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September 6, 2013

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

**RE: Gary Eckenrode v. PECO Energy Company
PUC Docket No.: C-2012-2337839**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents in the matter referenced above.

- Answer
- Answer & New Matter
- Motion Objecting to Continuance Request
- Motion for Judgment on the Pleadings
- Motion to Admit Exhibits
- Preliminary Objection
- Exceptions
- X** Reply Exceptions
- Main Brief
- Reply Petition

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

Shawane Lee
Counsel for PECO Energy Company
SL/lo

cc: Gary Eckenrode (first class mail)

REPLY EXCEPTIONS

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Gary Eckenrode (“Complainant”) in the above-referenced matter on August 24, 2013. On December 2, 2012, the Complainant filed a formal complaint against PECO. In his formal complaint, the Complainant claims that when the Hurricane Sandy storm hit on October 29, 2012, his power was out for seven days. The Complainant states that PECO’s response to restoring his power was inadequate and he believes the company’s vegetation management efforts to prevent power loss were ineffective. The Complainant additionally alleges that a live wire came down in his neighborhood during the storm and PECO assigned a wire watcher to monitor the wire rather than send someone immediately to repair the wire.

Respondent, PECO filed an Answer on December 19, 2012. On April 10, 2013, an in person hearing convened before Administrative Law Judge Marta Guhl (“ALJ Guhl”). Complainant represented himself pro se at the hearing. PECO offered the testimony of three (3) witnesses and submitted twenty-three (23) exhibits into the record. The testimony lasted approximately five (5) hours and included extensive cross-examination of PECO’s witnesses by the Complainant. PECO also submitted late filed Exhibit “24”. On August 1, 2013, ALJ Guhl issued an Initial Decision, wherein she held inter alia:

I find that the Respondent’s actions were in all respects reasonable and that the explanations and protocols successfully rebut the Complainant’s prima facie case. ...the circumstances were unfortunate and I am sympathetic to the Complainant’s frustration with the delay of the restoration of his power, but the response was organized, orderly, appropriate and thorough, therefore, the Complainant’s Formal Complaint will be dismissed in the Ordering Paragraphs below. See Initial Decision, p. 11.

The Commission should sustain the initial decision of ALJ Guhl. The Complainant excepts to the decision issued by ALJ Guhl in fourteen (14) separate paragraphs. In these

paragraphs, the Complainant lists no error of law made by ALJ Guhl in arriving at her decision. The Complainant simply disagrees with ALJ Guhl's decision and believes he submitted adequate proof to support his position. These specific Exceptions should be summarily dismissed because they are procedurally improper and simply further litigation in this matter. Specifically, Complainant Exceptions state and PECO responds as follows:

Paragraph 4 – “The unanswered question here that was never answered was why there were so many outages for PECO involving a storm that was nowhere near the disaster, calamity or catastrophic event that affected neighboring states of NY and NJ.”

This Exception goes beyond the scope of the Complainant's complaint and ALJ Guhl's Initial Decision and raises issues, concerning outages for other customers during the storm generally as a whole. The other 850,000 outages that occurred during the storm are not specifically relevant to whether the company restored the Complainant's service in a reasonable period of time and whether PECO had a reasonable protocol in place to do so. After hearing extensive testimony and evidence, with regards to the Complainant's outage, ALJ Guhl determined:

The October 29, 2012 storm was a major event known as Hurricane Sandy. The Respondent had more than 850,000 customers out of service. The Respondent has a standard protocol in place that it follows in the event of an outage. The question is whether that protocol is reasonable enough to explain satisfactorily why it took Respondent from October 29th to November 5th to restore power to the Complainant.” See Initial Decision, p. 9. ALJ Guhl determined that “the Respondent's actions during the October 29, 2012 weather event known as Hurricane Sandy were reasonable; service was restored to the Complainant in as timely a manner as possible.” See Initial Decision, p. 12, para. 5.

The Complainant's Exception does not point to any specific error ALJ Guhl made in arriving at this decision; and therefore, should be dismissed.

Paragraph 5 – “The unanswered questions is why are things apparently getting worse in terms of outages and their restoration duration and what did PECO do during Sandy to correct the inconsistent and misleading information issues cited in the past.”

Again, the Complainant raises general theoretical issues regarding outages and restorations as a whole for all of PECO customers, which is not germane to his sole issue of why his service was out for seven (7) days. ALJ Guhl correctly ruled:

The Respondent’s actions during the October 29, 2012 weather event known as Hurricane Sandy were reasonable; service was restored to the Complainant in as timely a manner as possible.”
See Initial Decision, p. 12.

Paragraph 6 – “With the proliferation and widespread heightened awareness of identity theft, I find the need to display and disseminate my full account numbers and any other billing related data to be both inconceivable and cavalier.” Here, PECO presented the Complainant’s Account Activity Statement as Exhibit “1” to demonstrate the service address and type of service at issue. The account activity statement is a standard exhibit submitted in all of PECO’s formal cases to establish the fact the Complainant is a customer, has service, and the type of service. Notwithstanding this, the fact this exhibit was presented is not a basis for an Exception against ALJ Guhl’s Initial Decision because it does not raise an error of law.

Paragraph 8 – “The Judge’s Finding of Fact made it sound like PECO made some great find or discovery for the very first time on November 5, 2012. Namely, that this power line wire was down and in need of repair.” Once again, there is no error associated with ALJ Guhl’s finding of fact. The fact is that during Hurricane Sandy, when multiple power lines were down throughout PECO Energy’s service territory and 850,000 customers were without power, the company determined there was a line down that feeds the Complainant’s

service, and dispatched a wire watcher until a repair crew could safely repair the wire. The Complainant suggests that in the midst of a major hurricane the company should have done more to find that his specific wire was down immediately after it came down. That is not reasonable under the circumstances. ALJ Guhl correctly stated in her Initial Decision:

On November 5, 2012, the Respondent found the issue causing the Complainant's outage was a damaged wire to the transformer on his street. Once the damaged wire to the transformer was found to be the issue, a crew was dispatched and service was restored to the Complainant. See Initial Decision, p. 11. ... The response was organized, orderly, appropriate and thorough. Id.

Paragraph 9 – “PECO’s Exhibit 5, Customer Outages for premises for the period 11/01/12 to 11/04/12 cites in the comments section ‘cancelled due to ping’ what exactly does that statement mean how does it relate or pertain to the ‘low priority’ power restoration designation of my electrical service.” The Complainant uses this Exception not to raise an issue or error of law that ALJ Guhl made but to question the content of exhibits and data presented at the hearing. The Exceptions process is not the appropriate forum to dispute the information contained in exhibits presented at the hearing. During approximately five hours of testimony, the Complainant had an opportunity to cross-examine witnesses and to question witnesses on the information presented in the exhibits. The Complainant failed to raise this issue during his cross-examination of the witness who presented this exhibit. Again, as this Exception does not raise an issue with ALJ Guhl’s decision, it should be rejected.

Paragraph 10 – “PECO’s lack of concern in addressing secondary lines when it comes to Tree/Vegetation control needlessly contributes to the number of outages during storm events and extends the duration of those outages for all concerned. When it comes to safety and reliability of my electric energy service, I would very much like to know how

PECO's sponsorship of bobble head dolls giveaways at Phillies games and their other advertising at these games helps me or other PECO customers?" Once again, this Exception does not raise any specific error of law made by ALJ Guhl, but rather, attacks the company in a completely unrelated aspect – the company's advertising efforts. The fact is that after several hours of testimony presented by a vegetation management expert, ALJ Guhl determined:

I find that the tree trimming schedule is reasonable, and that broken and uprooted trees were not caused by inadequate tree trimming. See Initial Decision, p. 10.

It is reasonable to believe that during a major hurricane, trees will be uprooted and heavy branches torn from trees. The only way to avoid this from happening is for PECO to cut down every single tree in the Complainant's neighborhood and surrounding territory. This is unreasonable as well as the Exception, raising this issue. Accordingly, the Complainant's Exception should be rejected.

Paragraph 12 – “On at least two separate occasions I told PECO representatives I felt like I was living in a third country such as Afghanistan, Iran or Bangladesh when it came to restoring my electric power....The conversations are not listed.” Once again, the Exceptions process is not the forum to raise an issue or challenge the exhibits PECO presented at the hearing. The Complainant had ample opportunity to cross-examine the witnesses on the exhibit at issue and to question why his comments were not contained in the exhibits presented. The Complainant's Exception should be rejected.

Paragraph 13 – “A wire watch sent days after the wire had been down certainly did not ‘ensure’ my public safety.” Here, as in the previous Exceptions, the Complainant does not point to any error of law made by ALJ Guhl, but rather, disagrees with the fact his wire was not

immediately identified during a major Hurricane and put back up to his satisfaction. The Complainant Excepts to ALJ Guhl's Initial Decision because he feels that out of the 850,000 customers without power during the hurricane, he was specifically entitled to have his downed wire found immediately in the midst of a dangerous hurricane. The Complainant Excepts to ALJ Guhl's Initial Decision because he feels that his electric wire should have been repaired immediately, regardless of the weather conditions and irrespective of the other critical power outages that occurred during that storm to such places as hospitals, police stations, fire departments, and homeless shelters. The Complainant disagrees with ALJ Guhl's Initial Decision because PECO simply did not find that wire and put it back up fast enough to his liking. There is no error of law identified and the Exceptions process is not the appropriate forum to continue this baseless complaint against PECO. Accordingly, this Exception should be rejected.

Paragraph 14 – “ To be clear, just saying PECO is phenomenal or receiving dubious awards for its restoration efforts or by expressed witness testimony of not wanting to change a thing in response to the next major event are certainly not the answers to these very serious outage and restoration problems.” The Complainant's Exception, once again, raises theoretical issues with power outages and restorations as a whole and not his specific outage. ALJ Guhl correctly stated in her Initial Decision:

It should be noted that PECO made significant preparation for Hurricane Sandy. The storm hit on a Monday, and PECO brought in additional crews on the Saturday before the storm actually hit. PECO mobilized more than 3,000 employees, contractors and out-of-state crews prior to the storm. During Hurricane Sandy, PECO had 300 crews doing vegetation work which is above the normal 100 crews. PECO had an additional 969 personnel on hand just for vegetation management during and after the storm. See Initial Decision, p. 10.

PECO's witnesses who testified at the hearing were principal managers at the forefront of the crews mobilized to restore power to the company's customers. These two individuals testified about the company's protocols in place and their personal efforts working more than 15-16 hour shifts to restore power. Under these extreme weather circumstances, PECO performed phenomenally and the company deserved the awards it received for its efforts. The Complainant's baseless Exception, which does not raise an error with ALJ Guhl's decision, should be rejected.

The remaining evidentiary Exceptions the Complainant raises are regarding a denial of a subpoena request and a motion to deny evidentiary documentation. These Exceptions should be dismissed. The Complainant's Exceptions in this regard arise from correspondence he submitted to ALJ Guhl on April 1, 2013, listing a request for thirteen (13) separate documents, records and/or items from PECO, which purported to be a subpoena request. PECO objected to the Complainant's request for information as the request did not comply with the subpoena rules set forth under 52 Pa. Code § 5.421; the request was overbroad and sought documents not relevant to the formal complaint in contravention of 52 Pa. Code § 5.421(b)(1) and (b)(2); and the request was not timely as it was served on PECO Energy only nine (9) days before the scheduled hearing. The request did not give PECO Energy reasonable time to object to the subpoena nor did it give the company a reasonable amount of time to gather the documentation requested.

Additionally, the Complainant's correspondence did not specify "the general relevance, materiality and scope of the" documentary evidence sought. For instance, the Complainant's formal complaint raises an issue with PECO Energy's response to a power outage at his premises that occurred during Hurricane Sandy. The formal complaint did not raise an issue with the

Complainant's reliability of service at any other time than the date of the storm. However, in the Complainant's request for documents, he requested such documents as "copies of all PECO correspondence related to Docket No. 2011-2271989, including any prior non-public correspondence by PECO to such docket". The request also asked for "all related inspections and reports to demonstrate its adherence and compliance with Sub Chapter "N" entitled Electric Reliability Standards." The Complainant requested "records and reports pertaining to the Burdsal Avenue outages along with any other documentation". The documentation the Complainant requested was not relevant to his formal complaint. The Complainant requested information related to outages in general as opposed to the outages that occurred during the time period specified in his formal complaint, arising from Hurricane Sandy. The fact is that PECO presented data and information related to the Complainant's *specific* outage on his electric line in the twenty-three exhibits submitted during the hearing. These exhibits were relevant to the Complainant's formal complaint and the Complainant had the opportunity to cross-examine PECO's witnesses, regarding the content of the exhibits.

Further, the Complainant's request asked for information, concerning other customer's accounts. Specifically, the Complainant requested "the content of calls between 10/29/12 and 11/05/12" from customer calls made from Burdsal Avenue. The content of telephone calls made by other customers is protected by privacy rules that do not permit the company to disclose specific information on customer's accounts. Nevertheless, PECO presented exhibits that detailed the contacts and telephone calls the Complainant made to the company, regarding his specific outage. It is the Complainant's telephone calls that were relevant to his specific formal complaint – not other customer's telephone calls. Like the other exhibits presented, the

Complainant had an opportunity to cross-examine PECO's witnesses regarding the content of the exhibits and the calls he made to the company.

PECO further objected to the Complainant's request pursuant to 52 Pa. Code § 5.423 as it requested information that is proprietary and not available to the public. For instance, the Complainant requested documentation filed by PECO with the Pennsylvania Public Utility Commission ("PUC"), including "any prior non-public correspondence" by PECO. Not only is the information the Complainant requests not relevant to his formal complaint, it is not available on the public docket. Any information submitted pursuant to the Order of the PUC is not yet publicly available. Additionally, the Complainant requested such proprietary information as "a detailed overview of how [PECO's] cost and any out-of state or area crews paid for in responding to episodes such as Sandy and what overheads additives and/or profit are added to such cost. The information the Complainant requests has no bearing on the outcome of whether PECO responded to his outage in a timely manner. Further, PECO's profits, costs and overheads is proprietary information that would cause "unfair economic or competitive advantage" if made public. See 52 Pa. Code § 5.423(a)(1).

ALJ Guhl properly denied the Complainant's request for evidentiary information raised in Exceptions 1, 2 and 3. As ALJ Guhl correctly stated in her Initial Decision:

The Complainant had the opportunity at the hearing to address the issues raised in his request through his questions on cross-examination of PECO's witness. Some of the other information that the Complainant requested was included in the exhibits that PECO presented at the hearing and also through their witness testimony. Based on all of the above, PECO's Motion Objecting to Complainant's Request for Evidentiary Information is granted.

See Initial Decision, p. 8.

In summary, ALJ Guhl properly concluded that the Complainant has not met his burden of proof in this matter pursuant to 66 Pa. C.S. § 332(a). Accordingly, ALJ Guhl's decision should be upheld. For the reasons set forth above, PECO respectfully requests that the Commission deny the Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,



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GARY ECKENRODE

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket Nos. C-2012-2337839

VERIFICATION

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.



Date: September 6, 2013

Shawane L. Lee

