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December 20, 2016

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

RE: Rosalyn Purnell v. PECO Energy Company
PUC Docket No.: F-2015-2513799

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Exceptions of PECO Energy Company* with regard to the matter referenced above.

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,

A handwritten signature in black ink, appearing to read "Shawane Lee".

Shawane Lee
Counsel for PECO Energy Company

cc: Certificate of Service

SL/ab
Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROSALYN PURNELL	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. F-2015-2513799
	:	
	:	
PECO ENERGY COMPANY	:	
	:	
Respondent	:	

**EXCEPTIONS OF
OF PECO ENERGY COMPANY**

Pursuant to 52 Pa Code § 5.533, PECO Energy Company (“PECO”) hereby files its Exceptions to the Initial Decision (“I.D.”) of Administrative Law Judge Darlene R. Davis Heep issued on October 26, 2016, in the above-referenced matter and states the following:

I. Introduction

The Complainant in this proceeding, Rosalyn Purnell, has been filing complaints with the Public Utility Commission (“PUC”) since 2010 when she first moved into her current service address on June 17, 2010. Tr. 7. Ms. Purnell filed informal and formal complaints alleging excessive usage, meter installation issues and meter concerns. Id. She also opened high bill disputes with PECO regarding her usage. Tr. 8. During each of these complaints, PECO held collection on Ms. Purnell’s balance and stayed any pending termination consistent with 52 Pa. Code § 56.141, 52 Pa. Code § 56.151, and 52 Pa. Code§ 56.372. Pursuant to these regulations, PECO may not issue termination notices or pursue collection on disputed charges.

During the winter 2014-2015 and winter 2015-2016 Low Income Home Energy Assistance Program (LIHEAP) season, Ms. Purnell sought funding in the form of a Crisis Grant

to pay her PECO bills. To obtain this funding, LIHEAP required that Ms. Purnell produce a 10-day termination notice, demonstrating that she was in need of Crisis funding for being in imminent danger of not having heat. Over the two LIHEAP winter seasons, Ms. Purnell had open high bill disputes, informal and formal PUC complaints. While the high bill disputes and PUC complaints were open and pending, Ms. Purnell's account remained out of collection and there was no termination action on her account. Absent a present intent to terminate service, PECO was prohibited from issuing termination notices to Ms. Purnell. *52 Pa. Code § 56.99*. Hence, PECO did not issue any 10-day termination notices to Ms. Purnell during the winter 2014-2015 and winter 2015-2016.

The *Purnell* I.D. holds that PECO should have issued a termination notice to Ms. Purnell or given her a letter stating that her account was in threat of termination so that she could produce the notice to LIHEAP and obtain Crisis funding. The I.D. holds that because PECO did not provide a termination notice or letter stating there was a possibility of a termination, PECO provided unreasonable utility service in violation of 66 Pa.C.S. § 1501.

As set forth below, PECO respectfully submits that the *Purnell* I.D. is inconsistent with the provisions set forth in the Low Income Energy Assistance State Plan; PECO Energy Company Universal Service and Energy Conservation Plan ("Three Year Plan"), and Commission regulations at 52 Pa. Code § 56.141, 52 Pa. Code § 56.151, 52 Pa. Code § 56.372 and 52 Pa. Code § 56.99. PECO therefore respectfully suggests that the Commission should overturn the holding in the *Purnell* I.D. that PECO provided unreasonable utility service by not providing a termination notice or letter to a PECO customer to assist them with obtaining Crisis funding when there was no threat of termination or present intent to terminate service.

In the alternative, if the Commission wishes PECO to issue termination notices to customers notwithstanding the Commission rules staying such issuance in the face of a pending dispute, PECO requests that the Commission state that policy and waive any regulatory requirements prohibiting such issuance.

II. Argument

A. LIHEAP requires a utility termination notice to obtain Crisis funds.

The I.D. (pp. 15-16) discusses that PECO refused to provide Ms. Purnell a shutoff notice during the winter 2014-2015 and winter 2015–2016 period so that she could complete her application for energy assistance grants such as Crisis.

LIHEAP is a federal funding program that provides Cash, Crisis and weatherization assistance. The Crisis program “allocates funding for emergencies including purchasing home heating fuel, preventing service from termination, or reinstating service that has been terminated for non-payment.” *See PECO Energy Company Universal Service and Energy Conservation Plan (“Three Year Plan”) 2013 to 2015 and 2016 to 2018*, pp. 21-211, Section 6. Section 601.32 of the Low Income Energy Assistance State Plan (“State Plan”) requires that a customer be without service or in termination status to be eligible for Crisis:

§601.32. Eligibility requirements for crisis benefits.

Households may apply for and, if eligible, receive crisis benefits regardless of whether they apply for or receive a LIHEAP cash benefit. To qualify for a crisis benefit, a household shall meet the following requirements:

- (1) The household shall meet the general eligibility requirements under §601.31 (relating to general eligibility requirements), income limit, responsibility for heating costs, Pennsylvania residency and lawfully admitted non-citizen status.

(2) The household shall be without heat or in imminent danger of being without heat because of a weather-related or energy-supply-shortage emergency.

(3) The household shall be eligible for a crisis benefit that, alone or combined with other resources available to the applicant household, will resolve the home-heating emergency. If a household is authorized for the LIHEAP Cash component before the date of their request for Crisis benefits, any existing credit including the LIHEAP Cash component that has been authorized and not yet received is considered to be available and must be used first for the resolution of the crisis.

(4) The applicant must provide proof of the home-heating emergency.

See 2014 - 2016, Low Income Energy Assistance State Plan, §601.32 (emphasis added).

Section 601.61 of the State Plan articulates the requirement of a “utility termination notice” to obtain Crisis funding.

§601.61. Benefit amounts.

The amount of a crisis benefit is the amount needed to resolve the home-heating emergency; subject to the minimum and maximum LIHEAP crisis benefits allowed. The household is ineligible for a crisis benefit which, alone or combined with other resources available to the household, will not resolve the crisis. Any credit balance with the vendor, including but not limited to the LIHEAP cash component that has been authorized and not yet approved is considered to be available and must be used first for the resolution of the crisis.

Vendors that accept crisis payments based on utility termination notices or based on reconnection of utility service must agree to maintain ongoing utility service to such households for no less than 30 calendar days from the date of the resolution of the crisis. The amount of a crisis grant cannot exceed the amount listed on a utility termination notice, subject to the minimum and maximum LIHEAP crisis benefits allowed. Crisis benefits may be used for reconnect fees. With regard to crisis payments approved to regulated utilities during the period referred to in §601.62(2)(ii)(A), the earliest

allowable termination date is considered to be 30 days following the resolution of the crisis, or May 1, whichever is later.

See 2014 - 2016, Low Income Energy Assistance State Plan, §601.61 (emphasis added).

Additionally, PECO's Three Year Plan notes that a "termination notice is required for a LIHEAP Crisis grant." *See PECO Energy Company Universal Service and Energy Conservation Plan ("Three Year Plan") 2013 to 2015 and 2016 to 2018, pp. 21-22, Section 6.*

During the hearing, Ms. Purnell testified that PECO denied her a shut-off notice. Tr. 10. She stated that she was able to obtain LIHEAP cash funding but she could not receive additional funding because she did not have a termination notice. Tr. 11. Ms. Purnell felt that since she had filed so many complaints with the PUC, PECO was punishing her by not giving her a termination notice. Tr. 11. Ms. Purnell testified:

Judge Heep: Now, in the letter accompanying your complaint, you said you were denied a shut-off notice, so you couldn't apply for any assistance program?

Ms. Purnell: That's correct. I just went to USEF to try to get help because they have a grant that you receive in the beginning of February and I am not eligible for the grant because I don't have a shut-off notice and I tried to get additional funds because LIHEAP still have funds left over for CRISIS and USEF and I wasn't able to get those because they refuse to give me a shut-off notice.

Judge Heep: When did they refuse to give you the shut-off notice?

Ms. Purnell: This current winter and the last winter, I haven't gotten a shut-off notice.

Judge Heep: Did you request a shut-off notice?

Ms. Purnell: Yes, I did.

Judge Heep: In person; by phone, how did you go about doing that?

Ms. Purnell: I went there to try to talk to them on 23rd Street, the main office and the only thing I was able to get was LIHEAP because I didn't have a shut-off notice and I told them that the program had the money to pay but basically, I feel like it was a punishment because I filed so many complaints with the PUC. Three winters ago I asked for a shut-off notice and I was given a shut-off notice not less than a week away, so last winter I was denied a shut-off notice and this winter I was also denied a shut-off notice where there is still funds available for me to get help because I am disabled and I have a minor in the house but they refuse to give it to me. They refused to also give me a letter stating that I am in jeopardy of getting shut off.

Tr. 10-11.

Ms. Purnell's testimony is consistent with the State Plan and PECO's Three Year Plan that a termination notice is required to obtain Crisis funding. To obtain a Crisis grant, Ms. Purnell needed to establish that she was in "imminent danger" of being without heat and "provide proof of the home heating emergency." Ms. Purnell did not have proof of the home heating emergency in the form of a termination notice because she was not in "imminent danger" of being without heat. The I.D. (p. 15) suggests that "nothing prevented PECO from providing [Ms. Purnell] with a letter stating that she was behind on her payments and that she was subject to shut off absent the complaint filed." The I.D. even suggests in footnote 1, (p. 16) that PECO sent two utility reports at PECO Exhibit 6 and PECO Exhibit 9, "showing that a letter written for Ms. Purnell to include in her assistance application would not have been a daunting task." However, §601.32 and §601.61 of the State Plan suggests that a letter would not be satisfactory since a "utility termination notice" is required. Additionally, Ms. Purnell did not meet the requirements to obtain the grant - she was not in "imminent danger" of being without heat. Consequently, providing documentation other than a termination notice would not have assisted

Ms. Purnell to obtain Crisis funds, and failure to provide the notice thus should not be deemed unreasonable. PECO therefore requests that the Commission conclude that PECO has not provided unreasonable utility service by not providing a letter or other documentation to Ms. Purnell for her Crisis grant application.

B. PECO's Customer Information Management System did not generate a 10-day termination notice because Ms. Purnell's disputed charges were suspended in compliance with Commission regulations.

The I.D. (p. 17) finds that PECO is in violation of 66 Pa.C.S. §1501 because the company did not provide Ms. Purnell with “some sort of documentation of the possibility of shut off” to include in her energy assistance application for Crisis and USEF funding. The I.D. (p. 18) states that “nothing prevented or prohibited this, despite the particularities of PECO's IT system. The I.D. (p. 18) suggests that “PECO should consider and make efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future.” However, pursuant to 52 Pa. Code § 56.141, 52 Pa. Code § 56.151 and 52 Pa. Code§ 56.372, PECO's Customer information Management System (CIMS) did not generate a 10-day termination notice based on the fact that Ms. Purnell's balance had been suspended as a result of numerous high bill disputes and PUC complaints.

When a customer has an open high bill dispute or PUC complaint, PECO may not issue a termination notice based on the disputed subject matter. *See 52 Pa. Code § 56.151(1)*. The regulations are clear that during a billing dispute or complaint, PECO must stay termination until resolution of the complaint and the customer is only required to pay “undisputed portions of the bill.” *See 52 Pa. Code § 56.141(2); 52 Pa. Code§ 56.372(2)*. To comply with this regulatory

requirement, PECO's CIMS suspends disputed charges on a customer's account to keep the charges out of collection. Tr. 33, 41.

During the hearing, PECO's Regulatory Assessor testified that termination notices are issued automatically through CIMS when an account is in arrears. Tr. 33. The witness testified that if a customer has charges on an account that have been suspended, then there is no balance in arrears. Tr. 33. PECO's witness testified that if a customer files a high bill dispute, informal complaint or receives a utility report, charges are suspended on that customer's account. Tr. 33. Specifically, the witness testified:

Q: Now, I want to talk about Ms. Purnell. She said she was denied a shutoff notice. Did you review that issue?

A. Yes.

Q. Can you tell us, was she denied a shutoff notice?

A. She was not denied a shutoff notice. Shutoff notices are issued or generated I should say, automatically through the Customer Information Management System for accounts that are in arrears and if you have a suspended charge on your account and when I say suspended charge, such as if you have a complaint that is going to suspend money and so if you suspended money, then you may not have a balance that goes into arrears. So if you don't have a balance that goes into arrears, then our system has nothing to generate as far as a shutoff notice.

Q. Now, is there a difference in the suspended charges if someone just requested a payment agreement or if somebody files a high bill dispute with the Company?

A. Yes. If you are filing a high bill dispute, you are disputing your bill, so we are regulated to suspend that money because you are in dispute of that and we have to have time to investigate that, so that money will not be due until the outcome of the investigation.

Q. Did you determine if that was the reason why Ms. Purnell did not receive any termination notices?

A. Yes.

Q. So according to the records you pulled, how long has this high bill dispute been going on with, you know, utility reports and informal complaints?

A. Pretty much since the time that she has been at the property but the only time that I saw that she did not get a shutoff notice was just recently – this current time period. She has gotten shutoff notices in the past.

Tr. 33-34.

PECO's Regulatory Assessor testified to PECO Exhibit 22, which contains all of the communications on Ms. Purnell's account since she opened her account with PECO in August 2010. Tr. 40-66. PECO Ex 22. PECO's witness testified in detail about the multitude of high bill disputes and informal complaints Ms. Purnell opened beginning August 19, 2010. Tr. 40. Even Ms. Purnell agrees that she has "been filing complaints with the Public Utility Commission since July or August of 2010". Tr. 7. PECO's witness testified about the process of suspending charges during one such complaint as follows:

Q. How much was suspended?

A. \$713.26 is suspended, meaning that we cannot collect on that and if the system is going through and looking for arrearages to send shutoff notices, that amount would not be included because it is suspended.

Tr. 41.

The record in this case demonstrates that Ms. Purnell has been filing high bill disputes and informal and formal PUC complaints since August 2010. During these disputes, PECO suspended the charges on Ms. Purnell's account, as the company is required to do pursuant to 52 Pa. Code § 56.141(2), 52 Pa. Code § 56.151(1) and 52 Pa. Code§ 56.372(2). PECO's CIMS did

not generate a termination notice for Ms. Purnell to take to LIHEAP to apply for Crisis funds because her charges had been suspended and her account was not in arrears. The I.D. (p. 15) recognizes that CIMS “removes any balance due from collection procedures, no amount is due until the matter is resolved and therefore no shut off notice is generated by the system.” PECO’s billing system is configured this way to prevent collection on a disputed balance consistent with Commission regulations.

Ms. Purnell testified that she felt as if PECO’s refusal to give her a 10-day termination notice to obtain Crisis funding was a punishment because she had filed so many complaints with the PUC. Tr. 10-11. PECO’s refusal to provide the notice was not a punishment, but rather, a regulatory protection built into §56.141(2) and §56.151(1) that prohibits termination action on disputed charges while a customer has a pending complaint or dispute. PECO is prohibited by Commission rule from sending a termination notice that would allow the customer to seek LIHEAP Crisis funds; therefore, there should not be a Section 1501 violation of unreasonable service. PECO respectfully requests that the Commission conclude that PECO has not provided unreasonable utility service by having a billing system that suspends charges and prevents a termination notice from being generated when a customer has an open high bill or PUC dispute.

C. PECO did not issue a termination notice to Ms. Purnell because the company had no present intent to terminate her service.

The I.D. (p. 18) finds that PECO not providing documentation or a termination notice to Ms. Purnell so that she could obtain Crisis funding “was an isolated incident affecting one customer.” PECO’s inability to provide a termination notice when there is a pending dispute while disputed charges are suspended is actually an issue that applies to all PECO customers.

The Commission's regulations do not permit PECO to threaten termination of service if the company does not intend to terminate service. *52 Pa. Code § 56.99.*

Commission regulations at §56.99 provide that “a public utility may not threaten to terminate service when it has no present intent to terminate service.” The regulation is clear that “notice of the intent to terminate shall be used only as a warning that service will in fact be terminated.” *52 Pa. Code § 56.99.* The I.D. noted at (p. 6) Findings of Fact number 27 that “Complainant tried to secure a CRISIS or USEF energy assistance grant but could not complete the application because PECO would not provide her with a shut off notice.” The I.D. holds (p. 17-18) that “PECO is found in violation of 66 Pa.C.S. § 1501 when the company did not provide Complainant some sort of documentation of the possibility of shut off of her account.” These findings are inconsistent with §56.99. Pursuant to §56.99, PECO could not generate a termination notice to help Ms. Purnell obtain Crisis funding because the company had no “present intent to terminate service.”

The record evidence clearly supports that PECO complied with §56.99 by not sending 10-day termination notices while Ms. Purnell had an open high dispute or PUC complaint with the company. For instance, the winter 2010-2011 period, PECO sent a 10-day termination notice to Ms. Purnell on January 4, 2011 and another 10-day notice on February 8, 2011. *See* PECO Ex. 22, p. 62 and p. 64. At the time, Ms. Purnell did not have an open high bill dispute or open PUC complaint. The 10-day termination sent on February 8, 2011, was to comply with PECO's Three Year Plan, which provides termination notices to low-income customers that are identified as Crisis Eligible.¹ That 2010-2011 winter period, Ms. Purnell received both a LIHEAP and USEF grant. *See* PECO Exhibit 22, pp. 65 and 67.

¹ In an effort to help low-income customers maintain active service, every February PECO conducts an “Expedited mailing” to customers that have been identified as being Crisis eligible. The mailing includes a termination notice.

During the winter 2011-2012 winter period, Ms. Purnell did not receive any 10-day termination notices. *See* PECO Exhibit 22 pp. 68-72. Notably, Ms. Purnell had an open high bill dispute and an informal PUC case open with the Bureau of Consumer Services (BCS) at case number 2874156 that closed on November 29, 2011. *See* PECO Exhibit 22, p. 69. *See also* PECO Ex. 7 and 8. The winter 2012-2013 winter period, Ms. Purnell received a 10-day termination notice on February 4, 2013, encouraging her to apply for LIHEAP Crisis. PECO Exhibit 22, p. 74. On February 20, 2013, Ms. Purnell opened a high bill dispute and her \$759.38 past due balance was suspended from collection consistent with the regulations. PECO Exhibit 22, p. 75. Her high bill dispute was followed by another informal complaint with the BCS at case number 3076067 opened on March 29, 2013 that closed on June 14, 2013. PECO Exhibit 22, p. 78. *See also* PECO Exhibit 10 and 11. During that entire winter period, Ms. Purnell did not receive a Crisis or USEF grant. The 2013 – 2014 winter period, Ms. Purnell received a 10-day termination notice on November 6, 2013. Notably, however, she had no open high bill disputes or informal complaints. PECO Ex. 22 pp. 85 – 90. The record evidence reflects that for the 2014 – 2015 and 2015 – 2016 winter periods, Ms. Purnell received no 10-day termination notices. PECO Ex. 11 pp. 91 -105. During that period, however, she had opened multiple high bill disputes and two informal complaints with the BCS at case numbers 003252740 and 003322635, which opened on June 17, 2014 and closed on September 30, 2015. PECO Ex. 22 pp. 91-105; PECO Ex. 12-16.

Clearly, here, PECO complied with §56.99 and did not issue a termination notice during the winter periods 2014 – 2015 and 2015 – 2016 as the record shows that Ms. Purnell was not in

The termination notice is required for a LIHEAP Crisis grant. The mailing includes a letter informing the customer that they are LIHEAP Crisis eligible and how to apply for a LIHEAP Crisis grant. *See* PECO Universal Service and Energy Conservation Plan (2016-2018), Section 6, page 22.

termination status. Based on the numerous high bill disputes and open informal complaints, PECO correctly suspended Ms. Purnell's balance and did not place her account into collection. Despite Ms. Purnell's request, PECO refused to violate §56.99 and generate a termination notice when there was no present intent to terminate service. PECO, therefore, respectfully requests that the Commission conclude that it did not provide unreasonable utility service by not generating a 10-day termination notice for Ms. Purnell to apply for Crisis.

D. The Commission should permit PECO to issue termination notices on disputed charges during the LIHEAP winter season so that low-income customers can receive LIHEAP Crisis funding.

PECO understands that a customer may not seek LIHEAP Crisis grants without a termination notice in hand. Termination notices are mailed to delinquent low-income customers in early February so they may demonstrate hardship and obtain a Crisis grant during the LIHEAP winter season. However, the Commission's regulations do not allow PECO to send a termination notice if a customer has a pending billing dispute or PUC complaint. *52 Pa. Code § 56.141, 52 Pa. Code § 56.151, and 52 Pa. Code § 56.372.* This creates a tension – PECO is prohibited by Commission regulation from sending the termination notice that would allow the customer to seek LIHEAP Crisis assistance. PECO respectfully submits there should be a policy change so that Commission regulations may comfortably coincide with State Plan LIHEAP Crisis requirements.

PECO agrees there should be an avenue for customers who have an open billing dispute or PUC complaint to obtain LIHEAP Crisis funds. PECO would prefer that its customers did not miss the opportunity to receive LIHEAP Crisis funds, and would like to issue termination notices to assist them without violating Commission regulations but the Commission must provide

PECO with the means to do so.² PECO requires the Commission to give it the ability to send termination notices without being in violation of the regulations. Thus, PECO requests that the Commission clarify the regulatory requirements set forth under 52 Pa. Code § 56.141, 52 Pa. Code § 56.151, and 52 Pa. Code § 56.372, which prohibit PECO from issuing termination notices during a pending dispute or complaint, and give PECO permission to issue termination notices for the purpose of assisting customers to obtain LIHEAP Crisis funding only.

² The need for a change in policy is validated by the fact that after the Summer LIHEAP Crisis program, LIHEAP had a surplus of \$8,000,000 before the beginning of the 2016-2017 LIHEAP Winter season. LIHEAP received fewer applications likely due in part to the mild weather and the requirement for a termination notice negating the customer's ability to apply for the grants during a pending complaint or billing dispute. PECO welcomes a change in the regulation for this very purpose.

III. Conclusion

For the reasons stated above, PECO respectfully requests that the Commission issue an Order in this proceeding that:

1. PECO has not violated any provision of the Commission's regulations, or otherwise engaged in unreasonable utility service, in its interactions with Complainant.
2. The Complaint is denied in its entirety.
3. The docket is closed.

Respectfully submitted,



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Counsel for PECO Energy Company

Dated: December 20, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROSALYN PURNELL	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. F-2015-2513799
	:	
PECO ENERGY COMPANY	:	
	:	
Respondent	:	

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Exceptions to ALJ Darlene Heep's Initial Decision in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Administrative Law Judge Darlene D. Heep
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

Rosalyn Purnell
2261 North Bouvier Street
Philadelphia, PA 19132

Dated at Philadelphia, Pennsylvania, December 20, 2016.



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