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August 8, 2013

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: William Bachmann v. Pennsylvania Electric Company
Docket No. C-2012-2312422

Dear Secretary Chiavetta:

I have enclosed for electronic filing the Replies to Complainant's Exceptions on behalf of Pennsylvania Electric Company in the above-captioned matter. Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,



Patrick R. Malone

PRM/tlg
Enclosure

cc: Office of Special Assistants (via e-mail only)
Administrative Law Judge Mary D. Long (via e-mail and first class mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WILLIAM BACHMANN

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2012-2312422

**REPLIES TO EXCEPTIONS
ON BEHALF OF
PENNSYLVANIA ELECTRIC COMPANY**

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Dated: August 8, 2013

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I. INTRODUCTION

On July 2, 2012, William Bachmann (“Complainant”) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) against Pennsylvania Electric Company (“Penelec” or the “Company”) at Docket No. C-2012-2312422, challenging the Company’s billing and meter reading cycles. Specifically, Mr. Bachmann alleged that (1) when he is enrolled on the Company’s typical cycle wherein payments are owed twenty days after receipt of the bill for electrical service he sometimes would receive two bills in one calendar month and (2) when he was enrolled on the Company’s thirty-day cycle, wherein payment is owed thirty (30) days after receipt of the bill for electrical service, the current bill would occasionally show the amount owed for both the prior month’s and current month’s electric service if the bill was issued prior to the Company debiting the Complainant’s bank account for his payment on the prior month’s bill.

The Formal Complaint was served upon the Company on July 3, 2012, and on July 23, 2012, the Company filed an Answer and New Matter. On August 14, 2012, the Complainant answered the New Matter and provided more detailed information about his complaint.

On March 7, 2013, the Commission issued a Telephonic Hearing Notice scheduling a hearing on April 9, 2013 before Administrative Law Judge (“ALJ”) Mary D. Long. The hearing was held on April 9, 2013. The Complainant appeared *pro se* and offered no exhibits. Penelec offered the testimony of one witness, Pamela Jordan, and submitted three exhibits that were admitted into evidence without objection.

On June, 27, 2013, ALJ Long issued her Initial Decision (“I.D.”) in this matter. The Commission’s Secretary’s Bureau served a copy of the I.D. on all parties by letter dated July 9, 2013.

On July 9, 2013, the Complainant filed Exceptions (“Exceptions”) to the I.D, but failed to serve them on Penelec. In accordance with Section 5.535 of the Commission regulations, 52 Pa. Code § 5.535, Penelec submits the following Replies to the Exceptions.

II. REPLIES TO EXCEPTIONS

A. Overview

The Exceptions merely restate the factual allegations contained in the Formal Complaint and the Complainant’s testimony at the hearing, including his requested relief. He identifies no errors in the I.D. warranting reversal of a single Finding of Fact or Conclusion of Law. For these reasons, the Exceptions should be denied in their entirety.

B. The Exceptions do not comply with the Commission’s requirements

The filing and scope of exceptions to an Initial Decision filed by a party are governed by specific Commission’s regulations:

In a proceeding, exceptions may be filed by a party and served within 20 days after the initial, tentative or recommended decision is issued unless some other exception period is provided. Exceptions may not be filed with respect to an interlocutory decision.

See 52 Pa. Code § 5.533(a). In particular, “*each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception.*” 52 Pa. Code § 5.533(b) (emphasis added).

While the Exceptions were timely filed and numbered, they do not comply with the other Commission requirements. In violation of 52 Pa. Code § 5.533(b), the Exceptions do not identify a single Finding of Fact or Conclusion of Law in the I.D. to which the Complainant is taking exception. As a result, the Company cannot determine which Findings of Fact or Conclusions of Law in the I.D. the Complainant is challenging. In order to provide a meaningful

response, the Company would have to speculate which Findings of Fact and Conclusions of Law the Complainant is challenging. The Commission should not countenance such a result. For these reasons, the Exceptions filed by the Complainant must be denied.

C. The ALJ properly found that the Complainant had the burden of proof and failed to satisfy his burden.

As pointed out in the I.D., the Complainant is the party seeking affirmative relief from the Commission, I.D., pp. 5, 8, and, as such, bears the burden of proof in this proceeding pursuant to Section 332(a) of the Public Utility Code (“Code”). 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that Penelec was responsible for the problems alleged in his Formal Complaint through a violation of the Code, Commission regulation, or order. *See* 66 Pa.C.S. § 701. He was required to prove the violation by a preponderance of the evidence. *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980).

Once a complainant in a Commission proceeding presents evidence sufficient to initially satisfy the burden of proof of a violation on the part of the utility, the utility has the burden of rebutting the complainant’s *prima facie* case. If the evidence presented by the utility is of co-equal weight or greater, the complainant has not satisfied his burden of proof. *Id.* The complainant then must provide some additional evidence to rebut the utility’s evidence. *Burleson v Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 461 A.2d 1234 (Pa. 1983). While the 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, in this case, the Complainant. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth. 2001). In addition, the Commission must ensure that the decision is supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Application of Samir Ouaqerrouch*, Docket No. A-

2011-2218369 (Order entered September 27, 2012); *Yellow Cab Company v. Pa. Pub. Util. Comm'n*, 524 A.2d 1069 (Pa. Cmwlth 1987). A mere “trace of evidence or a suspicion of the existence of a fact” is insufficient. *Application of Samir Ouaqerrouch*, Docket No. A-2011-2218369 (Order entered September 27, 2012); *Norfolk and Western Railway v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

In this proceeding, the parties presented the ALJ with a comprehensive factual record consisting of three exhibits and a hearing transcribed into forty-seven pages of testimony. The ALJ thoroughly discussed the parties’ respective positions for three (3) pages in the I.D. I.D., pp. 1-4. After reviewing the evidence submitted at hearing, the ALJ properly concluded that the Complainant failed to establish that the Company’s Commission-approved tariff is unreasonable, and that the Company’s billing practices were inconsistent with Commission regulations or its Commission-approved tariff. I.D., pp. 6-7 and Conclusion of Law (“COL”) ¶ 2.

The I.D. made the critical and important finding that “[a]ll bill payment scenarios offered by Penelec are consistent with its Commission-approved tariff.” I.D., p. 7; COL ¶ 2. This critical finding was not rebutted by the Complainant.

As a result, the I.D. is supported by substantial evidence and should not be disturbed.

D. The ALJ was correct not to award the Complainant his own separate and unique meter reading and billing schedule.

In his Formal Complaint, the Complainant seeks a meter reading and billing schedule that ensures he receives his bill for electric service on the exact same day every month. The ALJ correctly ruled that the Complainant is not entitled to a fixed date on which he receives his bill for electric service.

Section 56.21 of the Commission’s regulations establishes that “[t]he due date for payment of a bill may not be no less than 20 days from the date of transmittal...” 52 Pa. Code §

56.21. Section 56.11 of the Commission’s regulations also establishes that “[a] public utility shall render a bill once every billing period to every residential customer in accordance with approved rate schedules.” 52 Pa. Code § 56.11(a).

The Complainant is being billed under the Company’s residential rate schedule contained in its Commission-approved retail electric tariff, which, among other things, requires that the Complainant be billed in accordance with Rule 13 of the Penelec’s Commission-approved tariff. Ex. 2, Penelec's Retail Electric Tariff Rule 13(a), Electric Pa. P.U.C. No. 80, Original Page 53, Effective: January 11, 2011.

Among other things, Rule 13 of the Company’s Commission-approved tariff provides that billing statements issued to residential customers are due and payable to the Company within twenty days from the date the billing statement is issued to the customer. Penelec's Retail Electric Tariff Rule 13(a), Electric Pa. P.U.C. No. 80, Original Page 53, Effective: January 11, 2011. A public utility is required to adhere to its Commission-approved tariff. Such tariff has the force and effect of law in Pennsylvania and is legally binding upon the utility, its customers, and the public. 66 Pa.C.S. § 1303. In the I.D., the ALJ correctly found that the Company has provided and continues to provide monthly bills to the Complainant for electric service provided by the Company to the Service Location in accordance with the its Commission-approved tariff, applicable Commission's regulations, and the Public Utility Code. COL ¶ 2; I.D. p. 7

E. Response to the Complainant’s specific numbered exceptions.

The Complainant’s Exceptions are completely without merit because the I.D. is supported by substantial and un rebutted evidence that was properly reflected in the I.D. The specifically numbered Exceptions have been restated and are answered as follows:

1. This decision did not change the way my social security check is deposited to me. I still get one check per month. It is always the second week of the month and is not tied to the Pennsylvania Electric Company invoicing.

REPLY: This “Exception” is not disputed and was acknowledged in the I.D. at Finding of Fact (“FOF”) No. 3. However, the Company’s meter reading and billing procedures are not based on or contingent upon when the Complainant receives his Social Security check nor does it have any legal obligation to plan its reading and billing activities around this schedule. Instead, the Company’s billing and meter reading policies are governed by its Commission-approved tariff, which the Company followed at all times relevant hereto. COL ¶ 2.

2. This decision has not mandated that the Pennsylvania Electric Company send me one invoice a month, and have that one invoice show the correct amount due.

REPLY: This “Exception” simply restates the outcome of the hearing. The I.D. properly concluded that (i) the Company is not required to issue a bill for electric service on a fixed date each month; (ii) the Company must read the Complainant’s meter and issue an electric bill in accordance with the Company’s Commission-approved tariff and (iii) at all times relevant to the Formal Complaint, “[a]ll bill payment scenarios offered by Penelec are consistent with its Commission-approved tariff.” I.D., p. 7; COL ¶ 2. There is nothing contained in this “Exception” that justifies a departure of the findings described above.

3. I cannot match my revenue with my expenses because some months I get two invoices from the Pennsylvania Electric Company and I only get one social security check. This was not disputed by the Pennsylvania Electric Company.

REPLY: This is not an “Exception”, but a repetition of the Complainant’s argument advanced at hearing and rejected in the I.D. I.D., p 6. Further, the I.D. properly found that the Company’s billing and meter reading practices are governed by Commission regulations and its Commission-approved Tariff, which the Company followed at all applicable times. I.D. pp., 5-6 and COL ¶ 2. There is no basis under Pennsylvania law for a utility like the Company to be

bound by the billing practices of other companies or agencies instead of its own Commission-approved tariff.

4. It was not disputed by the Pennsylvania Electric Company that some of the invoices show the incorrect amount. This causes me physical hardship, raises my blood pressure, and forces me to call the Pennsylvania Electric Company to verify that the invoice is not correct.

REPLY: The Company disputes that invoices sent to the Complainant have on occasion contained an incorrect amount due. Rather, the invoices were correct when rendered. The I.D. specifically found that, when the Complainant opted to enroll in the Company's 30-day billing cycle, the Complainant may have received a bill which was generated before a payment was credited to his account. However, the I.D. never concluded that the Company issued a bill or read a meter in violation of the Company's Commission-approved tariff or that the Company overbilled the Complainant. I.D., pp. 6-7

5. I have no other bills from any company that sends me two invoices in one month.

REPLY: This is not an "Exception", but rather a repetition of an argument advanced by the Complainant at hearing that was considered and rejected by the I.D. I.D., pp. 6-7. Further, the I.D. properly found that the Company's billing and meter reading practices are governed by its Commission-approved Tariff, which the Company followed at all applicable times. I.D., pp. 5-6 and COL ¶ 2. The Company is under no obligation to match billing practices of other companies or to align its billing practices with the Social Security payment schedule.

6. It is standard accepted policy by all companies, except the Pennsylvania Electric Company, to send one invoice per month. The Pennsylvania Electric Company needs to follow the same billing procedures as the rest of the manufacturing companies, service companies, credit card companies, National Fuel Gas, Waste Management, and many many more.

REPLY: This is not an "Exception", but rather a repetition of another argument advanced by the Complainant at hearing and rejected by the I.D. I.D., pp. 5-6; COL ¶ 2. The

Company incorporates by reference its response to Exception No. 5 above as if set forth fully herein.

7. Social Security follows the accepted practice of making one deposit per month.

REPLY: This is not an “Exception”, but rather a repetition of another argument advanced by the Complainant at hearing and rejected by the I.D. I.D., pp. 5-6; COL ¶ 2. The Company incorporates by reference its response to Exception No. 5 above as if set forth fully herein.

8. The Pennsylvania Electric Company should follow the same billing cycles as social security.

REPLY: This is not an “Exception”, but rather a repetition of another argument advanced by the Complainant at hearing and rejected by the I.D. I.D., pp. 5-6; COL ¶ 2. The Company incorporates by reference its response to Exception No. 5 above as if set forth fully herein.

9. The government should not have special privileges that void the industry standard for revenue and expenses. One deposit from social security and one expense from the Pennsylvania Electric Company that shows the correct amount of the invoice.

REPLY: This is not an “Exception”, but rather a repetition of another argument advanced by the Complainant at hearing and rejected by the I.D. I.D., pp. 5-6; COL ¶ 2. The Company incorporates by reference its response to Exception No. 5 above as if set forth fully herein.

10. Balanced billing was offered, but for me that is not an option. I want to pay monthly only for the amount of electricity that I used. This helps me conserve electric by reviewing monthly my usage.

REPLY: This is not an Exception to a Finding of Fact or Conclusion of law, rather this is merely a repetition of Mr. Bachman’s argument during the Initial Telephonic Hearing.

Further, the ALJ acknowledged Complainant's argument. I.D. as p. 7. The ALJ also concluded that the Company offered several payment scenarios to the Complainant that were all consistent with the Company's Commission-approved tariff and although each of the options presented certain "inconvenience" for the Complainant, such "inconvenience is not sufficient to find that Penelec rendered unreasonable service to the Complainant." I.D. at p. 7.

11. Balanced billing does not work for me because in the winter time when the electric bill is higher, the weather is bad and I cannot go to very many places and do many things. When the summer is here, my electric bill is less, and that gives me more money to do things in the nice weather.

REPLY: This is not an Exception to a Finding of Fact or Conclusion of law, rather this is merely a repetition of Mr. Bachman's argument during the Initial Telephonic Hearing. The Company incorporates by reference its response to Exception No. 5 above as if set forth fully herein.

12. I am asking for nothing more than any other business does on a regular basis. One monthly invoice and that invoice shows the correct amount I owe.

REPLY: This is not an "Exception", but rather a repetition of another argument advanced by the Complainant at hearing and rejected by the I.D. I.D., pp. 5-6; COL ¶ 2. The Company incorporates by reference its response to Exception Nos. 4 and 5 above as if set forth fully herein.

13. I am on a fixed income and two invoices in one month causes great hardship to me.

REPLY: This is not an "Exception", but rather a repetition of another argument advanced by the Complainant at hearing and rejected by the I.D. I.D., pp. 5-6; COL ¶ 2. The Company incorporates by reference its response to Exception No. 5 above as if set forth fully herein.

III. CONCLUSION

For the reasons set forth above, Penelec respectfully requests that the Commission (i) reject the Exceptions and (ii) affirm the July 9, 2013 Initial Decision in this proceeding.

Respectfully submitted,



Date: August 8, 2013

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*Attorneys for
Pennsylvania Electric Company*

**BEFORE THE
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WILLIAM BACHMANN	:	
	:	
v.	:	Docket No. C-2012-2312422
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via First-Class U.S. Mail

William Bachman
3436 Hershey Road
Erie, PA 16506

Dated this 8th day of August, 2013.



Patrick R. Malone, Esq.