**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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

Darryl Hicks C-2010-2207800

v.

Philadelphia Gas Works

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition to Rescind Order (Petition)[[1]](#footnote-1) filed by Darryl Hicks (Mr. Hicks or Petitioner), on June 17, 2013, relative to the above-captioned proceeding. The Petition refers to an Order that was issued on February 14, 2013 (*February 2013 Order*). No response has been filed to the Petition.[[2]](#footnote-2) For the reasons set forth herein, we will deny the Petition.

**History of Proceeding**

On October 27, 2010, the Petitioner filed a Complaint against the Company alleging, *inter alia*, the following: that there are incorrect charges on the bill; that he tried to avoid a service interruption in March 2010; that he was told that he was charged $6,066.01 after his meter was changed in May 2005 because his meter had not been recording actual usage since February 2000; and that the Company did not follow its own procedures when it changed the meter. The Petitioner requested that the Company remove the outstanding charges on his bill for usage prior to the May 2005 meter exchange.

On November 22, 2010, the Company filed an Answer and New Matter. In its Answer, the Company, *inter alia*, denied that there are incorrect charges on the Petitioner’s bill. The Company also referred to an October 6, 2010 Bureau of Consumer Services decision which dismissed the informal complaint and required the Petitioner to pay a budget bill of $224.00, plus $158.00 toward the arrearage beginning in November 2010. The Company also stated that the Petitioner’s account balance was $9,507.06.

In the New Matter, the Company averred that after it exchanged the Petitioner’s meter on May 2, 2005, it issued the Petitioner a bill in the amount of $6,066.01 on May 3, 2005, for previously unbilled services. The Company also noted that the Petitioner was in the Customer Responsibility Program (CRP) until September 29, 2009. When he was removed from CRP, the frozen arrears became due. The Company raised the issue that the Petitioner is barred from contesting the May 2005 bill due to the three year statute of limitations, pursuant to Section 3314(a) of the Public Utility Code (Code), 66 Pa. C.S. § 3314(a). The Company also pointed out that, pursuant to Section 1312, the Petitioner can only seek a refund up to four years after the improper bill is discovered.

After the Petitioner requested and received a continuance, the hearing was held on February 6, 2012, before Administrative Law Judge (ALJ) Cynthia Williams Fordham. The Petitioner appeared *pro se* and the Company was represented by counsel. The Company presented one witness, Wendy Vacca, a customer review officer, who sponsored five exhibits.

The record was held open for the Company to submit a late filed exhibit regarding the CRP applications. Tr. at 95, 98-102. By correspondence dated March 15, 2012, the Company provided PGW Exhibit 6 - a seven page exhibit entitled “E-mail re: CRP enrollment records.” The Petitioner did not object to the admission of Exhibit 6 by March 27, 2012. Therefore, PGW Exhibit 6 was admitted into evidence as a late filed exhibit.

The record in this case consists of a 104 page transcript of the hearing and six exhibits. The record closed on March 28, 2012.

In her Initial Decision, issued on July 12, 2012, ALJ Fordham concluded that the Petitioner had failed to carry his burden of proof that the charges on his bills are incorrect. I.D. at 11. Accordingly, she recommended that the Complaint be dismissed. *Id.*

On August 8, 2012, the Petitioner filed Exceptions to the Initial Decision. On August 20, 2012, PGW filed Reply Exceptions. Per the *February 2013 Order*, we took the following actions: (1) denied the Petitioner’s Exceptions; (2) adopted the ALJ’s Initial Decision; and (3) dismissed the Complaint.

The instant Petition was filed as above noted.

**Discussion**

**Legal Standards**

We note that any issue not specifically addressed herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corporation v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsyl­vania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

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 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. A petition to modify or rescind a final Commission order may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation,* 490 Pa. 264, 416 A.2d 461 (1980). Additionally, we recognize that, while a petition under Section 703(g) may raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, at the same time “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (quoting [*Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=118+Pa.+Super.+380)). 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* at 559.

**The Petition**

The Petition responds to several paragraphs in the “New Matter” portion of PGW’s Answer and New Matter, filed on November 22, 2010. These paragraphs relate to the removal and replacement of the Petitioner’s meter in May 2005 and alleged inaccuracies in the bill that was sent to the Petitioner at that time. Petition at 1.

**Disposition**

We will deny the Petition to Rescind Order. First, it is too late for the Petitioner to respond to PGW’s New Matter now. PGW’s Answer and New Matter included a “Notice to Plead,” advising the Petitioner that he was required to file a written response to the New Matter within twenty days. He never filed a response. Additionally, the Petitioner had the opportunity to introduce pertinent evidence at the hearing. We will not rescind our *February 2013 Order* based on the Petitioner’s belated response to PGW’s New Matter.

Second, as noted above, in making a determination on rescission or amendment of an order, the Commission may consider whether the petition addresses new and novel arguments, or issues previously overlooked. The Petition focuses on alleged errors by PGW personnel in 2005, but our *February 2013 Order* stated “the ALJ properly concluded that [Mr. Hicks] is barred from contesting the May 2005 bill. Section 3314(a) and 1312(a) preclude the Complainant from filing a Complaint in 2010 regarding the May 2005 meter exchange or the May 2005 bill.” The Petition offers no reasons why we should reconsider that legal conclusion, and we see none.

**Conclusion**

Based on our review of the record, the Petitioner’s averments, and the applicable law, we shall deny Mr. Hicks’ Petition to Rescind Order; **THEREFORE,**

**IT IS ORDERED:**

That the Petition to Rescind Order filed by Darryl Hicks, on June 17, 2013, with reference to the Order entered herein on February 14, 2013, is denied.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 15, 2013

ORDER ENTERED: August 15, 2013

1. The filing before us explicitly requests “intersession” (*sic*). It was not filed within fifteen days of the entry of the Order in question, so it cannot be considered a Petition for Reconsideration. 52 Pa. Code § 5.572(c). We will treat it as a Petition to Rescind Order pursuant to 52 Pa. Code § 5.572(d), which may be filed at any time. [↑](#footnote-ref-1)
2. The Petitioner appeared not to have served a copy of the Petition on Philadelphia Gas Works (PGW or Company). Accordingly, the Company was contacted by Commission Staff and afforded an opportunity to file an Answer to the Petition. The Company elected not to file an Answer. [↑](#footnote-ref-2)