for a high voltage power line that Duquesne mapped through a parcel of property in 2017 for a reliability project. Complaint at 3-5.

On June 22, 2023, Administrative Law Judge (ALJ) Emily I. DeVoe issued an Initial Decision (I.D.) which dismissed the Complaint because the Complainants did not allege that Duquesne committed any violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission. The Initial Decision concluded that the Complaint must be dismissed and transferred back to the Court of Common Pleas. I.D. at 1, 19, 20-21. Duquesne filed Exceptions on July 12, 2023, and the Complainants filed Reply Exceptions on August 1, 2023.

The Commission, in the *December 2023 Order*, granted, in part, and denied, in part, Duquesne's Exceptions, and modified the ALJ's Initial Decision, consistent with the *December 2023 Order*.

On December 31, 2023, the Complainants filed the instant Petition. On January 11, 2024, Duquesne filed an Answer to the Petition.

¹ See, *December 2023 Order* at 2-6 for a summary describing the procedural history of this proceeding, which is incorporated herein.

II. Discussion

A. Legal Standards

Initially, we note that any issue or argument that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Public Utility Code (Code) establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 1982 Pa. PUC LEXIS 4, *12-13:

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . . what

we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Id.* at *13.

The Commission has administrative discretion regarding whether to grant or deny a petition for reconsideration of an order filed under Section 703(g). *West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995). Such a petition, however, should only be granted judiciously and under appropriate circumstances, because such action results in the disturbance of a final order. *Id.* (citing *City of Pittsburgh v. Pa. Dep’t of Transportation*, 416 A.2d 461 (Pa. 1980)).

B. *December 2023 Order*

In the *December 2023 Order*, the Commission concluded that the issues raised by the Complainants in their Complaint are within the Commission’s jurisdiction because they are issues regarding whether Duquesne provided reasonable service under 66 Pa. C.S. § 1501 and other Commission Regulations. The Commission found that the Complainants appeared to allege that Duquesne acted improperly with respect to its interactions with the public and customers, and that these issues are precisely the types of services that are to be reasonably provided by a public utility under Section 1501 of the Public Utility Code (Code), 66 Pa. C.S. § 1501. *December 2023 Order* at 24. The *December 2023 Order* explained that a public utility has a duty to maintain safe,

adequate, and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa. C.S. § 1501. Further, the *December 2023 Order* explained that the term “service” is defined broadly and is broadly construed under the Code. *Id.* at 24-25, citing 66 Pa. C.S. § 102; *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

Upon a review of the Complaint on its face, the Commission concluded that the Complainants appeared to have alleged that Duquesne acted improperly with respect to its interactions with the public and customers. Although the Complainants stated that the Complaint was filed “under protest,” and they suggested that Duquesne’s actions were negligent, reckless, and breached certain duties owed to the Complainants, Complaint at 3-4, we concluded that the basis of the claims set forth in the Complaint raised issues that fall squarely within the Commission’s jurisdiction in determining whether certain services provided by Duquesne were reasonable under the Code. See, 66 Pa. C.S. §§ 102 and 1501. Furthermore, we found that these allegations raised issues regarding the reasonableness of Duquesne’s planning, notice and public communications with respect to a transmission line siting project, even though the Complaint may not have specifically referenced 66 Pa. C.S. § 1501.

In defining “service” broadly, which includes “any and all acts” related to the function of utility service, as well as customer service, we concluded that the issues raised in the Complaint fall within the types of utility service that are to be reasonably provided under 66 Pa. C.S. § 1501. Therefore, we found that the Commission has jurisdiction to determine whether Duquesne’s actions with respect to the timing and communications regarding the potential route and siting of a transmission line on the Complainant’s newly purchased property, which were raised in the Complaint, violated

66 Pa. C.S. § 1501.² The *December 2023 Order* clarified that, while the Commission cannot adjudicate whether Duquesne acted negligently or recklessly, or find that Duquesne is liable to the Complainants under common tort law principles, as the Complainants requested, the Commission is the proper entity to resolve the issues raised in the Complaint regarding whether Duquesne provided reasonable service under 66 Pa. C.S. § 1501 and other regulations within the Commission’s jurisdiction with respect to Duquesne’s communications and interactions with the public and customers regarding the route and siting of a potential transmission line.

For these reasons, the Commission granted one of Duquesne’s Exceptions. Inasmuch as we concluded that the Commission has jurisdiction over the issues raised in the Complaint and granted Duquesne’s Exception No. 1, we further found it unnecessary to consider Duquesne’s Exception Nos. 2 and 3; therefore, we denied those Exceptions.

Our *December 2023 Order* further noted that although the Commission may require a party to litigate a matter that the party brought before the Commission, even if that party makes it clear that they do not desire to continue with the matter before the Commission, we will not require the Complainants to litigate a Formal Complaint before the Commission that they are not interested in pursuing, especially because the Complainants would bear the burden of proving their claims at an evidentiary hearing. In this case, the Complainants filed their Complaint “under protest,” and consistently and repeatedly averred that their claims against Duquesne are common law tort claims based on recklessness and negligence and that they are not alleging that Duquesne violated any Commission Regulations or rules. I.D. at 11; Tr. at 9-13, 24; Complainants’ Memoranda at 7. We stated in the *December 2023 Order* that forcing a reluctant litigant to proceed

² We also noted that, in addition to 66 Pa. C.S. § 1501, the allegations raised in the Complaint may also raise issues within the Commission’s jurisdiction with respect to the Commission’s Regulations regarding transmission line siting and the disclosure of eminent domain power at 52 Pa. Code §§ 57.71, *et seq.* and 57.91, *et seq.*

forward with a Complaint that they clearly have no interest in litigating would be an inefficient use of resources of the Parties and of this Commission. While the Commission clearly has jurisdiction over the issues alleged in the Complaint, we concluded that it is not in the public interest, and that there is no reason, to force the Complainants here to move forward with the Complaint against their will.

To that end, the Commission held this matter in abeyance to afford the Complainants the opportunity to decide whether they wish to pursue the Complaint. Specifically, the Complainants were directed to decide whether or not they wish to proceed with their Complaint before this Commission, as directed by the Bifurcation Order issued by the Allegheny Court of Common Pleas. The *December 2023 Order* provided for thirty (30) days for the Complainants to inform the Commission's Secretary, in writing at this docket, whether they were interested in proceeding with their Complaint, as filed, before the Commission, or to file an amended Formal Complaint in this matter. If the Complainants chose to move forward with their Complaint, as filed, or to file an amended Formal Complaint, the Commission's Secretary was directed to re-assign this matter to the Office of Administrative Law Judge for further proceedings in this matter as deemed necessary. In the event the Complainants did not respond within thirty (30) days indicating that they wish to proceed with their Complaint, as filed, or they did not file an amended Formal Complaint, the Commission's Secretary was directed to dismiss the Complaint and close this proceeding.

B. The Complainants' Petition and Duquesne's Answer

The Complainants request that the Commission amend its *December 2023 Opinion and Order* to accept the ALJ's Initial Decision in its entirety. The Complainants contend, *inter alia*, that the Commission's assertion of jurisdiction because the Complainants raise issues concerning whether Duquesne violated Section 1501 of the Code is erroneous because: (1) the Complainants did not allege that Duquesne violated

Section 1501 as a basis for liability, nor do they need to plead or prove such a violation to prevail on their common law tort claims; (2) even if they did raise a Section 1501 violation in addition to the common law torts claim, the Courts of Pennsylvania would have original jurisdiction over the issue and any referral of that issue is proper only if the Commission has primary jurisdiction; (3) bifurcating the referral would be wasteful; (4) a claim of violation of Section 1501 as a statutory claim would be independent of the common law tort claims and there is no authority that a statutory claim takes precedence over the independent tort claims; (5) the Complainants' claims are based in property rights over which the Commission does not have jurisdiction; and (6) the Commission does not have subject matter jurisdiction over the matter transferred to it. Petition at 3-10.

On the other hand, Duquesne argues that the Petition should be denied for failure to raise any new or novel arguments. Specifically, Duquesne avers that the Commission correctly determined that even though the Complaint did not specifically reference Section 1501, it did contain a broad range of unreasonable service matters. In addition, Duquesne alleges that the Petition improperly characterizes the Commission's findings and that all of the arguments raised in support of the Petition were raised previously by the Complainants and were rejected. Answer at 6-8. Furthermore, the Complainant's argument challenging the issues regarding Duquesne's communications and interactions with the public and the assertion that the Commission does not have jurisdiction over them are factually incorrect. Answer at 8-9.

C. Disposition

As mentioned, *supra*, Petitions for Reconsideration are governed by *Duick*, which essentially requires a two-step analysis. First, we must determine whether a party has offered new or novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. We will not

reconsider our previous decision based on arguments that have already been considered. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. The second step of the *Duick* analysis is, therefore, to evaluate the new or novel argument or overlooked consideration, in order to determine whether to modify our previous decision.

Upon review, we find that the Petition does not raise any new or novel arguments or considerations that were overlooked or not addressed by the Commission in the *December 2023 Order*. The arguments included in the Complainants' Petition were previously presented by the Complainants and considered by the Commission. As noted above, both the Complainants and Duquesne previously argued the issue of whether there was a violation of Section 1501 of the Code in their Exceptions and Replies to Exceptions, and the Commission considered and disposed of those arguments. *See, December 2023 Order*.

Furthermore, the Complainants' other arguments in the Petition were also previously considered and disposed of by the Commission. *See, Id.* As these arguments are not new and novel and were previously addressed by the Commission in the *December 2023 Order*, we find that the Petition fails to satisfy the first step required in the analysis under *Duick*. Therefore, we shall deny the Petition.

III. Conclusion

For the reasons set forth above, we shall deny the Petition, consistent with this Opinion and Order; **THEREFORE**,

IT IS ORDERED:

1. That the Petition for Reconsideration filed by Laura Andracchio Johnson and Charles Johnson on December 31, 2023, is denied.

2. That this proceeding at Docket No. C-2022-3032695 shall be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: February 1, 2024

ORDER ENTERED: February 1, 2024