

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

Public Meeting held August 1, 2024

Commissioners Present:

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

Karen Feitt & Higinio Mendoza Jr.

C-2022-3037095

v.

Duquesne Light Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Rehearing or Reconsideration (Petition) filed by Karen Feitt and Higinio Mendoza Jr. (Petitioners or Complainants) on December 15, 2023, seeking reconsideration of the final Commission Opinion and Order entered on December 7, 2023 (*December 7, 2023 Order*) in the above-captioned

proceeding. On consideration of the Petition,<sup>1</sup> it shall be denied. We shall, hereby, relinquish jurisdiction of this matter and request the Secretary mark this docket closed.

### **Background**

This proceeding is a formal complaint (Complaint) brought by the Petitioners naming Duquesne Light Company (Duquesne or Respondent) as Respondent. By Order entered December 21, 2023, we granted reconsideration of the Petition, within the meaning of Pa. R.A.P. 1701(b)(3), pending review of, and consideration on, the merits. No Answer to the Petition is noted on the Commission dockets.<sup>2</sup>

On December 5, 2022, Karen Feitt and Higinio Mendoza Jr. filed a Complaint against Duquesne. The Complaint was filed subsequent to a Commission, Bureau of Consumer Services (BCS), Informal Complaint closed on September 29, 2022. *See BCS # 3854655; December 7, 2023 Order at 2.*

In the Complaint, the Petitioners asserted vague and unsubstantiated legal theories under which they, *inter alia*, took the position that indebtedness incurred by them to Duquesne for past due utility bills rendered for electric utility service provided to their Service Address were not due and payable. The bills for electric utility service from

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<sup>1</sup> Subsequent to the final Commission Order in this matter, the Petitioners submitted to the Commission documents styled, “Motion . . . to Dismiss and Reconsider New Hearing” (December 22, 2023), an “Answer . . .” to the Petition (January 18, 2024) and “Executor Letter” (January 25, 2024). These submittals are non-permitted pleadings under the Commission’s Rules of Practice and Procedure. We shall not consider these documents in the instant, Opinion and Order.

<sup>2</sup> By Commission Secretarial Letter dated January 3, 2024, a copy of the Petition was served on the participants to the proceeding as no Certificate of Service evidencing service of the Petition was attached. We also note that Commission dockets indicate that on January 10, 2024, counsel for Duquesne filed a Notice of Withdrawal of Appearance.

Duquesne were issued pursuant to a Commission-approved tariff. Petitioners, in reliance on the vague and unsubstantiated legal theories raised in the Complaint and expressed in pleadings, appeared to take the position, in pertinent part, that the utility bills at issue were contestable as a result of these theories and that they were entitled to withhold payment pending, *inter alia*, some form of accounting. *December 7, 2023 Order* at 3.

Duquesne filed an Answer to the Complaint. Duquesne admitted to issuing a service termination notice to the Complainants for past due utility bills. However, Duquesne denied that there were any incorrect charges on the said bills. Duquesne also filed Preliminary Objections seeking the dismissal of the Complaint. *December 7, 2023 Order* at 4.

The matter was assigned to Administrative Law Judge (ALJ) Mary D. Long as presiding officer. By order entered January 9, 2023, ALJ Long sustained Duquesne's Preliminary Objections in part. The ALJ concluded that the Petitioners conceded that the Commission did not have jurisdiction to adjudicate certain of their claims which arose pursuant to federal law. However, the ALJ also held that the Complainants could proceed with their claim(s) that there were incorrect charges on their bill(s). *See, e.g. Alkhatib v. EPOC Energy Co.*, Docket No. C-2011-2242125 (Opinion and Order entered January 12, 2012) (*Alkhatib*). *December 7, 2023 Order* at 4.

On March 21, 2023, a hearing was convened as mediation between the Parties proved unsuccessful. Higinio Mendoza, Jr. appeared, *pro se*, and testified on his own behalf. Mr. Mendoza sponsored two exhibits that were admitted into the record. Duquesne was represented by counsel and presented the testimony of one witness. Duquesne further moved for the admission of three exhibits. Additionally, the ALJ directed the admission of one of Duquesne's proposed exhibits (exhibit D). Duquesne Exhibits A, C, D and K were admitted into the record. *December 7, 2023 Order* at 5.

An evidentiary hearing was held which generated a transcript of 55 pages. At the conclusion of the hearing the Parties were given the opportunity to file written statements to clearly explain their respective positions. Both the Petitioners and Duquesne served written statements. The record was closed by order entered April 26, 2023. *December 7, 2023 Order* at 5.

On July 20, 2023, the Initial Decision of ALJ Long was issued. The ALJ concluded that the Complaint should be dismissed. Exceptions and Replies to Exceptions were filed by the participants. By Opinion and Order entered December 7, 2023, we denied the Exceptions of the Petitioners, adopted the Initial Decision, and dismissed the Complaint. *December 7, 2023 Order*.

On December 15, 2023, the Complainants' Petition was filed. No Answer has been received.

## **Discussion**

### **A. Legal Standards**

With respect to petitions for rehearing, reconsideration, rescission and amendment of Commission orders, the Public Utility Code (Code), 66 Pa.C.S. §§ 101, *et seq.* establishes a party's right to seek relief within fifteen days following the service of a Commission order pursuant to Subsections 703(f). 66 Pa.C.S. § 703(f) (relating to rehearing).<sup>3</sup> Upon the filing of a petition for relief pursuant to Section 703(f), the Commission may affirm, rescind, or modify its original order. 66 Pa.C.S. § 703(f).

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<sup>3</sup> Petitions under this section which do not allege new evidence are typically treated as petitions for reconsideration. Petitions for rehearing pursuant to Section 703(f) of the Code, typically include an allegation of new evidence. 66 Pa.C.S. § 703(f); *see, West Penn Power Co. v. Pa. PUC*, 659 A. 2d 1055 (Cmwlth. 1995).

The Code further provides that the Commission may, at any time, after notice and opportunity to be heard by all affected parties, rescind or amend any order made by the Commission, pursuant to Section 703(g). 66 Pa.C.S. § 703(g) (relating to rescission and amendment of orders). A request for relief pursuant to § 703(f) or § 703(g) must be brought as a petition for relief consistent with Section 5.572 of Commission Regulations. 52 Pa. Code § 5.572 (relating to petitions for relief).

Petitions for relief predicated upon Sections 703(f) and 703(g) of the Code, whether brought under Section 5.572(c) of Commission Regulations as a petition for reconsideration, rehearing, reargument, clarification, supersedeas or others within fifteen days of the service of a Commission order, or under Section 5.572(d) as a petition for rescission or amendment filed at any time following service of a Commission order, are reviewed by the Commission as matters seeking relief falling within the agency's discretion.

The Commission's application of the standard for granting a petition for amendment, reconsideration, or rescission is set forth in *Philip Duick, et al v Pennsylvania Gas and Water Company*, 56 Pa. PUC 553 (1982) (*Duick*) as follows:

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 on the grounds that the decision or ruling of the Commission on a matter or issue was either unwise or in error.

In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein the Court said,

[b]ut the grounds for reconsideration should be restricted to the new matters and new or changed conditions set up in the joint petition, which had arisen since and were not presented in the several petitions of

these appellants ... and dismissed by the Commission ... and not appealed from. 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 and not appealed from. ...

*Pennsylvania Railroad Co. v. Public Service Commission*, 118 Pa. Super. 380 (1935).

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 or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

*Duick* at 559; *see also*, *AT&T v Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990).

The Commission utilizes a two-step analysis in determining whether to exercise its discretion to grant relief under *Duick*. *See, e.g., SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Opinion and Order entered May 19, 2019) (SBG Order)<sup>4</sup> (discussing *Application of La Mexicana Express Service, LLC, to transport persons in paratransit service, between points within Berks County*, Docket No. A-2012-2329717; A-6415209 (Opinion and Order entered September 11, 2014)).

The first step is to determine whether a party has offered any basis to persuade the Commission to exercise its discretion, including but not limited to, new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. This initial step examines whether a

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<sup>4</sup> *Affirmed, Phila. Gas Works v. Pa. PUC*, 249 A.3d 963 (2021); No. 14 EAP 2020 (April 29, 2021); 2021 WL 1681311; *remand granted, in part* (June 15, 2021); 2021 WL 2697432 (Table).

party raises the same questions which were specifically considered and decided against them by the prior Order of the Commission. If so, it is unlikely that the Commission will be persuaded to exercise its discretion to grant relief. *Duick* at 559 (citing *Pennsylvania Railroad Co. v. Public Service Commission*, 118 Pa. Super. 380 (1935)). The second step of the *Duick* analysis is to evaluate any matter the Commission has deemed worthy of consideration, to determine whether to grant any relief.

## **B. Petition**

The Petition raises the following as the basis for rehearing and/or reconsideration:

The PENNSYLVANIA PUBLIC UTILITY COMMISSION court shall Reconsider, Rehearing, (52 Pa. Code § 5.572, Pa. Code § 35.241) for the reasons and evidence set forth in this Petition. All proceedings enacted in this case after decisions made by Administrative Law Judge Mary D. Long, OPINION, ORDER, and the [PENNSYLVANIA PUBLIC UTILITY] Commissioners public hearing dated December 7<sup>th</sup>, 2023, are OPINION, and not the facts. Decisions based on opinions deny the claimant's credible new evidence because opinions, orders are not factual, therefore based on violations of Claimants right to be heard in person at (Commissioners public hearing dated December 7<sup>th</sup>, 2023) said hearings. Opinions, orders are not the Facts, and claimant due process allows the factual aspects of the case to be based on facts presented against the Respondent knowingly deprive Claimant fundamental rights, liberties as afforded by the PENNSYLVANIA PUBLIC UTILITY COMMISSION authority, the state constitution, the Constitution, and Bill of Rights.

Petition at 1.

### C. Disposition

On consideration of the Petition, it is denied. On review, the Petition alleges neither any new evidence, new or novel arguments or matters overlooked, nor any reasons in support of a request that the Complaint be reconsidered and/or the subject of a rehearing. The Petition alludes to “new evidence.” However, the Petitioners do not state such new evidence with any specificity. Also, Petitioners appear to erroneously conclude that the use of the term “opinion” as used in the Commission’s Opinion and Order, renders the Commission’s orders invalid, as based upon “opinion” rather than facts and legal conclusions. However, pursuant to statute, the specific findings of fact and conclusions of law reached by the presiding ALJ have been independently reviewed by the Commission as the ultimate fact finder. 66 Pa.C.S. § 335 (a). Further, Commission orders must be based on substantial evidence. 2 Pa.C.S. § 704; *Popowsky v. Pa. PUC*, 164 Pa. Commw. 338, 642 A.2d 648(1994).

The charges billed to Petitioners for electric utility service have accrued pursuant to, and have been issued in accordance with, a Commission-approved tariff. *See* Pa.C.S. § 1302; 1303. On issuance of the bills by Duquesne to the Petitioners in accordance with the Respondent’s duly filed tariff and Commission Regulations, the Petitioners, as ratepayers, are obligated to pay for the receipt of such service and the Respondent is entitled to be compensated for the provision of service. *See Scaccia v. West Penn Power Company*, 55 Pa.P.U.C. 637 (1982).

Based on the forgoing we conclude that the Petition fails to meet the standard for either rehearing or reconsideration. The Petition fails to raise any considerations based upon which to provide relief. A petition to amend or rescind a final Commission order may be granted only judiciously and under appropriate circumstances because such an action results in the disturbance of final Commission orders. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 416 A.2d 461 (Pa. 1980). We

conclude that it would be improvident for this Commission to further entertain the merits of the Complaint.

### **Conclusion**

Consistent with the discussion in this Opinion and Order, we will deny the Petition; **THEREFORE;**

### **IT IS ORDERED:**

1. That the Petition for Rehearing and Reconsideration of the Opinion and Order entered December 7, 2023, of Karen Feitt and Higinio Mendoza Jr. at Docket No. C-2022-3037095 is denied, consistent with the discussion in this Opinion and Order.
2. That the Commission Secretary shall mark this matter closed.

**BY THE COMMISSION:**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: August 1, 2024

ORDER ENTERED: August 1, 2024