

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

Public Meeting held December 19, 2024

Commissioners Present:

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

Robbin K. Stanton

F-2023-3043322

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Recission/Reconsideration (Petition), filed on May 21, 2024, by Robbin Stanton (Complainant or Stanton) to a Final Order of the Commission issued on May 13, 2024. The Complainant challenges a Final Order of the Commission (Final Order) that adopted the Initial Decision (I.D.) of Administrative Law Judge (ALJ) F. Joseph Brady, issued on April 10, 2024. The Initial Decision contained ALJ Brady's resolution of a Formal Complaint (Complaint) filed by the Complainant against Philadelphia Gas Works (PGW or Respondent). The Respondent

filed an Answer to the Petition on September 26, 2024. For the reasons stated below, we shall grant the Petition, rescind the Final Order of the Commission and remand this matter to the Office of Administrative Law Judge for such further proceeding, as deemed necessary, consistent with this Opinion and Order.

I. History of the Proceeding

On May 5, 2023, the Complainant filed an Informal Complaint with the Commission's Bureau of Consumer Services (BCS) challenging high bills, claiming that the account was wrongly listed as a commercial account when it was a residential account, and that the monthly bill was about \$300, despite minimal use in the residence.

On August 15, 2023, BCS issued an Informal Decision on the Informal Complaint, at BCS No. 3906743, dismissing the Complainant's claims. In the Informal Decision, BCS concluded that dismissal was appropriate because the bills are properly based on actual meter readings considered correct as rendered. BCS further concluded that the Complainant does not pay monthly bills on time or in full, resulting in an accumulated arrearage. The Complainant was reminded that she must first contact the Respondent if she wished to dispute the rate on the account before contacting the Commission further. The Complainant was told of the right to file a formal complaint.

On September 20, 2023, the Complainant timely filed the Complaint before an October 2, 2023 deadline. The Complaint for the account in question sought a payment arrangement and challenged a notice to terminate service, notwithstanding incorrect charges. The Complainant further alleged that the \$2,687.08 arrearage was not owed.

On October 19, 2023, the Respondent filed an Answer to the Complaint (Answer) that admitted and denied the various allegations of the Complaint and requested the Complaint be dismissed. Answer at 2.

A Hearing Notice was issued on October 25, 2023, scheduling a hearing for December 20, 2023. A Prehearing Order was subsequently issued on November 17, 2023.

A hearing was held, as scheduled, on December 20, 2023. The Complainant appeared, *pro se*, and the Respondent appeared represented by counsel. The Parties agreed to limit the Complaint to a payment arrangement only. The Respondent presented the testimony of one witness and submitted one exhibit, a statement of the account. The record closed on January 12, 2024 upon the filing of the transcript with the Commission.

On April 10, 2024, the Commission issued the Initial Decision of ALJ Brady, wherein he determined that a payment arrangement be established consistent with Sections 1405(b), 66 Pa.C.S. § 1405(b), and 332(a), 66 Pa.C.S. § 332(a), of the Public Utility Code (Code) and the Responsible Consumer Protection Act (Act). More specifically, the ALJ determined that a payment arrangement of six months be set for a customer with a gross monthly income level in excess of 300% of the Federal Poverty Level (FPL). I.D. at 6-7.

The Complainant filed no Exceptions. The Initial Decision was entered as a Final Order of the Commission on May 13, 2024.

On May 21, 2024, the Complainant filed the instant Petition alleging that a prior attempt to file exceptions was rejected due to errors, and that Commission staff later

instructed the Complainant on how to file a Petition for Reconsideration. On September 26, 2024, PGW filed an Answer to the Petition.

II. Discussion

A. Legal Standards

1. Burden of Proof

Pursuant to Section 332(a) of the 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 PGW 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 PGW. *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 PGW to present persuasive evidence rebutting that of the Complainant. If PGW'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 PGW. *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 Rescission

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).¹ 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,

¹ 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).

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)² (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.

² *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).

3. Responsible Utility Consumer Protection Act

The Act, 66 Pa.C.S. §§ 1401-1419, applies to consumer complaints alleging an inability to pay and requesting that the Commission issue a payment arrangement. The Act imposes strict guidelines the Commission must follow in considering whether a payment arrangement can be issued, *inter alia*, as follows:

§1405. Payment arrangements

- (a) **General rule.** – The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

- (b) **Length of payment arrangements.** – The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:
 - (1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.
 - (2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.
 - (3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

- (4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level

66 Pa.C.S. § 1405(a)-(b).

The Act also states the Commission is prohibited from establishing a second or subsequent payment arrangement, absent a change in income, in the event a customer defaults on a prior payment arrangement. 66 Pa.C.S. § 1405(d). The Act allows the Commission to reinstate and extend a Commission-issued payment arrangement on which a customer has defaulted because of a “significant change in circumstances,” as that term is defined in the Act. 66 Pa.C.S. § 1405(e).

B. Final Order

On May 13, 2024, the Initial Decision of ALJ Brady, issued on April 10, 2024, became a Final Order of the Commission.

The Final Order sustained the Complainant’s request for a payment arrangement. The Complainant was ordered to make monthly payments consisting of the current budget bill plus one-sixth (1/6th) of the arrearage owed on the account, commencing with the first billing due date after entry of the Final Order and continuing thereafter on the due date for the payment of each regular monthly bill until the arrearage on the account has been paid in full. The Final Order further held that as long as the Complainant complied with the terms of the payment arrangement, that service would not be suspended or terminated, except for valid safety or emergency reasons, nor would late payment or finance charges be applied. If, however, the Complainant failed to comply with the terms of the payment arrangement, the Respondent could suspend or terminate utility service in accordance with the Code and Commission Regulations. Final Order at 1-2.

C. Complainant's Petition for Reconsideration and PGW's Answer

In her Petition, the Complainant challenges the establishment of a payment arrangement premised on a 40-hour work week. The Complainant claims that she works a 30-hour work week and that she disclosed that fact during the hearing. Petition at 1.

In its Answer, PGW requests that the Petition be denied on the grounds that it fails to satisfy the *Duick* standard because the Complainant fails to raise a novel argument or a consideration not previously addressed by the Commission. Specifically, PGW argues that the Complainant raises the issue of how many hours she works a week, which she claims is a relevant issue to her household income, and which was raised at the December 20, 2023 hearing and considered in the decision on whether to issue a payment agreement. In addition, PGW claims that the number of hours that the Complainant worked in a week is not novel, as the ALJ specifically asked the Complainant how many hours she worked in a week during the hearing. Answer at 3.

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. We are persuaded based upon the assertions in the Petition, that the Complainant satisfies the standard for relief under Section 332(a) of the Code, 66 Pa.C.S. § 332(a), to support the grant of rescission sought under Section 703(g) of the Code. 66 Pa.C.S. § 703(g).

Setting aside the full issues in the case, in the Petition, Ms. Stanton states that there is an error in the record regarding the income used to determine the payment arrangement for which she was eligible under Chapter 14 of the Public Utility Code.

In the Initial Decision, the ALJ calculated that she was eligible for a payment arrangement and that the eligible income was over 300% of the federal poverty guidelines. The ALJ based this calculation on the income testimony reflected in the transcript of the December 20, 2023 telephonic hearing. Therein, the transcript states that Ms. Stanton works 40 hours per week. In her Petition for Rescission, Ms. Stanton states that she actually works 30 hours per week, and that she reported such at the December 20th hearing. If the Commission uses 30 hours per week in the calculation, the eligible income would be in a different tranche of the federal poverty guidelines. This would substantially impact the term for the payment arrangement under Chapter 14.

While we are inclined to believe the accuracy of transcripts, in the present circumstances, we find that the possible error or overlooked evidence asserted by Ms. Stanton regarding the number of hours per week worked is worthy of reconsideration, especially in light of the consequences of an error here.

Therefore, it is appropriate to remand this matter to the Office of Administrative Law Judge to clarify the record and ensure an accurate value for the Complainant's eligible income.

III. Conclusion

Based on the foregoing discussion and our review of the record, we shall grant the Petition for Rescission or Amendment filed by Robbin Stanton, rescind the Final Order of the Commission entered on May 13, 2024, and remand the matter to OALJ for

such further proceedings, as deemed necessary, consistent with this Opinion and Order;
THEREFORE,

IT IS ORDERED:

1. That the Petition for Recission/Reconsideration of Robbin K. Stanton, filed on May 21, 2024, to the Final Order of the Commission entered on May 13, 2024 at Docket No. F-2023-3043322, is granted, consistent with this Opinion and Order.

2. That the Final Order of the Commission entered on May 13, 2024, at Docket No. F-2023-3043322, which adopted the Initial Decision of Administrative Law Judge F. Joseph Brady, issued on April 10, 2024, is rescinded.

3. That this matter be remanded to the Office of Administrative Law Judge to clarify the record and ensure an accurate value for the Complainant's eligible income, consistent with this Opinion and Order.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 19, 2024

ORDER ENTERED: January 23, 2025