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March 12, 2020

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

**RE: Rashid El Malik v. PECO Energy Company**  
**PUC Docket No. F-2020-3018838**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Preliminary Objection of Respondent, PECO Energy Company* with regard to the above matter.

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,



Khadijah Scott, Esquire  
Assistant General Counsel, Exelon BSC  
Encl.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

**RASHID EL MALIK** :  
    **Complainant** :  
    **v.** :           **DOCKET NO. F-2020-3018838**  
          :           :  
**PECO ENERGY COMPANY** :  
    **Respondent** :

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**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objections of PECO Energy Company, within 20 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Khadijah Scott, and where applicable, the Administrative Law Judge presiding over the issue.

File with:  
Rosemarie Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

With a copy to:  
Khadijah Scott, Esq.  
PECO Energy Company  
2301 Market Street, S-23  
Philadelphia, PA 19103

Dated: March 12, 2020



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Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street S-23  
Philadelphia, PA 19103  
215-841-6841  
Khadijah.scott@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>RASHID EL MALIK</b>	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>DOCKET NO. F-2020-3018838</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**PRELIMINARY OBJECTION OF RESPONDENT,  
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code § 5.101(a)(4), respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On February 21, 2020, PECO was served with a formal complaint filed by Rashid El Malik (hereafter “Complainant”). See Complaint.
2. In his Complaint, the Complainant disputes that he enrolled with supplier NRG Retail Solutions (“NRG”). See Complaint.
3. The Complainant has not requested any specific relief from Respondent. See Complaint.
4. In essence, the Complainant is disputing that he did not authorize NRG to register him under a contract for electric service.
5. PECO therefore files the instant Preliminary Objection.
6. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).
7. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure. Equitable Small Transportation

Intervenors. v. Equitable Gas Co., 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

8. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible. Roc v. Flaherty, 527 A.2d 211 (Pa. Cmwltth 1985).

9. A complaint must be able to recover under the law to survive a preliminary objection. Milliner v. Enck, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) (“preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover”).

10. All of the non-moving party’s averments must be taken as true for the sake of deciding the preliminary objection. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (Pa. 1985).

11. The court does not, however, need to accept, “unwarranted inferences from facts, argumentative allegations, or expressions of opinions.” Feingold v. McNulty, 2009 Phila. Ct. Com. Pl LEXIS 167, \*3.

12. Section 703 of the Public Utility Code, 66 Pa. C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary to the public interest.

13. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm’n, 817 A.2<sup>nd</sup> 593 (Pa.Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

14. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

**I. Legal Insufficiency – Under both the Commission’s regulations and the contract between NRG Retail Solutions and the Complainant, PECO is not a party to the electric generation transaction.**

1. The Complainant is disputing that he authorized NRG to register him under a contract for electric service.

2. By way of background, on December 3, 1996, the Pennsylvania Legislature passed the Electricity Generation Customer Choice and Competition Act (“Competition Act”) under 66 Pa.C.S. § 2807.

3. The Competition Act required electric distribution companies, such as PECO to unbundle transmission, distribution and generation rates for retail customers. The Competition Act deregulated electricity generation and provided all customers in Pennsylvania the opportunity to choose their electric generation supplier (“EGS”). 66 Pa.C.S. § 2807.

4. Section 2806(a) explicitly states:

All customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of electric generation suppliers. The ultimate choice of the electric generation supplier is to rest with the consumer.

66 Pa.C.S. § 2806(a).

5. The Pennsylvania Public Utility Commission (“Commission”) issued regulations under 52 Pa. Code § 54.1 et. seq. to enable customers to make informed choices regarding the purchase of electricity services. 52 Pa. Code § 54.1(a).

6. The Commission approved Section 23 in PECO's Electric Tariff to set forth the requirements for customers to switch to EGSs.

7. According to the Commission-approved tariff, customers were permitted to switch to EGSs and PECO Energy would "accommodate requests to switch in accordance with [Rule 23] and any applicable Commission Orders." See PECO's Electric Service Tariff, Section 23, attached hereto as Exhibit "1".

8. The Legislature and the Commission authorized customers to choose alternative electric suppliers consistent with the Electricity Generation Customer Choice and Competition Act, the regulations promulgated under 52 Pa. Code § 54.1; and PECO's Commission-approved Electric Service Tariff.

9. The Complainant entered into a contract with NRG Retail Solutions.

10. PECO is not the same company as NRG Retail Solutions and the contract at issue is not PECO's.

11. Further, PECO is not a party to the contract between the Complainant and NRG Retail Solutions.

12. PECO's Electric Supplier Tariff specifically states at Section 5.4.1:

EGSs shall be solely responsible for having appropriate contractual or other arrangements with their Customers necessary to implement Direct Access consistent with all applicable laws, PAPUC requirements, and this Tariff. The Company shall not be responsible for monitoring, reviewing or enforcing such contracts or arrangements.

See PECO's Electric Supplier Tariff, Section 5.4.1., attached hereto as Exhibit "2".

13. In this case, PECO is not a party to the contract between the Complainant and NRG Retail Solutions. PECO has no knowledge of the contract entered into with NRG Retail Solutions and has no visibility into that agreement.

14. The Complainant has not alleged that PECO entered him into a contract with NRG Retail Solutions.

15. Rather, the only dispute the Complainant alleges is with NRG Retail Solutions and its contract, over which PECO has no control.

16. The Complainant's Complaint, objecting to NRG Retail Solutions' contract does not allege a violation of any order, law or tariff that can be the basis of any finding against PECO.

17. Administrative Law Judge David Salapa ("ALJ Salapa") reached a similar conclusion in the matter Donald Mulzet v. PPL Electric Utilities Corporation, Docket No. C-2013-2367132 (Order entered July 22, 2013). In that case, the Complainant filed a formal complaint against PPL Electric alleging there were incorrect charges on his bill because various electric suppliers, including Sarko Energy, were charging him higher rates than other suppliers. Id.

18. PPL Electric filed a Preliminary Objection, requesting the matter to be dismissed for legal insufficiency because the allegations in the complaint did not pertain to PPL Electric and only contested the rates charged by the suppliers. Id.

19. ALJ Salapa sustained PPL Electric's Preliminary Objection and dismissed the complaint as follows:

The Complainant has entered into agreements with various EGSs for electric supply and those EGSs have billed him at rates higher than the rates set forth in the agreements. Accepting the facts alleged in the complaint as true for purposes of disposing of its preliminary objections, the Respondent contends that the complaint fails to allege that the Respondent has violated the Public Utility Code, Commission regulations or orders. The Respondent concludes that the complaint is legally insufficient. I agree.

**In order to be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.”** (emphasis added) 52 Pa. Code §5.22(a)(4). Here, the complaint does not allege any facts that could be construed as a violation by the Respondent of any statute, regulation or order which the Commission has jurisdiction to administer. The complaint is therefore legally insufficient. Id.

20. As stated above, the Complainant has not disputed the meter reading, billing or PECO charges and has only disputed the contract with NRG Retail Solutions.

21. Accordingly, the Complainant’s formal complaint should be dismissed as it fails to set forth a violation by PECO of either the Public Utility Code, the regulations of the PUC or PECO’s Electric Service Tariff as required by 52 Pa. Code §5.22(a)(4).

### **REQUEST FOR RELIEF**

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainants’ formal complaint, and all issues which were raised in the Complaint.

Respectfully submitted,



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Khadijah Scott  
Counsel for PECO Energy Company  
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Philadelphia, PA 19103  
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Fax: 215.568.3389  
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PENNSYLVANIA PUBLIC UTILITY COMMISSION

RASHID EL MALIK :  
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VERIFICATION

I, Khadijah Scott, 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: March 12, 2020



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Khadijah Scott

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>RASHID EL MALIK</b>	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>DOCKET NO. F-2020-3018838</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**CERTIFICATE OF SERVICE**

I, Khadijah Scott, hereby certify that I have this day served a copy of PECO Energy Company's Preliminary Objection in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

RASHID EL MALIK  
1320 VIA MARGARITA  
PALOS VERDES ESTATE, CA 90274

RASHID EL MALIK  
249 HAVERFORD RD  
WYNNEWOOD PA 19096

Dated: March 12, 2020



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Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-6841  
Fax: 215.568.3389  
Khadijah.scott@exeloncorp.com

# **EXHIBIT 1**

**RULES AND REGULATIONS (continued)**

**23. EGS SWITCHING**

- 23.1** PECO Energy will accommodate requests by customers to switch EGSs on active accounts and pending active (C)  
(Instant Connect) accounts in accordance with this Rule 23, Commission Order M-2014-2401085, and other  
applicable Commission Orders.
- 23.2** To switch to a new EGS, a customer must inform the new EGS. Customers that wish to switch are not required  
to contact PECO Energy to initiate a switch; PECO Energy will only switch a customer in accordance with Rule 23.
- 23.3** To enable a new EGS to complete a switch, a customer must provide to the new EGS the customer's PECO  
Energy account number as it appears on the customer's PECO Energy monthly bill.
- 23.4** If a Customer contacts the Company to discontinue electric service and indicates that the Customer will be (C)  
relocating outside of the Company's service territory, the Company will notify the current EGS of the Customer's  
discontinuance of service for the account at the Customer's location. If relocating within the Company's service  
territory the Company will seamlessly move the current EGS to the new location if all qualifications are met  
in accordance with PUC Order M-2014-2401085.
- 23.5** A switch to an EGS will be effective 3 business days after the enrollment request is processed, provided the  
enrollment request includes valid customer information as required by the controlling provisions of the Supplier  
Tariff. Upon receiving valid notice to switch an EGS, the Company shall notify the customer's existing EGS that  
such a request has been made.
- 23.6** If and when a customer's EGS discontinues its supply in the event of bankruptcy, loss of license, or similar  
occurrence, or if a Customer is dropped by its EGS for non-payment or other reason then the customer may  
select a new EGS. The customer will receive its energy supply from PECO Energy until the switch becomes  
effective.
- 23.7** Nothing in this Rule 23 shall be interpreted to preclude EGSs from entering into agreements for supply with a  
term of service of one month. EGSs may enter into agreements for longer.

**24. LOAD DATA EXCHANGE**

- 24.1** PECO Energy will provide to a customer or the customer's designated EGS or authorized consultant, all available  
data from the meter once each calendar year for no fee. The exchange of data among PECO Energy, EGSs,  
and customers shall be in accordance with the Supplier Tariff and the Final Consensus Plan for Electronic Data  
Exchange Standards for Electric Deregulation in the Commonwealth of Pennsylvania, as approved by the  
Commission.

(C) Denotes Change



## **EXHIBIT 2**

preceding process is complete, the Company will notify the Customer's prior EGS, via an EDI transaction, of the discontinuance of service to the Customer from that prior EGS.

#### 5.3.4

(a) If a Customer contacts the Company to discontinue electric service at the Customer's then current location, and initiates a request for service at a new location in the Company's service territory, the Company will notify the current EGS, via an EDI transaction, of the Customer's discontinuance of service for the account at the Customer's old location. If relocating within the Company's service territory, the Company will seamlessly move the current EGS to the new location if all qualifications are met in accordance with PUC Order M-2014-2401085. (C)

(b) If a Customer contacts the Company to discontinue electric service and indicates that the Customer will be relocating outside of the Company's service territory, the Company will notify the current EGS, via an EDI transaction, of the Customer's discontinuance of service for the account at the Customer's location.

### 5.4 Provisions relating to an EGS's Customers.

**5.4.1 Arrangements with EGS Customers.** EGSs shall be solely responsible for having appropriate contractual or other arrangements with their Customers necessary to implement Direct Access consistent with all applicable laws, PaPUC requirements, and this Tariff. The Company shall not be responsible for monitoring, reviewing or enforcing such contracts or arrangements.

**5.4.2 Transfer of Cost Obligations Between EGSs and Customers.** Nothing in this Tariff is intended to prevent an EGS and a Customer from agreeing to reallocate between them any charges that this Tariff imposes on the EGS, provided that any such agreement shall not change in any way the EGS's obligation to pay such charges to the Company, and that any such agreement shall not limit the right of the Company to seek recourse directly from the EGS's Customer for any charges owed to the Company by the EGS Customer or preclude the termination or reconnection of the EGS Customer by the Company as provided in the Company's tariffs.

(C) Denotes Change

Supplement No. 6 to  
Tariff Electric Pa. P.U.C. No. 1S  
First Revised Page No. 23  
Superseding Original Page No. 23

PECO Energy Company

(C)

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(C) Denotes Change

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Issued February 2, 2004

Effective April 2, 2004