

Legal Department  
2301 Market Street / S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Direct Dial: 215.841.6841

November 29, 2018

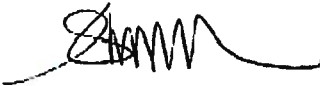
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

**RE: Salwa Mohamed v. PECO Energy Company**  
**PUC Docket No.: F-2018-3001318**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are *Reply Exceptions of PECO Energy Company*.

Very truly yours,



Shawane Lee  
Counsel for PECO Energy Company

SL/ab  
Enclosure

cc: Certificate of Service





## **REPLY EXCEPTIONS**

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Salwa Mohamed (“Complainant”) in the above-referenced matter on November 19, 2018.

### **I. BACKGROUND AND PROCEDURAL HISTORY**

On April 9, 2018, Complainant filed a formal complaint against PECO. In her formal complaint, Complainant ticked the box “incorrect charges” and stated “a monthly deduction of \$18 for more than 2 years. I did not sign an agreement and I do not know that for what.” The Complainant alleged that PECO removed her from the Customer Assistance Program (CAP) and sent her a zero credit. For relief, the Complainant requests enrollment in CAP effective July 2015; a refund of \$18.00 per month for two years; and a refund of all late payment fees paid.

Respondent, PECO Energy filed an Answer on April 23, 2018, denying the allegations in the complaint and averred that the Complainant is a CAP customer under the Fixed Credit Option. PECO averred that the Complainant is ineligible for a discount under the program based on her energy burden. PECO averred that the Complainant has an active payment agreement, which was processed on an \$826.61 balance and under that agreement the Complainant must pay \$18.79 per month.

An in-person hearing was held before Administrative Law Judge Eranda Vero (“ALJ Vero”) on June 21, 2018. During the hearing, the Complainant offered one exhibit. ALJ Vero issued an Initial Decision on October 22, 2018, granting the Complainant’s request for a refund of late payment charges for the periods May 8, 2014 to June 23, 2016 and June 22, 2017 to June 21, 2018. The Initial Decision dismissed the other allegations in the complaint. For the reasons set forth below, the Complainant’s Exceptions should be denied. However, ALJ Vero’s Initial

Decision granting late payment charges should be reversed and the Commission should uphold the dismissal of all other allegations in the complaint.

**II. COMPLAINANT’S EXCEPTIONS DISPUTING ALJ VERO’S FINDINGS OF FACT SHOULD BE DENIED.**

- A. Complainant disputes ALJ Vero’s finding that PECO did not terminate the Complainant’s Customer Assistance Program enrollment.

In her Exceptions, the Complainant states “why they terminated our CAP when we are entitled for that?” The evidence of record demonstrates that the Complainant originally enrolled in CAP on October 5, 2011 at a previous service address. On May 8, 2014, the Complainant re-enrolled in CAP at her current service address. She was removed from the program on June 23, 2016, for failing to recertify in the program. On June 22, 2017, the Complainant re-enrolled in CAP under PECO’s Fixed Credit Option. (PECO 4).

PECO’s witness testified that based on the Complainant’s annual gross income and low energy usage, the Complainant is ineligible for a monthly discount under the Fixed Credit Option. Tr. 46-50. In effect, under the program, the Complainant can afford to pay \$1,060.80 per year for her electricity bills based on her \$1,473.33 monthly household gross income for four people. (PECO 4) The Complainant’s energy usage in 2017 and 2018 never surpassed the \$1,060.80. Tr. 45, 49. Accordingly, the Complainant did not receive a credit yet she still remains enrolled in CAP. As the evidence of record clearly shows that the Complainant’s CAP enrollment was not terminated, the Complainant’s Exceptions should be denied.

- B. Complainant disputes ALJ Vero's finding that she entered into a payment agreement.

The Complainant disputes that she entered into a payment agreement with PECO to repay a balance in monthly installments of \$18.79. In her Exceptions, the Complainant states "where is the copy of the agreement we have signed?" The evidence in the record indicates that the Complainant entered into a payment agreement on an outstanding balance of \$846.70 on May 8, 2014 at a previous service address. (PECO 2; Tr. 26-27). Under that agreement, the Complainant was to pay \$15.12 per month towards the arrearages. (PECO 2; Tr. 28). The payment agreement transferred to the Complainant's new service address on September 21, 2015. After the transfer, the Complainant was required to pay monthly installments of \$18.79. (PECO 3; Tr. 38-39). The agreement is still active and at the time of the hearing, there was \$300.53 still remaining under the agreement. Tr. 41.

The Complainant disputes that she ever entered into the agreement. PECO's records; however, indicate that during a CAP enrollment on May 8, 2014, the agreement was initiated. The records indicate a telephone conversation with an Arabic interpreter. (PECO 15; p. 7) During that conversation the customer service representative advised the Complainant she would receive a 60-month payment agreement once her income information had been received. (PECO 15, p.7). The payment agreement was processed on May 8, 2014, and has appeared on page 2 of the Complainant's billing statement every month since that time. (PECO 15; Tr. 29). If the Complainant chooses not to have the agreement, the entire balance due under that agreement would become due and payable immediately. As the evidence of record clearly demonstrates the Complainant entered into a payment agreement, her Exceptions disputing this and requesting a refund of \$18.79 for the past two years should be denied.

- C. Complainant disputes ALJ Vero's finding that she had an outstanding balance of \$648.43.

In the Complainant's Exceptions, she disputes that she had an outstanding balance of \$648.32 in March 2014. The Complainant states: "they mentioned outstanding balance of 648.32. We do not know about this balance since we paid our bills month by month including late fees if any. There is something wrong." At the hearing, PECO presented evidence that on March 7, 2014, the Complainant had incurred a \$648.32 balance. (PECO 2) The balance was incurred as follows:

- \$6.00 for a connection fee
- \$237.83 in electric usage charges from 12/6/13 – 1/9/14
- \$3.66 for a late payment charge
- \$214.75 in electric usage charges from 1/9/14 – 2/7/14
- \$186.08 in electric usage charges from 2/7/14 – 3/6/14

During this period, the Complainant made no payments to her account, resulting in a \$648.32 bill due by March 28, 2014. (PECO 2). The Complainant argues in her Exceptions that PECO has hidden and fabricated information. The Complainant argues that she can obtain evidence from her bank that she made payments during this time. However, the Complainant did not produce evidence at the hearing that PECO had somehow hidden or fabricated information. The Complainant submitted one exhibit only and that exhibit did not include a bank statement, cancelled checks or other showing that payments had been made during that period. As PECO's records clearly indicate that the Complainant incurred and did not pay these charges, her Exceptions should be denied.

- D. Complainant disputes ALJ Vero's finding that she had \$1,473.33 per month in gross household income at the time of her CAP-Fixed Credit Option enrollment.

The Complainant argues in her Exceptions that she did not have \$1,473.33 per month income when she enrolled in the CAP-Fixed Credit Option. The Complainant argues that "we did not report our income of 1473.33 on 06/2017 this was old income, my wife had been in vacation that time and I am disabled." The Complainant argues that she is entitled to a 17% allowable energy burden because her income is less than \$1,200 per month.

At the time of the hearing, the Complainant presented one exhibit and that exhibit did not contain tax returns or income information. PECO presented business records establishing that the Complainant reported a monthly gross income of \$1,473.33 for three adults and one child living in the household from part-time employment from 21-year old Moayed Abdulrahman. (PECO 4). Based on this income, PECO correctly calculated the Complainant's CAP Energy Burden to be \$1,060.80 based on an annual gross income of \$17,680. The Complainant did not provide any testimony or exhibits proving she had reported lower income to PECO at the time of her CAP-FCO enrollment. The Complainant had an opportunity to present tax return information, correspondence to PECO, or other documents to prove this point, but she did not. The Complainant cannot now attempt to litigate this issue in the form of Exceptions. As PECO's records clearly indicate that the Complainant reported \$1,473.33 in monthly gross household income for her CAP-FCO enrollment, the Complainant's Exception should be denied.

**III. COMPLAINANT'S EXCEPTIONS DISPUTING THAT SHE HAD NO OPPORTUNITY FOR AN ATTORNEY SHOULD BE DENIED.**

In her Exceptions, the Complainant states that she was not given an opportunity to have an attorney represent her but PECO came to court with an attorney. On May 9, 2018, ALJ Vero issued a Prehearing Order. In Section 4 of the Order, ALJ Vero noted: "Pursuant to 52 Pa. Code §§1.21 & 1.22, an individual is not required to have a lawyer present for the Formal complaint process before the Public Utility Commission. You may represent yourself." After receipt of the Prehearing Order, the Complainant at no time asked for an attorney. The Complainant did not send correspondence to ALJ Vero stating she would like an attorney. The Complainant did not send a continuance request, setting forth as a basis that she would like time to obtain an attorney. At no time during the litigation, did the Complainant raise the issue of attorney. The Complainant chose not to obtain an attorney and proceeded to hearing representing herself *pro se*. Accordingly, she cannot now argue that she was somehow prejudiced by not being afforded the opportunity to obtain counsel. As the Complainant did not request an opportunity to obtain counsel prior to the hearing, her Exception should be denied.

**IV. COMPLAINANT'S EXCEPTIONS DISPUTING LATE PAYMENT CHARGES SHOULD BE DENIED AND ALJ VERO'S DECISION GRANTING LATE PAYMENT CHARGES SHOULD BE REVERSED.**

The Complainant disputed the fact that PECO imposed late payment charges to her account. ALJ Vero granted the Complainant's request for a refund of late payment charges and ordered PECO to refund late payment charges incurred between the periods May 8, 2014 to June 23, 2016 and June 22, 2017 to June 21, 2018. PECO should not be required to refund the late payment charges since the company did not improperly assess the charges.

In ALJ Vero's Initial Decision, she indicates that the Complainant "made numerous late or partial payments to PECO." (PECO 2 and 3). ALJ Vero additionally noted that the Complainant did not "dispute the lateness of their payments to PECO." ALJ Vero determined that she does not "find that PECO violated a Commission statute, regulation or PECO's own Tariff by assessing late payment charges against [the Complainant's] accounts for the Service Address." ALJ Vero ordered PECO to waive late payment charges stating that the regulations at 66 Pa.C.S. § 1409 and 52 Pa. Code § 56.22(d) allow the Commission to 'order waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level."

The statute concerning termination of utility service, 66 Pa. C.S. § 1409, provides:

A public utility shall waive late payment charges on any customer accounts if the charges were improperly assessed. The commission may order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level.

The statute governing the accrual of late payment charges, 52 Pa. Code § 56.22,

Provides:

- (a) Every public utility subject to this chapter is prohibited from levying or assessing a late charge or penalty on any overdue public utility bill, as defined in § 56.21 (relating to payment), in an amount which exceeds 1.5 % interest per month on the overdue balance of the bill. These charges are to be calculated on the overdue portions of the bill only. The interest rate, when annualized, may not exceed 18% simple interest per annum.
- (b) An additional charge or fixed fee designed to recover the cost of a subsequent rebilling may not be charged by a regulated public utility.
- (c) Late payment charges may not be imposed on disputed estimated bills, unless the estimated bill was required because public utility personnel were willfully denied access to the affected premises to obtain an actual meter reading.
- (d) A public utility may waive late payment charges on any customer accounts. The Commission may only order a waiver of late payment charges levied by a public

utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level. See 66 Pa.C.S. § 1409 (relating to late payment charge waiver).

PECO should not be ordered to waive the late payment charges for these periods because the evidence of record shows that the Complainant frequently paid her bill late, missed payments and made partial payments. (PECO 2; PECO 3) The Complainant was enrolled in a discount program for low income customers and received the benefit of lower rates. Despite this, her account was not in good standing and she continued to pay her bills late. It is not fair to other ratepayers that a customer who is already benefiting from a discounted rate does not pay her bills on time, and skips a month or two of paying a bill, but yet she is not penalized for doing so. In contrast, if a credit card customer does not pay their bill on time, the credit card company imposes a late fee. If an individual does not pay their mortgage in a timely manner, a late payment fee will be imposed. Most landlords charge late payment fees if a tenant does not pay their rent on time. The imposition of late payment charges is done so, in part, to change behavior to encourage timely payments. Under the circumstances, PECO's imposition of late payment charges was appropriate based on the Complainant's consistent behavior of not paying her bill by the due date.

PECO's Public Utility Commission approved tariff permits the company to impose late payment charges. Section 17.5 of PECO's Tariff permits PECO to charge late payment fees and does not exclude low income customers: "If payment is made at a Company office or authorized payment agency after the due date shown on the bill, a late fee will be added to the unpaid balance until the entire bill is paid. If payment is made by mail, the late fee will be added if the payment is received by the Company more than five days after the due date shown on the bill.

For Rates R, R-H, RS-2, POL and GS this late fee will be 1-1/2 % per month; for all other rates the late fee will be 2% per month.” PECO Tariff Electric PA, P.U.C. No. 5, at Section 17.5.

Additionally, § 1303 of the Public Utility Code emphasizes strict adherence to public utility tariffs, which “have the force and effect of law, and are binding on the customer as well as the utility.” *Philadelphia Suburban Water Co. v. Pennsylvania Public Utility Commission*, 808 A.2d 1044, 1052 (Pa. Commw. Ct. 2002) (citing 66 Pa.C.S.A. § 1303). Notably, PECO’s Tariff No. 5 includes a CAP Rider, which directs to PECO’s Three-Year Plan. *See* Supplement No. 20 to Tariff Electric Pa. P.U.C. No. 5.

PECO’s Three-Year Plan explicitly states that a customer is eligible for PECO’s Customer Assistance Program (CAP) if they “[p]ay their CAP Rate bills on time and in full each month, or *late charges will be assessed on past-due balances and service may be terminated.*” *See* PECO Energy Company Universal Services Three-Year Plan 2016 to 2018. On page 50, the Three-Year Plan specifically allows for the imposition of late charges where it states that “late charges will be assessed on past-due balances ...” Thus, the language of the tariff and the related CAP Rider, the details of which are included in the Three-Year Plan, has the effect of binding law. A public utility is prohibited “from straying from its approved tariff ‘directly or indirectly, by any device whatsoever, or in anywise....’” *Philadelphia Suburban Water Co.* at 1052. Furthermore, “[a]dministrative agencies do not have the authority to order a regulated company to change lawful conduct on the theory that it is in the best interest of their customers.” *Id.* at 1056.

Based on PECO’s tariff and Universal Services Three-Year Plan, the company was correct to impose late payment charges to the Complainant’s account for multiple late payments over the entire period the Complainant had her accounts with PECO. Indeed, ALJ Vero noted in


her Finding of Fact number 5 that “during the period of December 6, 2013 to June 10, 2014, [the Complainant] made only one payment of \$100.00 towards her PECO account for the Service Address.” ALJ Vero additionally notes in her Initial Decision that PECO had already cancelled \$9.80 in late payment charges assessed to the Complainant’s account “as a courtesy to her.” The Complainant’s failure to pay her bills in full and on time every month justified the imposition of late payment charges. ALJ Vero did not indicate a basis for waiving late payment charges for the periods indicated other than the fact the Commission “may” order the waiver. As the record demonstrates that the Complainant did not pay her bills in full and on time and had a pattern of late payments, PECO should not be ordered to refund the late payment charges. Accordingly, the Complainant’s Exception regarding the late payment charges should be denied and ALJ Vero’s Initial Decision granting late payment charges should be reversed.

V. **CONCLUSION**

Complainant’s exhibit and testimony did not meet the burden of proof required to demonstrate that PECO improperly billed her. Complainant presented no evidence to establish that PECO violated a regulation or the Public Utility Code. As Complainant did not meet her burden of proof, ALJ Vero properly dismissed her complaint with respect to the billing and CAP enrollment dispute. However, the Initial Decision improperly ordered PECO to refund late payment charges and should be reversed.

For the reasons set forth above, PECO respectfully requests that the Commission deny the Complainant's Exceptions and issue an Order reversing ALJ Vero's Initial Decision with respect to ordering PECO to refund late payment charges.

Respectfully submitted,



---

Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
Direct Dial: 215.841.6841  
Fax: 215.568.3389



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**SALWA MOHAMED**

**COMPLAINANT**

**v.**

**PECO ENERGY COMPANY,**

**RESPONDENT**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**Docket No. F-2018-3001318**

**CERTIFICATE OF SERVICE**

I, Shawane L. Lee, hereby certify that I have this day served a true copy of the foregoing Reply Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Salwa Mohamed  
1071 Levick Street  
Philadelphia, PA 19111**

Dated at Philadelphia, Pennsylvania, November 29, 2018.



---

Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
Direct Dial: 215.841.6841  
Fax: 215.568.3389