

GRIESING LAW LLC

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February 13, 2020

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

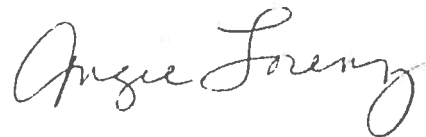
**RE: Karen Tortorella v. PECO Energy Company
PUC Docket No. C-2019-3012082**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are *Reply Exceptions of Respondent, 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,



Angela Lorenz, Esq

Cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|----------------------------|---|----------------------------------|
| KAREN TORTORELLA | : | |
| Complainant | : | |
| v. | : | DOCKET NO. C-2019-3012082 |
| | : | |
| PECO ENERGY COMPANY | : | |
| Respondent | : | |

REPLY EXCEPTIONS OF RESPONDENT, PECO ENERGY COMPANY

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Karen Tortorella (“Complainant”) in the above-referenced matter on January 15, 2020.

On August 6, 2019, Complainant filed a formal complaint against Respondent, PECO Energy Company (“PECO”). In her formal complaint, Complainant alleged that the utility was threatening to or had shut off her service and sought a payment arrangement. The Complainant disputed a \$2,451.08 balance at her service address 5026 York Road, PO Box 45, Holicong Pa, 18928.

On August 15, 2019, PECO filed an Answer denying all material allegations of the complaint and averring that the Complainant was not eligible for another payment agreement because she defaulted on her previous arrangement.

On August 21, 2019, the parties received a Prehearing Order that provided the parties with the procedures for the hearing.

On September 30, 2019, a Hearing Judge Change Notice was issued and indicated Administrative Law Judge Marta Guhl (“ALJ Guhl”) would be the presiding officer in this matter. On October 1, 2019, an in person hearing was held before ALJ Guhl. At this hearing, Complainant testified in support of her formal complaint. PECO provided testimony and presented documents

in support of its position. Complainant also had the opportunity to cross examine the PECO witness.

On January 14, 2020, ALJ Guhl issued an Initial Decision wherein she held *inter alia*:

1. That the Complaint filed by Karen Tortorella against PECO Energy Company at Docket No. C-2019-3012082 is denied and dismissed.

Complainant filed timely exceptions to the Initial Decision. Complainant disputes several Findings of Fact and attempts to re-litigate the complaint in her exceptions. Specifically, Complainant advances facts and argument in her exceptions which are not part of the underlying record. In her exceptions, Complainant argues that her income has changed since the time of the hearing and the closing of the record. However, ALJ Guhl considered Complainant's income as it existed at the time of the hearing, and Complainant did not introduce any of the evidence she is purportedly relying on now at the time of the hearing. Neither did PECO have a chance to cross-examine her on this change of income, as her income apparently changed after the hearing. Thus, the record demonstrates that ALJ Guhl correctly determined that the Complainant is not eligible for another payment agreement under Section 66 Pa.C.S. 1405 because she defaulted on her prior payment arrangement and had not established a decrease in income consistent with 66 Pa.C.S. 1403.

The record reflects that the Complainant established an account for service at 5026 York Road, PO Box 45, Holicong Pa, 18928. (Tr. 10; Exh. 4). While at this address, the Complainant was granted a Commission-issued payment arrangement by decision dated October 15, 2018. (Tr. 24; PECO Ex. 4). The BCS granted Complainant a Level 1 payment arrangement of \$144.00 (budget bill) + \$19.00 (arrearage) = \$163.00 per month. (Tr. 24; PECO Exh.4). The Complainant defaulted on this payment arrangement. (Tr. 25).

At the time of hearing, Complainant provided testimony and evidence that she received \$500.00 per week for each writing assignment she completed as a freelance writer. (Tr. 13). The Complainant also received \$596.00 per month in Social Security. (Tr. 12; Exh.3). The record of evidence established that the Complainant's household income of \$2,763.00 per month with one household member places the household at 265% of the Federal Poverty guidelines. This makes the Complainant a Level 3 customer. *See* 66 Pa.C.S § 1405(b)(3) ("One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.")

The Complainant's gross household monthly income had increased since the previous Commission-issued payment arrangement. Thus, the Complainant did not meet the "change of income" criteria set out in section 1403 of the Public Utility Code. *See* 66 Pa.C.S. 1403. The Complainant has income greater than 200% of the Federal Poverty Level at 265% of the Federal Poverty Level and has not experienced a decrease in income of 20% or more. *See* 66. Pa.C.S. § 1403.

The Complainant did not present evidence that would meet any of the "significant change in circumstance" criteria outlined in Section 1403 nor did she establish an entitlement to a second payment agreement. Based on the foregoing, the Complainant's request for a payment arrangement was denied and dismissed, and the Complainant was deemed ineligible for reinstatement of her previous Commission-issued payment arrangement.

The Complainant now files the instant Exceptions wherein she requests a payment arrangement and reconsideration of the ALJ's ruling. She further requests to set up a payment plan of \$144.00 per month. This request is identical to the one made in her formal complaint which was properly dismissed by ALJ Guhl. Complainant's exceptions have no basis, and as

such, her exceptions should be denied. PECO posits that ALJ Guhl's Initial Decision should be affirmed. To the extent Complainant is relying on evidence concerning her change in income that occurred after the hearing, ALJ Guhl should not consider such evidence. This evidence either did not exist at the time of the hearing, or Complainant failed to offer it into the record. Further, PECO has no way of knowing if this new evidence is true and correct, as no evidence of the change in income was presented at the hearing and PECO had no opportunity to cross-examine Complainant on this alleged new evidence. Thus, this new alleged evidence should be disregarded.

Pursuant to the Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.* (the Act or Chapter 14), applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow in handling customer complaints. Section 1405(a) of the Public Utility Code reads as follows:

§ 1405. Payment arrangements

- (a) General rule. – The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

66 Pa.C.S. § 1405(a).

However, section 1405(d) of the Public Utility Code prohibits the Commission from establishing a second or subsequent payment arrangement if the customer has defaulted on a Commission-issued payment arrangement, absent a change in income. 66 Pa.C.S. § 1405(d).

Under section 1403, a “change in income” is defined as a decrease in household income of 205 or more if the customer’s household income level is greater than 200% of the Federal poverty level. 66 Pa.C.S. § 1403.

PECO is permitted to deny subsequent payment agreements after a customer has previously defaulted on a payment agreement. In this case, the evidence confirms Complainant defaulted on her prior payment arrangement and did not establish a significant change in circumstance under as required by 66 Pa.C.S. § 1403. Accordingly, as ALJ Guhl correctly stated in her Initial Decision:

The Complainant has not met her burden of establishing that she is eligible for a second Commission-issued payment arrangement or reinstatement of her prior commission-issued payment arrangement.

See Karen Tortorella v. PECO Energy Company, Initial Decision (C-2019-3012082, Initial Decision entered January 14, 2020) (emphasis added).

For the reasons set forth above, PECO respectfully requests that the Commission deny the Complainant’s Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,



Angela M. Lorenz
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1880 John F. Kennedy Blvd., Suite 1800
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215-618-3720


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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| KAREN TORTORELLA | : | |
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VERIFICATION

I, Angela M. Lorenz, 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: February 12, 2020



Angela M. Lorenz


**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| KAREN TORTORELLA | : | |
| Complainant | : | |
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| Respondent | : | |

CERTIFICATE OF SERVICE

I, Angela M. Lorenz, 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.

Dated at Philadelphia, Pennsylvania, February 12, 2020.



Angela M. Lorenz
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215-618-3720