**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held April 21, 2016 |
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| Commissioners Present:  Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman  Pamela A. Witmer  John F. Coleman, Jr.  Robert F. Powelson | |
| Ena Blackwood | F-2014-2455548 |
| v. |  |
| PECO Energy Company |  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Ena Blackwood (Complainant) filed on October 6, 2015, to the Initial Decision (I.D.) of Administrative Law Judge Christopher P. Pell (ALJ), which was issued on August 10, 2015, in the above-captioned proceeding. [[1]](#footnote-1) Replies to Exceptions were filed by the PECO Energy Company (PECO or the Company) on October 29, 2015.[[2]](#footnote-2) For the reasons stated below, we shall deny the Complainant’s Exceptions and adopt the ALJ’s Initial Decision.

**History of the Proceeding**

On November 17, 2014, the Complainant filed a Formal Complaint (Complaint) against PECO in which she alleged that there were incorrect charges on her bill and that PECO was threatening to shut off her service or had already shut off her service. The Complainant attached a hand written note to her Complaint in which she stated that her lights were shut off, that she needed a lawyer but could not afford one, and that she would like to be compensated for her health.

On December 4, 2014, PECO filed an Answer denying that the Complainant was being overcharged and denying that there were any billing errors on the Complainant’s bills. PECO stated that the Complainant had a history of prior informal and formal complaints where she has alleged discrepancies on her utility bills and requested payment agreements. PECO indicated that the Complainant’s account balance was $2,712.27 and that the Complainant was carrying this balance because she does not pay the full amount billed or pay her bills on time. Answer at 1-3.

By Hearing Notice dated February 23, 2015, a hearing regarding this matter was scheduled for April 9, 2015. On March 16, 2015, the Company filed a Motion for Continuance of the April 9, 2015 hearing. By Order dated March 18, 2015, the ALJ granted the Company’s request. By Hearing Cancellation/Reschedule Notice dated March 16, 2015, the hearing was rescheduled for April 13, 2015.

The hearing convened as scheduled on April 13, 2015. The Complainant appeared *pro se*, testified on her own behalf, and presented eleven exhibits (Complainant Exhs. 1 through 11), which were admitted into evidence. PECO, which was represented by counsel, presented the testimony of one witness who offered nine exhibits (PECO Exhs. 1 through 7, 9 and 10), which were admitted into evidence. The record in this case consists of a 140-page transcript and twenty exhibits. The record was closed on May 5, 2015.

In his Initial Decision, issued on August 10, 2015, ALJ Pell denied the Complaint because he found that the Complainant failed to demonstrate that her allegations in her Complaint had merit. As previously indicated, the Complainant filed Exceptions on October 6, 2015.[[3]](#footnote-3) PECO filed Replies to Exceptions on October 29, 2015.

**Discussion**

**Legal Standards**

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a 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,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the Respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision 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 & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by a Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal value or “weight,” the burden of proof has not been satisfied. The Complainant now has to provide some additional evidence to rebut that of the Respondent. [*Burleson v. Pa. PUC,* 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d,* 501 Pa. 433, 461 A.2d 1234 (1983).](http://www.lexis.com/research/buttonTFLink?_m=0d7e78528297490763e78babd487bc42&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2006%20Pa.%20PUC%20LEXIS%20102%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=16&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20Pa.%20Commw.%20282%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=9&_startdoc=1&wchp=dGLzVzz-zSkAz&_md5=44d0f4cf51bc1159652e85695542a09d) While the burden of persuasion may shiftback 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. *Milkie v. Pa. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001).

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically delineate 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. 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)

**ALJ’s Initial Decision**

In his Initial Decision, ALJ Pell made forty-one Findings of Fact and reached six Conclusions of Law. I.D. at 3-7, 12-13. 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.

In his Initial Decision, the ALJ concluded that the Complainant failed to produce substantial evidence to support her allegations and thus failed to sustain her burden of proof. The ALJ specifically concluded that the Complainant failed to demonstrate that there were incorrect charges on her bill and that PECO improperly terminated her electric and gas service. The ALJ stated that the Complainant could not offer a clear explanation as to why she believed there were incorrect charges on her bill, or why her account balance was incorrect. According to the ALJ, the Complainant also could not substantiate her claim that there were incorrect charges on her bill. However, the ALJ pointed out that the Complainant offered as an explanation that although occasionally she may have been late with her payments, she always paid her bills in full and never missed a payment. I.D. at 1, 9‑10.

Next, the ALJ stated that the Company provided evidence that every payment the Complainant submitted to PECO had been properly credited to her account and that each money order receipt supplied by the Complainant was credited against her balance. The ALJ found that PECO demonstrated that the Complainant’s continually growing balance was the direct result of her repeated failure to pay her bills on time, in full, or sometimes even at all. As such, the ALJ concluded this portion of the Complaint should be denied. I.D. at 10-11.

With regard to the termination of the Complainant’s service, the ALJ noted that the Complainant testified that PECO never should have terminated her gas or electric service because she always paid the billing amount that was requested of her. The Complainant further testified that PECO did not send her notices when they terminated her services. However, the ALJ acknowledged that PECO provided evidence that it had issued a ten-day notice to the Complainant prior to the termination of her electric service in July 2014 and again in September 2014. *See* Tr. at 73, 76. Also, PECO demonstrated that the Company issued two separate 72-hour notices to the Complainant prior to each termination. The ALJ further noted that regarding the termination of the Complainant’s gas service in November of 2014, PECO issued the required ten-day notice as well as two separate 72‑hour notices. *See* Tr. at 80. According to the ALJ, the Complainant clearly failed to meet her burden of demonstrating that PECO improperly terminated her electric and gas services. As such, the ALJ concluded that this portion of the Complaint also should be denied. I.D. at 11-12.

**Exceptions and Replies**

In her Exceptions, the Complainant states that she disagrees with the payment of $2,560 owed and would like to ask PECO for a calculation of the amount that she is “accused of owing.” She claims that she never received any proof from PECO “for each month that I was accused of owing and would like that to be explained.” The Complainant also disagrees with having her name sent to the Credit Bureau and with having her name still on the CAP Program, from which she would like to be removed. The Complainant disputes the ALJ’s decision and states that she no longer lives at her property because she has no lights or gas. Exc. at 1-3.

In reply, PECO states that the Complainant’s Exceptions are procedurally improper and should be dismissed on that basis alone, citing to 52 Pa. Code § 5.533(b). PECO states that the Complainant’s attempt to further litigation by simply disagreeing with the outcome of the Initial Decision without identifying any specific error of law or abuse of discretion fails to satisfy the requirements of the Commission’s Regulations, is procedurally improper, and should be dismissed summarily. R. Exc. at 1-2.

Furthermore, PECO avers that the Complainant’s Exceptions are without merit. In regard to her allegation that PECO has enrolled her in the CAP program, PECO maintains that there is nothing in the record that reflects that the Complainant is enrolled in CAP. PECO notes that the ALJ’s decision does not state the Complainant is enrolled in CAP and, in fact, the record reflects that prior to her service termination, the Complainant had a gas and electric supplier. PECO asserts that the fact the Complainant had suppliers proves she was not enrolled in a CAP because pursuant to the Commission’s current Regulations, CAP customers may not enroll with suppliers. R. Exc. at 2.

In regard to the Complainant’s allegation that PECO sent her name to the credit bureau, PECO submits that there is nothing in the record that reflects that PECO reported the Complainant to the credit bureau. PECO avers that the Complainant did not present any proof at the hearing through testimony or otherwise that this allegation is true. In fact, PECO explains that the Company does not report to the credit bureaus and there is no company practice or policy in place reporting customers with delinquent balances. R. Exc. at 2-3.

Next, PECO notes that the Complainant continues to dispute the $2,560 she states that PECO says she owes. PECO claims that the Complainant’s evidence on this issue consists solely of assertions, as the Complainant failed to offer anything except money order receipts to demonstrate that her balance was incorrect. According to PECO, the Complainant excepts to the ALJ’s decision simply because she disagrees with the ALJ’s Initial Decision and believes she submitted adequate proof to the ALJ to support her position. PECO maintains that the record clearly demonstrates, within PECO Exh. 1, that the Complainant had an outstanding $2,678.33 balance for which PECO properly terminated her service. PECO opines that the remaining allegations in the Complainant’s Exceptions are unintelligible and do not warrant a response or serve as a basis for overturning the ALJ’s decision. PECO concludes that the ALJ correctly determined that the Complainant did not meet her burden of proof in this matter and his Initial Decision should be upheld by the Commission. R. Exc. at 2-3.

**Disposition**

Initially, we reiterate that we have previously determined that we would accept the Complainant’s Exceptions despite the procedural imperfections within them. However, based upon our review and analysis of the evidence of record, we are in agreement with the ALJ’s Initial Decision and conclude that the Complainant’s Exceptions lack merit. We find that PECO has demonstrated adequately that the Complainant has a history of prior informal and formal complaints, has an account balance of $2,678.33, and has failed to satisfy her burden of proof that there were incorrect charges on her bill. As the evidence of record illustrates, the Complainant has a history of not paying the full amount owed towards her utility bills or does not pay at all, resulting in the increasing balance due to PECO. We further find that PECO has demonstrated that the Company followed the requirements in Section 1406 of the Code, 66 Pa. C.S. § 1406, prior to the termination of the Complainant’s electric and gas service. For all of these reasons, we agree with the ALJ that the Complainant failed to meet her burden of proof that PECO improperly terminated her services for nonpayment of her delinquent account.

Accordingly, we shall deny the Complainant’s Exceptions and adopt the ALJ’s Initial Decision that dismisses the Complaint for failure by the Complainant to carry her burden of proving that there were incorrect charges on her bill or that her services were improperly terminated.

**Conclusion**

Based on the above discussion, we shall deny the Complainant’s Exceptions and adopt the ALJ’s Initial Decision, which denies the Complaint; **THEREFORE**,

**IT IS ORDERED:**

1. That the Exceptions of Ena Blackwood filed on October 6, 2015, to the Initial Decision of Administrative Law Judge Christopher P. Pell, which was issued on August 10, 2015, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Christopher P. Pell is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Ena Blackwood at Docket Number F‑2014‑2455548 against the PECO Energy Company is dismissed.

4. That this proceeding be marked closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 21, 2016

ORDER ENTERED: April 21, 2016

1. Exceptions to the Initial Decision were due on August 31, 2015. The Commission did not receive Exceptions and the ALJ’s decision became final by operation of law. On September 9, 2015, the Complainant telephoned Commission staff stating that she did not receive the Initial Decision until September 4, 2015, and requested an extension of time to file Exceptions. As such, by letter dated September 10, 2015, the Secretary’s Bureau, pursuant to 52 Pa. Code § 1.15, notified the Parties that the Commission would rescind its final action in this case and established September 30, 2015 as the filing due date for Exceptions. The Complainant filed Exceptions on September 25, 2015. However, by letter dated September 29, 2015, the Secretary’s Bureau returned the Exceptions as they lacked an original signature and a Certificate of Service. The Complainant was provided ten days to properly file her Exceptions. The Complainant’s signed Exceptions were received on October 6, 2015. [↑](#footnote-ref-1)
2. We note that the Replies to Exceptions were late filed by the Company. However, considering the circumstances with the late-filed Exceptions and consistent with 52 Pa. Code § 1.2(c), we shall consider them in order to secure a just, speedy, and inexpensive determination. [↑](#footnote-ref-2)
3. We acknowledge that the format of the Complainant’s Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusion of law to which exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(c), in order to secure a just, speedy, and inexpensive determination. [↑](#footnote-ref-3)