

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

Public Meeting held January 23, 2025

Commissioners Present:

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

John M. Novak

F-2024-3046076

v.

Palmco Energy PA LLC d/b/a Indra Energy

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Rehearing and Petition for Reopening the record (Petition), filed on October 24, 2024, by Palmco Energy PA LLC d/b/a Indra Energy (Indra, Company or Respondent) to the Final Order of the Commission issued on November 13, 2024 (*Final Order*). Indra challenges the *Final Order* which adopted the Initial Decision (I.D.) of Special Agent (Presiding Officer) Michael J. Mroczka, issued on October 10, 2024. The Initial Decision contained the Presiding Officer's disposition of a formal complaint (Complaint) filed by John M. Novak (Mr. Novak or Complainant) against Indra. The Complainant filed an Answer to the

Petition (Answer). For the reasons stated below, we shall grant the Petition, rescind the *Final Order*, and remand this matter to the Office of Administrative Law Judge (OALJ) for such further proceedings as deemed necessary, consistent with this Opinion and Order.

## I. History of the Proceeding

On January 10, 2024, Mr. Novack filed his Complaint with the Commission against Indra.<sup>1</sup> In the Complaint, Mr. Novack alleged, *inter alia*, that Indra moved his PECO Energy Company (PECO) account without his permission or consent (also known as “slamming”). Complaint ¶ 4. For relief, Mr. Novack requested that, *inter alia*, Indra be directed to show him some form of proof, such as an audio recording, a signed agreement, or a completed form, etc., to establish the Complainant’s consent to move the account. Complaint, ¶ 5.

On February 6, 2024, the Commission served the Complaint on Indra via eService at Indra’s registered eService account, which is listed in Commission records as [compliance@indraener](mailto:compliance@indraener). Indra did not file an answer to the Complaint.

By a March 26, 2024 Hearing Notice, an Initial Call-In Telephonic Hearing was scheduled for May 15, 2024.

On May 8, 2024, a Prehearing Order was issued reminding the Parties, *inter alia*, of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

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<sup>1</sup> The Complaint is a timely appeal of a decision by the Commission’s Bureau of Consumer Services (BCS), issued on January 5, 2024, at BCS No. 3934555. The timely appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

On May 15, 2024, the hearing convened as scheduled. The Complainant appeared *pro se*. Indra was not represented at the hearing. Because the Prehearing Order was only sent out seven days prior to the hearing, out of an abundance of caution and to ensure due process, the hearing was rescheduled to June 11, 2024.

On May 15, 2024, a Rescheduled Hearing Notice was issued, rescheduling the hearing to June 11, 2024. Also on May 15, 2024, a second Prehearing Order was served on the Parties. The Rescheduled Hearing Notice and second Prehearing Order were served on the Parties via eService.

On June 11, 2024, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on his own behalf. Once again, Indra was not represented at the hearing. The hearing commenced without the Respondent.

The record closed on July 17, 2024.

On October 10, 2024, the Commission issued the Initial Decision of Special Agent Mroczka, *infra*, wherein the Presiding Officer sustained the Complaint. No Exceptions to the Initial Decision were filed.

As previously noted, on October 24, 2024, Indra filed the Petition to reopen the record.

On November 13, 2024, the Commission entered its *Final Order* adopting the Initial Decision of Special Agent Mroczka.

On November 14, 2024, Mr. Novak filed an Answer to the Petition. Also on the same day, the Commission issued a Secretarial Letter rescinding the Final Order.

## II. Discussion

### A. Legal Standards

#### 1. Burden of Proof

Pursuant to Section 332(a) of the Public Utility Code (Code), the Complainant, as the proponent of a rule or order, bears the burden of proof. 66 Pa.C.S. § 332(a). To satisfy the burden of proof, the Complainant, as the party seeking relief, must establish a sufficient case that Indra is responsible for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). This showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). This standard requires the Complainant's evidence to be more convincing, by even the smallest amount, than the evidence presented by Indra. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). This Commission's decisions must be supported by substantial evidence in the record; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & West Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the evidentiary burden shifts to Indra to present persuasive evidence rebutting that of the Complainant. If Indra's evidence is of co-equal weight, the Complainant has not satisfied their burden of proof, and must provide additional evidence to rebut that of Indra. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd* 461 A.2d 1234 (Pa. 1983).

While the evidentiary burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on

the party seeking affirmative relief from the Commission to prove their case by a preponderance of the evidence. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

## **2. Petition for Rehearing**

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 Subsections 703(f). 66 Pa.C.S. § 703(f) (relating to rehearing).<sup>2</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 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.

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<sup>2</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 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) (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 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.

### **3. Petition for Reopening of the Record**

Commission Regulations provide that at any time after the record is closed in a proceeding, but before a final decision is issued, a party may file a petition to reopen for the purpose of taking additional evidence. The petition must set forth clearly the facts supporting reopening, including material changes of fact or law alleged to have occurred since the conclusion of a hearing. If there is reason to believe conditions of fact or law have changed so as to require, or that the public interest requires, the reopening of the proceeding, the presiding officer, or the Commission (if the record has been certified to the Commission) may reopen the record. See 52 Pa. Code § 5.571.

## **B. Final Order**

On November 13, 2024, the Initial Decision of Special Agent Michael J. Mroczka, issued on October 10, 2024, became a Final Order of the Commission.

In the *Final Order*, the Commission sustained Mr. Novak's Complaint, finding that Indra had "slammed" him, by moving his electric service account from PECO and enrolling him as a customer of Indra, without the Complainant's knowledge or consent. The Commission further held, *inter alia*, that within thirty (30) days of entry of the *Final Order* that Indra shall remit a civil penalty in the amount of \$2,000. *Final Order* at 1-2.

## **C. Indra's Petition for Rehearing and Reopening of the Record and Complainant's Answer**

In the Petition, Indra asserts, *inter alia*, that it was not aware of Mr. Novak's Formal Complaint. Specifically, Indra asserts that it has no record of the Complaint having been served to either of the two email addresses that were on file with the Commission. In addition, Indra states that it has no record of receiving either of the Hearing Notices or the Prehearing Order, which Indra posits were served to an incorrect email address. Petition at 3.

In the Complainant's Answer, Mr. Novak asserts, *inter alia*, that there is no basis for a 3<sup>rd</sup> hearing, that it would be difficult for him to miss additional time from his place of employment; and that he doesn't have the time to restate all of the details that he has already previously provided. Answer at 1.

#### **D. Disposition**

We note that any argument or Exception not specifically addressed shall be deemed to be considered and denied without further discussion or consideration. The Commission is not required to consider expressly, or at length, each contention or argument made 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 consideration, we will grant the Petition. Initially, we note that the Petition for Rehearing was filed in a timely manner in accordance with our Regulations and prior to the entry of the Commission's *Final Order*. Under the circumstances, Indra has met the burden of proof for relief under Section 332(a) of the Code, 66 Pa.C.S. § 332(a), to support the relief sought under Section 703(g) of the Code. 66 Pa.C.S. § 703(g). Indra's Petition presents new or overlooked facts or considerations which persuade us to exercise our discretion to rescind the Commission's *Final Order*.

Specifically, Indra has presented evidence to show that there was a due process issue associated with the failure of proper service of important and relevant filings and Commission documents on Indra. As a result, Indra did not file appropriate pleadings or participate in the hearing, as they did not have notice of the matter and an opportunity to respond. *See Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (as an administrative agency of the Commonwealth, the Commission is required to provide due process). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider*, 479 A.2d at 15 (Pa. Cmwlth. 1984). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980). In the

present circumstances, the service of the Complaint to Indra was not sufficient to provide adequate notice and opportunity to be heard.

Accordingly, we find that in the Petition, Indra has asserted a basis to persuade us to exercise our discretion in order to ensure due process. Therefore, we shall grant the Petition, rescind the Commission's *Final Order*, reopen the record and remand the matter to the OALJ, for such further proceedings, as deemed necessary, consistent with this Opinion and Order.

### **III. Conclusion**

Based on the foregoing discussion and our review of the record, we shall grant the Petition for Rehearing and the reopening of the record filed by Palmco d/b/a Indra Energy, rescind the Final Order of the Commission entered on November 13, 2024, and remand the matter to the Office of Administrative Law Judge for such further proceedings, as deemed necessary, consistent with this Opinion and Order;

**THEREFORE,**

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

1. That the Petition for Rehearing and Reopening of the Record filed on October 24, 2024, by Palmco Energy PA LLC d/b/a Indra Energy at Docket No. F-2024-3046076, is granted, consistent with this Opinion and Order.

2. That this matter is remanded to the Office of Administrative Law Judge, for such further proceedings, as deemed necessary, consistent with this Opinion and Order.

**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: January 23, 2025

ORDER ENTERED: January 23, 2025