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March 19, 2020

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

**RE: Tiffany McCall v. PECO Energy Company
PUC Docket No. C-2019-3012597**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the *Reply 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.

Sincerely Yours,

A handwritten signature in blue ink that reads "Edward T. Fisher". The signature is written in a cursive, flowing style.

Edward T. Fisher

EF/

Cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TIFFANY MCCALL,	:	
Complainant	:	
v.	:	DOCKET NO. C-2019-3012597
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

REPLY EXCEPTIONS OF RESPONDENT, PECO ENERGY COMPANY

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Tiffany McCall (“Complainant”) in the above-referenced matter on March 17, 2020.

On September 2, 2019, Tiffany McCall (Complainant) filed a formal Complaint with the Public Utility Commission (PUC) against PECO Energy Company (“PECO”). In her formal complaint, Complainant sought to recoup the cost of damages to her landline telephone which she alleges to have occurred during PECO’s line tripping events.

On September 12, 2019, PECO filed an Answer denying all material allegations of the complaint and averred that PECO received a claims form from the Complainant indicating that in January 2019, a power outage caused damage to her home telephone; however, upon investigation, PECO found no power outage occurring on PECO lines which provided service to Complainant’s home. PECO further averred that any alleged momentary outage was not due to any equipment failure, transformer or other maintenance issue on PECO’s part.

A hearing was held on October 30, 2019. At the hearing, Complainant testified in support of her complaint. PECO presented the testimony of Kahlua Rashid, PECO Reliability Engineer for Delaware and Chester Counties; Timothy grow, PECO Senior Claims Case Manager and Jonathan Frissora, Manager of the PECO Claims Department. PECO also presented exhibits which were admitted by the presiding ALJ. During the hearing, Complainant amended, without

objection from PECO, her complaint to include notification practices related to her claim for damages.

On November 5, 2019, Complainant submitted a “Response to PECO’s Service Liability Report.” This response was admitted into the record below.

The record closed on December 12, 2019 with receipt of the hearing transcript.

On March 3, 2020, ALJ Darlene Heep issued a well-reasoned, Initial Decision denying the Complaint. ALJ Heep found that the Complainant did not establish that PECO Energy provided unreasonable service with respect to maintenance and notification prior to working on a line. Her Honor also denied the claim for damages as the PUC does not have authority or jurisdiction to award monetary damages. In her decision, ALJ Heep held *inter alia*:

2. That the Complaint of Tiffany McCall filed against PECO Energy Company at Docket no C-2019-3012597 is denied.

On March 17, 2020, Complainant filed exceptions to ALJ Heep’s Initial Decision. In her exceptions. Complainant alleges:

“(12) There is no dispute on whether there was outages in late January, early February of 2019, or in April of 2019. But then the raised question is whether or not [PECO] should be held liable for these (2) two outages. Was either outage out of [PECO’s] control? No, because the first outage in February, 2019 fell under the category of Equipment Failure-Def/Malfunction/Deterioration, not an “Act of God”. The second outage was caused by wildlife, but why did wildlife have access to wires or equipment, was these wires exposed due to not being updated or maintained? In addition, according to [PECO’s] own Tariffs and Policies, if damage occur if and only if, it was out of the control of [PECO], should they not be liable of up to \$1000.00”

PECO files the instant and timely Reply Exceptions and hereby respectfully requests that the Commission deny the Complainant’s Exceptions and issue an Order adopting the Initial Decision of ALJ Heep.

II. SCOPE OF REVIEW

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 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 utility, PECO, is responsible or accountable for the problem described in the Complaint through a violation of the Code or a regulation or order of the Commission. *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*, 602 A.2d 863 (Pa. 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*, 70 A.2d 854 (Pa. 1950).

Additionally, this Commission's decision must be supported by substantial evidence in the record, which is defined as evidence that a reasonable mind might accept as adequate to support a conclusion. 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*, 413 A.2d 1037 (Pa. 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 1371 (Pa. Cmwlth. 1982), *aff'd*, 433 A.2d 1234 (Pa. 1983). While the burden of persuasion may shift back 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).

It is well settled that the Commission cannot exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. Ct. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Cf. Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Super. Ct. 1992). Furthermore, it is a long-standing principle that the question of jurisdiction over the subject matter of a dispute may be raised at any time and must be considered. *See, West Penn Power Company Petition for Declaratory Order Re Clean Air Act Compliance Plan*, Docket No. P-00910511 (Order entered July 22, 1991) 1991 Pa. PUC LEXIS 151; *Sophia Poole v. Columbia Gas of Pa., Inc.*, Docket No. Z-00109922, (Order entered June 19, 1995) 1995 Pa. PUC LEXIS 53.

Any issue or Exception that is not specifically delineated 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); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

III. DISCUSSION

A. ALJ Heep Correctly Determined no Violation by PECO

In her Initial Decision, ALJ Heep made thirteen (13) Findings of Fact and reached seven (7) Conclusions of Law. In so doing, ALJ Heep considered evidence introduced by both Complainant and PECO. Based upon the credible evidence of record, ALJ Heep found that

Complainant did not establish by a preponderance of the evidence that PECO committed any violations in this matter.

Section 1501 of the Public Utility code provides that:

Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities and shall make all such repairs, changes, alterations, substitutions, extension, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and order of the commission....

66 Pa.C.S. Sec. 1501. 52 Pa.Code Sec. 57.194(a) provides that:

a.) An EDC shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make repairs, changes, alterations, substitutions, extensions and improvements in or to the service and facilities necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public. The service shall be reasonably continuous and without unreasonable interruptions or delay.

52 Pa. Code. Sec. 57.194(a). Finally Tariff 12.1 indicates:

12.1 Limitation on Liability for Service interruptions and Variations.

The Company does not guarantee continuous, regular and uninterrupted supply of service...

The Company is also not liable for any damages due to accident, strike, storm, riot, fire, flood, legal process, state or municipal interference, or any other cause beyond the Company's control.

PECO Energy Company- Tariff Electric Pa. P.U.C. No. 5, Page No. 21. Additionally, a utility is required to provide reasonable and adequate service, not perfect service. *See, Schell v. PPL Electric Utilities Corp.*, Docket No. C-2017-2592821 (Order entered June 14, 2018).

ALJ Heep credibly found that although there was a momentary outage on Complainant's circuit on February 1, 2019, that is not a sufficient basis upon which to find a violation. The Judge credited Mr. Timothy Grow's testimony that Tariff Rule 12 provides that the PECO does

not guarantee continuous service. (Tr. 50-51, PECO Exhibit 2). His testimony is underpinned by law that the utility is only required to provide adequate service; not perfect service under 66 Pa.C.S. Sec. 1501 and 52 Pa.Code Sec. 57.194. On February 1, 2019, ALJ Heep found there was no opportunity for notice and that the outage was caused by a high side breaker trip. (Tr. 62). These events are caused by a foreign object touching the line (Id.) ALJ Heep also relied on the testimony of Kahlua Rashid, PECO Reliability Engineer, that this momentary interruption lasted only 1 minute and was beyond PECO's control. This momentary outage which was beyond PECO's control is consistent with the duties set forth in 66 Pa.C.S. sec. 1501. Therefore, ALJ Heep correctly concluded that although an outage occurred on February 1, 2019, it did not rise to the level of a violation by PECO under the Public Utility Code, a Commission regulation or order or a Commission-approved tariff.

Additionally, ALJ noted that other than the 1 minute tripping on February 1, 2019, there is no record of line outages or other problems on the Complainant's circuit between January 2019 and April 4, 2019. The Judge credited PECO Exhibit-2 in support of her finding (Finding No. 11). Complainant presented no credible evidence in this regard.

Regarding notice, the ALJ found that the testimony of PECO witness Rashid established that PECO has a preventative maintenance program and keeps service reliability reports and proactively identifies equipment that needs replacement. (Tr. 37-38). Ms. Rashid's testimony confirmed that PECO sends out notification to customers prior to the maintenance taking place and that the Complainant's testimony confirmed she had received such notice. (Tr. 43-44, 80).

ALJ Heep correctly determined that there was no violation of the Public Utility Code, a Commission regulation or order, or a Commission –approved tariff. The outage of February 1, 2019. Consequently, the Judge reasonably concluded, based on the credible evidence of record,

that Complainant failed to establish PECO was in violation of Tariff Rule 12 or Section 1501 of the Public Utilities Code.

B. ALJ Heep Correctly Determined that the PUC has No Authority to Award Monetary Damages

Complainant also alleged that PECO should be held responsible for up to \$1,000 in damages because the outages were, as Complainant argues in her exceptions, within PECO control. As is indicated above, there was no credible evidence produced by Complainant to establish that the February 1, 2019 the outage was within PECO's control. Conversely, ALJ Heep specifically found that Ms. Rashid's testimony confirmed that the February 1, 2019 outage was indeed outside of PECO's control and that this momentary outage was the only one recorded on Complainant's circuit between January 2019 and April 4, 2019.

ALJ Heep correctly interpreted the law that the PUC does not have jurisdiction to award monetary damages to a private litigant. *Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977); *Morrow v. Bell Telephone Co. of Pa.*, 330 Pa.Super.276, 479 A.2d 548 (1984); *West penn Power Co. v. Pa. Pub. Util. Comm'n*, 104 Pa.Cmwlth. 21, 521 A.2d 75 (1987); *Ostrov v. I.F.T., Inc.*, 402 Pa. Super 87, 586 A.2d 409 (1991). A request for monetary damages must be pursued in a Magisterial District Court or a Court of Common Pleas.

The PUC is prohibited from providing the relief Complainant seeks. Without jurisdiction to award monetary damages or relief to Complainant, ALJ Heep correctly denied Complainant's formal Complaint.

IV. CONCLUSION

WHEREFORE, the Secretary must deny the Complainant's Exceptions and adopt the ALJ's Initial Decision. The Secretary must conclude:

1. That the Exceptions filed by Tiffany McCall on March 17, 2020 at Docket No. C-2019-3012597, are denied consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Darlene Heep is Adopted within the Opinion and Order of the Secretary.

3. That the Formal Complaint filed by Tiffany McCall on September 2, 2019, at Docket No. C-2019-3012597, is dismissed.

Respectfully submitted,

A handwritten signature in blue ink that reads "Edward T. Fisher". The signature is written in a cursive style with a clear, legible font.

Edward T. Fisher, Esquire
Counsel for PECO Energy Company
Griesing Law, LLC
1880 John F. Kennedy Blvd., Suite 1800
Philadelphia, PA 19103
215-618-3720

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PECO ENERGY COMPANY	:	
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VERIFICATION

I, Edward T. Fisher, Esquire, 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 19, 2020

Edward T. Fisher

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TIFFANY MCCALL	:	
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CERTIFICATE OF SERVICE

I, Edward T. Fisher, Esquire, 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.

Via email (uniquetee82@hotmail.com)
Tiffany McCall
2600 Edgemont Avenue, 2nd Floor Apt.
Brookhaven, PA 19015

Dated at Philadelphia, Pennsylvania, March 19, 2020.



Edward T. Fisher, Esquire
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