**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held August 15, 2013 |
| Commissioners Present:  Robert F. Powelson, Chairman  John F. Coleman, Jr., Vice Chairman  Wayne E. Gardner  James H. Cawley  Pamela A. Witmer |  |
| Alice Ann Belmonte-Gates | F-2012-2332583 |
| v. |  |
| PECO Energy Company |  |
| Alice Ann Belmonte-Gates |  |
| v. | F-2012-2332589 |

Pennsylvania-American Water Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration (Petition)[[1]](#footnote-1) of Alice Ann Belmonte-Gates (Complainant or Ms. Gates) filed on March 4, 2013, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Joel H. Cheskis, which was issued on February 1, 2013, in the above-captioned, consolidated proceedings.[[2]](#footnote-2) On March 8, 2013, PECO Energy Company (PECO) filed Replies to Exceptions. Pennsylvania-American Water Company (PAWC) filed Replies to Exceptions on March 13, 2013. For the reasons stated below, we shall deny the Complainant’s Petition for Reconsideration.

**History of the Proceeding**

On October 22, 2012, Ms. Gates filed a Formal Complaint against PECO, at Docket No. F-2012-2332583 (PECO Complaint). The PECO Complaint was an appeal of a prior informal decision of the Commission’s Bureau of Consumer Services (BCS) at case number 3026947. In the PECO Complaint, Ms. Gates listed the name of the utility company respondent as “Ms. Heather Green.” Under the section which requires one type of utility to be checked, Ms. Gates selected every type of utility but “Steam Heat.” Under the section which requests the general nature of the Complaint, Ms. Gates checked “Other” and attached a two-page, single-spaced document which purports to explain the basis of her Complaint. PECO Complaint at 6.

Also on October 22, 2012, Ms. Gates filed a Formal Complaint against PAWC, at Docket No. F-2012-2332589 (PAWC Complaint). The PAWC Complaint was an appeal of a prior informal decision by BCS at case number 3026921. It is substantially similar to the PECO Complaint including the Complainant’s check-off of all types of utilities but “Steam Heat” and the attachment of the two-page, single space document described above. Unlike the PECO Complaint, however, the name of the utility listed as a respondent in the PAWC Complaint was left blank. PAWC Complaint at 5.

On November 12, 2012, PECO filed Preliminary Objections arguing that the Complaint did not provide sufficient information to provide a meaningful response to the allegations or to address Ms. Gates’ concerns. Further, PECO averred that it conducted an independent investigation to determine the possible issues being alleged but was still unable to prepare a response. PECO requested that the Preliminary Objections be granted pursuant to Section 5.101(a)(3) of the Commission’s Regulations, 52 Pa. Code § 5.101(a)(3), and that the Complainant be directed to file more specificity regarding her Complaint.

On November 16, 2012, PAWC filed Preliminary Objections arguing that the Complainant requested relief which is awarded in federal courts and, thus, the Commission lacks jurisdiction. In addition, PAWC argued that the Complaint lacked specificity, did not provide sufficient notice of the allegations against it and did not provide information which would allow for an adequate response. PAWC requested that the Preliminary Objection be granted pursuant to Sections 5.101(a)(1) and (a)(3), 52 Pa. Code § 5.101(a)(1) and (a)(3), and that the Complaint be dismissed unless the Complainant files an amended Complaint pleading with specificity on issues over which the Commission has jurisdiction.

On November 21, 2012, the Commission assigned ALJ Kandace F. Melillo as the presiding officer in the Complainant’s action against PECO at Docket No.

F-2012-2332583, and ALJ Cheskis to the action against PAWC at Docket No.

F-2012-2332589.

According to ALJ Cheskis, both he and ALJ Melillo received similar six-page, single-spaced documents on November 27, 2012, which were presumably Answers to the Preliminary Objections. Order Consolidating Complaints at 3. Each of the Answers listed the docket numbers for the respective PECO and PAWC Complaints and appeared to be identical. *Id.*

Thereafter, on December 4, 2012, ALJ Cheskis issued an Order consolidating the Complaints and noting that the Preliminary Objections filed by PECO and PAWC would be addressed at the same time before one ALJ. *Id.*

On December 10, 2012, ALJ Cheskis issued an Order granting the Preliminary Objections of PECO and PAWC, finding that Ms. Gates’ Complaints were not sufficiently specific and did not raise issues over which the Commission has jurisdiction. The Order directed Ms. Gates to file and serve an Amended Complaint within thirty days. Order Granting Preliminary Objections and Directing Complainant to file a More Specific Pleading.

On December 21, 2012, the Complainant filed an eighteen-page, single spaced Amended Complaint.

On December 21, 2012, PECO filed Preliminary Objections arguing that the Amended Complaint should be dismissed for failure to state a claim upon which relief could be granted and for violating the December 10, 2012 Order, which required the filing of a more specific Complaint. On January 3, 2013, PAWC filed Preliminary Objections arguing the Amended Complaint should be dismissed for lack of Commission jurisdiction and insufficient specificity of a pleading. The Complainant did not file Answers to the Preliminary Objections to the Amended Complaint.

In the Initial Decision, issued on February 1, 2013, ALJ Cheskis sustained the Preliminary Objections and dismissed the Amended Complaint against PECO and PAWC for failure to raise an issue over which the Commission has jurisdiction. I.D. at 11. In addition, the Amended Complaint failed to state a clear and concise statement of the act or omission being complained of or a clear and concise statement of the relief being sought. *Id.* Also on February 1, 2013, the Office of Administrative Law Judge (OALJ) issued a Cancellation Notice of the Initial Telephonic Hearing which had been scheduled for February 26, 2013.

As previously indicated, the Complainant filed Exceptions on March 4, 2013. PECO filed Replies to Exceptions on March 8, 2013. On March 13, 2013, PAWC filed Replies to Exceptions.

**Discussion**

We begin by considering the nature of the Complainant’s filing, because the analysis to be applied depends on the type of filing before us. In this case, Exceptions to the Initial Decision were due on February 21, 2013. Exceptions were not received by the Commission by the required due date. Therefore, in accordance with Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h), the decision of the ALJ became final without further Commission action on February 21, 2013*.*

As discussed above, the Complainant filed Exceptions on March 4, 2013 (i.e., within fifteen days of the date that the Initial Decision became the final action of the Commission). Because the Plaintiff is appearing *pro se,* we will exercise our discretion and consider the Complainant’s Exceptions as a Petition for Reconsideration of the Commission’s final decision. 52 Pa. Code § 5.572(c). Consequently, we will treat the Replies to Exceptions filed by PECO and PAWC as Answers to the Petition for Reconsideration.

**Legal Standards**

Before addressing the Petition, we note that any issue not specifically discussed 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. Pennsylvania Public Utility Commission,* 625 A.2d 741 (Pa. Cmwlth. 1993).

The 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*, 56 Pa. P.U.C. 553 (1982):

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 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.

*Duick,* 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)).

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. *Duick*, 56 Pa. P.U.C. at 559.

ALJ Cheskis made fifteen Findings of Fact and reached twelve Conclusions of Law. I.D. at 4-6, 11-13. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

**ALJ’s Initial Decision**

In the Initial Decision, ALJ Cheskis determined that the Complainant failed to file a more specific pleading despite being given a second opportunity to do so. The Complainant’s failure to provide a clear and concise statement of the act or omission being complained of or a clear and concise statement of the relief being sought – as required by 52 Pa. Code §§ 5.22(a)(5) and (6) – would deprive the Respondents of the ability to prepare a defense. I.D. at 9. Further, ALJ Cheskis found that the Amended Complaint should be dismissed because of the Commission’s lack of jurisdiction over the issues she raised. *Id.* at 10. Therefore, the ALJ dismissed the Amended Complaint.

**Positions of the Parties**

The Complainant’s Petition comprises four pages with thirteen pages of attachments similar in format to her prior filings. They are addressed to “Your Honorable Judge L. Murphy” and contain unclear references to violations purportedly committed by various individuals and entities. Petition at 1. Within the Petition, Ms. Gates also states that she did not receive the Cancellation Notice of the February 26, 2013 Initial Telephonic Hearing.

In reply, PECO argues that the Petition should be denied because it is unintelligible and fails to identify any specific error of law or abuse of discretion. Second, PECO argues that Ms. Gates is presumed to have received the notice cancelling the Initial Telephonic Hearing because it was addressed to her at the address listed in the Complaints and because she previously received the initial Telephone Hearing Notice sent to the same address listed in her original Complaints. Third, PECO argues that the attachments to the Petition are irrelevant to any alleged violation by PECO and do not state any basis for overturning the ALJ’s Initial Decision. PECO Answer at 3-6.

PAWC also argues that most of the statements contained in the Petition are unintelligible. According to PAWC, the Complainant failed to identify or object to any findings of fact or conclusions of law in the Initial Decision. PAWC Answer at 1-2. In addition, PAWC argues that the Complainant’s apparent contention that she did not receive the Cancellation Notice of the Initial Hearing is without merit. *Id.* at 2-3. Finally, PAWC reiterates its prior arguments that the Complainant failed to plead sufficient facts on which any claim for relief can be granted or which PAWC could prepare an Answer and defense. Moreover, PAWC asserts that no issue has been raised over which the Commission has jurisdiction. *Id.* at 3.

**Disposition**

We will deny the Petition on the grounds that it fails to meet the *Duick* standards. We see no new or novel arguments, or any considerations which were apparently overlooked, when the ALJ’s decision became the final action of the Commission at the conclusion of the period for filing Exceptions.

Sections 5.22(a)(5) and (6) of the Commission’s Regulations, 52 Pa. Code §§ 5.22(a)(5) and (6), require a formal Complaint to set forth a clear and concise statement of the act or omission being complained of and a clear and concise statement of the relief being sought. The Commission’s rule is based on Pennsylvania Rule of Civil Procedure 1019, which requires a plaintiff to plead all the facts that he or she must prove in order to achieve recovery on the alleged cause of action. *Steven Higgins v. National Fuel Gas Distribution Corp.,* Docket No. C-2012-2338926 (Initial Decision dated February 26, 2013; Final Order entered April 9, 2013). The pleading must be sufficiently specific so as to set forth the *prima facie* elements of the alleged cause of action. *Feingold v. Hendrzak*, 15 A.3d 937, 942-943 (Pa. Super. 2011). Even under the present system of liberalized pleading, blind suspicions and unsupported allegations will not support a cause of action. *Id.* The purpose of requiring the complaint to contain sufficient material facts is to enable the adverse party to prepare a defense. *Landau v. Western Pennsylvania National Bank,* 445 Pa. 217, 225, 282 A.2d 335, 339 (1971).

In this case, Ms. Gates responded to the general question of the type of Complaints being alleged by checking “Other” and stating “SEE ATTACHED.” The two-page, single spaced attachments in both the PECO and PAWC Complaints are nearly identical. However, the only references to PECO and PAWC are found in the first sentence of the last paragraph of the attachments which read in part:

RE: PUC #1-800-782-1100 Secretary: Rosemary Chiavetta: Secretary Office of Administrative LAW JUDGE: Charles A. Rainey-Commonwealth of PA; PA Public Utility Commission … 10-15-2012 Cases: PECO Energy – BCS # 3026947 – PA American Water – BCS #3026921-(Philadelphia Suburban Water; Aqua) and West Conshohocken Sewage Authority Services and Billing Abuses and by Merion Hill Developers PENN DOT and Westcon Construction….

PECO Complaint and PAWC Complaint Attachments.

The remainder of the attached document consists of long sentence fragments which appear to reference various harms suffered by the Complainant and lists, in serial format, numerous individuals and entities. For example, the first paragraph states:

CIVIL FEDERAL RIGHTS OF FULL REPRESENTATION NOT; MEDIATION; EXPARTE; OR Collaborative LAWS….Trial by Jury of Evidentiary Facts under sub Section 402b of the United States Supreme Court Code ‘Under Color of Law’ Free From conflicts of my interests and the refusal’s to recues [sic] and remove. PFA filed reversed against me by Judge T. Delrecci.

*Id.*

We agree with the ALJ’s determination that the original Complaints did not plead material facts over which the Commission has jurisdiction. Thus, it was proper to give Ms. Gates an opportunity to file an Amended Complaint.

However, the eighteen-page Amended Complaint is also incomprehensible. It is addressed to “Judge Murphy” and contains long sentence fragments similar to the original Complaints. Amended Complaint at 1.Various individuals and entities are listed in serial format. PECO and PAWC are briefly listed at three locations in reference to the docket numbers assigned to the Complaints filed with the Commission. *Id.* at 3, 4, 15. However, there are no alleged facts which relate to any purported acts by either PECO or PAWC.

Based on our review of the record, we find that the ALJ properly dismissed the Amended Complaint. We agree that the Complainant’s failure to set forth a clear and concise statement of the facts being alleged, and of the relief being sought, would deprive the Respondents of the opportunity to prepare an adequate defense. Further, we agree that the Commission would not have jurisdiction over any of the issues raised in the Amended Complaint. As noted by ALJ Cheskis, the Amended Complaint referenced numerous issues such as breach of contract, banking, criminal code, Uniform Commercial Code, ERISA, insurance, separation of church and state, Social Security, federal civil rights actions and other claims, over which the Commission has no jurisdiction. I.D. at10.

Ms. Gates’ Petition is also unclear. It is addressed to “Judge Murphy” and the first sentence states:

I am Forwarding Documents and Dockets of my information of my complaints that involve the Federal [T]rade Commission and the PUC Public Utility Commissioners and PECO: F-2012-2332583 … and the PA American Water Co. F-2012 2332589 … and Communications Abuse of this Continual Civil Federal Abuses of Fraud of my Identity and the SSI; SSDI offices that involve R. Cohen and Clark & Cohen & AIG and AAG first by this Ms. Magill now this Ms. Toro.

Petition at 1.

We agree with PECO and PAWC that the Complainant has failed to identify any objectionable findings of fact or conclusions of law. There are no arguments raised in the Petition which would call into question any of the ALJ’s findings.

The only reference to the present proceedings in the Petition is the Complainant’s claim that she did not receive the Cancellation Notice of the Initial Telephone Hearing issued on February 1, 2013. Ms. Gates’ alleged failure to receive the Cancellation Notice is irrelevant. She did not allege a failure to receive the Initial Decision, which was also issued on February 1, 2013. In fact, Ms. Gates filed Exceptions to the Initial Decision indicating that she must have received the Initial Decision and the determination that her Amended Complaint was being dismissed. Thus, the alleged failure to receive the Cancellation Notice, even if true, has no bearing on the disposition of the Initial Decision and the Petition for Reconsideration.

The Complainant has not provided the Commission any valid reasons for granting her Petition and providing her with a hearing in this proceeding. Therefore, we shall deny the Complainant’s Petition.

Furthermore, we find that the ALJ’s granting of the Respondent’s Preliminary Objections was correct even though Ms. Gates is a *pro se* Complainant. In *Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (Order entered July 14, 1993), we held that, in the normal course, we would not dismiss a *pro se* complaint without first providing a hearing during which the *pro se* complainant could further explain his or her position and the factual basis for the complaint. The concern was expressed that, in general, *pro se* complainants may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe their basic issue and supporting facts. There are some cases, such as this one, where we find that a hearing would not enable the Complainant to better explain her position or provide additional facts that would alter the inevitable conclusion that this Commission lacks jurisdiction to entertain the Complaint in the first instance. *See, Vata v. Philadelphia Gas Works*, Docket No. C-2009-2149960 (Order entered August 24, 2010). Ms. Gates has repeatedly failed to set forth any information that might identify or support her alleged claims against PECO or PAWC. On this basis, we distinguish *Carlock* from the case now before us.

Accordingly, we affirm the ALJ’s determination that the Complainant would not be entitled to relief under any circumstances as a matter of law.

**Conclusion**

Based upon the foregoing discussion, we shall deny the Complainant’s Petition for Reconsideration, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration of Alice Ann Belmonte-Gates, filed on March 4, 2013, is denied, consistent with this Opinion and Order.

2. That these proceedings shall be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 15, 2013

ORDER ENTERED: August 15, 2013

1. As discussed further herein, the filing was labeled “Exceptions,” but was not timely filed. We will treat it as a Petition for Reconsideration and the Replies to Exceptions will be treated as Answers to the Petition for Reconsideration. [↑](#footnote-ref-1)
2. The Complainant filed the Petition with the Commission’s Secretary’s Bureau on March 4, 2013; however, the filing did not include a Certificate of Service. By letter dated March 6, 2013, the Secretary’s Bureau notified all Parties that the Complainant had timely filed Exceptions, but had failed to serve a copy of the Exceptions on the other Parties to the case. The Secretary’s Bureau provided a copy of the Exceptions to all Parties and gave them until March 18, 2013 to file Replies to Exceptions. Given these circumstances, we find the conclusion that the Exceptions were timely filed to be mistaken. [↑](#footnote-ref-2)