

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

Public Meeting held August 22, 2024

Commissioners Present:

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

Andree Lombard

C-2023-3041719

v.

PECO Energy 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 Ms. Andree Lombard (Petitioner or Ms. Lombard) on June 10, 2024, seeking reconsideration of the Opinion and Order entered on June 4, 2024 (*June 2024 Order*),

relative to the above-captioned proceeding.<sup>1</sup> No Answer to the Petition has been filed. For the reasons stated below, we shall deny Ms. Lombard’s Petition, consistent with this Opinion and Order.

### **I. History of Proceeding<sup>2</sup>**

On July 10, 2023, Ms. Lombard filed a Formal Complaint (Complaint) against PECO with the Commission.<sup>3</sup> In the Complaint, Ms. Lombard indicated, *inter alia*, incorrect charges appear on the bill and she would like a payment arrangement. Complaint at 2. On August 1, 2023, PECO filed an Answer to the Complaint (Answer), which admitted, in part, and denied, in part, various material allegations in the Complaint. Answer at 1-3. On October 3, 2023, at 10:00 a.m., the telephonic hearing was held as scheduled. I.D. at 2.

On January 23, 2024, Administrative Law Judge (ALJ) Arlene Ashton issued an Initial Decision (Initial Decision or I.D.) which dismissed the Complaint. The ALJ concluded that the Complainant and her husband, Mr. Giovanni Lombard (Mr. Lombard) (collectively, the Lombards), failed to meet their burden of proving that: (1) PECO violated any provision of the Public Utility Code (Code) or Commission

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<sup>1</sup> By Secretarial Letter issued June 18, 2024 (*June 2024 Secretarial Letter*), the Commission’s Secretary: (1) notified the Parties that there was no Certificate of Service or other indication that the Petition was served on the Parties; and (2) placed the Secretarial Letter on the record and served it upon the Parties, in order to ensure due process. *See, June 2024 Secretarial Letter*. Therefore, pursuant to 52 Pa. Code § 5.572(e), PECO Energy Company (PECO or the Company) was given ten days to file an Answer to the Petition.

<sup>2</sup> *See, June 2024 Order* at 2-4 for a comprehensive summary describing the procedural history of this proceeding, which is incorporated herein.

<sup>3</sup> We note that the Commission’s case management system indicates the Complaint was received July 10, 2023, but was not served until July 13, 2023. We further note that the Complaint is stamped “DATE OF DEPOSIT” by the Commission’s Secretary’s Bureau on July 10, 2023. *See, Complaint* at 1, 6, 10-11.

*Regulation*; or (2) they are entitled to a Commission-issued payment arrangement. Therefore, the ALJ denied and dismissed the Complaint. I.D. at 1, 9-10, COL No. 4.

On February 6, 2024, Ms. Lombard filed Exceptions to the Initial Decision (Exceptions). PECO filed Reply Exceptions on February 15, 2024.

In the *June 2024 Order*, the Commission denied Ms. Lombard's Exceptions and adopted the ALJ's Initial Decision without modification. *June 2024 Order* at 14.

As noted, *supra*, on June 10, 2024, the Petitioner filed the instant Petition. No Answer to the Petition has been filed.

By Order entered June 13, 2024, we granted reconsideration pending review of, and consideration on, the merits, pursuant to Pa. R.A.P. 1701(b)(3).

## II. Discussion

### A. Legal Standards

With respect to petitions for rehearing, reconsideration, rescission and amendment of Commission orders, the Code establishes a party's right to seek relief within fifteen days following the service of a Commission order pursuant to Subsection 703(f). 66 Pa.C.S. § 703(f) (relating to rehearing).<sup>4</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). The Code further provides that the

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<sup>4</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 (Pa. Cmwlth. 1995).

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 9, 2019)<sup>5</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 party raises the same questions which were specifically considered

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<sup>5</sup> *Affirmed, Phila. Gas Works v. Pa. PUC*, 249 A.3d 963 (Pa. 2021); No. 14 EAP 2020 (April 29, 2021); 2021 WL 1681311; *remand granted, in part* (June 15, 2021); 2021 WL 2697432 (Table).

and decided against them by a 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. The June 2024 Order**

In the *June 2024 Order*, we denied Ms. Lombard's Exceptions, adopted ALJ Ashton's Initial Decision, and dismissed the Complaint. Specifically, we noted that we agreed with the ALJ's denial of the Complaint for failure of the Lombards to meet their burden of proof. Further, we found that the Exceptions reiterated the same arguments in the Complaint (*i.e.*, the billing dispute and the request for a payment arrangement) and, as such, we denied the Exceptions. Moreover, we found that the ALJ's Initial Decision was supported by the evidentiary record. As such, we adopted the Initial Decision without modification. *June 2024 Order* at 14.

## **C. The Petition**

In the single-page Petition, the Petitioner states that she reviewed the circumstances and complexities of the case, as well as the grounds for "the decision." Petition at 1. The Petitioner continues that "there may have been some misunderstanding or oversight that contributed to the denial" and offers to provide "additional information and clarification" as support. *Id.* Further, the Petitioner avers that a review of the facts will show that her case is valid and provide grounds for reconsideration. Moreover, the Petitioner offers "to make at least a 30% payment of the disputed amount instantly." *Id.* Furthermore, the Petitioner expresses her commitment to an amicable resolution and again requests a Commission-based payment arrangement. Finally, the Petitioner states

that she is prepared to offer any further documentation or information necessary to “facilitate the process.” *Id.*

#### **D. Disposition**

At the onset, we note that any argument or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Upon review, we find that the Petition does not raise any new evidence, new or novel arguments or considerations that were overlooked or not addressed by the Commission in the *June 2024 Order*, or any reasons in support of a request that the *June 24 Order* be reconsidered. In her Petition, the Petitioner avers that “*there may have been some misunderstanding or oversight that contributed to the denial,*” and “*a thorough review of the facts will demonstrate the validity of [her] case and justify a reconsideration of the decision.*” Petition at 1 (emphasis added). However, the Petitioner does not identify or elaborate on *what* may have been misunderstood or overlooked. Furthermore, although the Petitioner states that she is willing to provide additional information for clarity, she does not include any documentation in support of her position that reconsideration is warranted.<sup>6</sup> Indeed, the Petitioner’s failure to provide any documentation in support of her Petition and her ambiguous assertion that something may have been misunderstood or overlooked militates against granting the Petition. Therefore, we find that the Petitioner’s averments fail to provide any persuasive basis

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<sup>6</sup> We note that at the hearing on this matter, Mr. Lombard offered no exhibits. *See, June 2024 Order* at 3. We further note that the Exceptions filed in response to the ALJ’s Initial Decision did not include any supporting documentation.

upon which to grant reconsideration of the *June 2024 Order*. Accordingly, we shall deny the Petition.

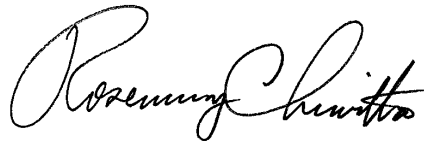
### **III. Conclusion**

Upon our review and consideration of the Petition for Reconsideration and the record evidence in this proceeding, we shall deny Andree Lombard's Petition for Reconsideration, consistent with this Opinion and Order; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Petition for Reconsideration, filed by Andree Lombard on June 10, 2024, at Docket No. C-2023-3041719, is denied, consistent with this Opinion and Order.
2. That this proceeding at Docket No. C-2023-3041719 be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: August 22, 2024

ORDER ENTERED: August 22, 2024