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April 9, 2020

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

RE: Eileen Wladen v. PECO Energy Company
Docket Number: F-2019-3011507

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are *PECO Energy Company's Reply Exceptions* 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**

EILEEN WALDEN

:
:
:
:
:

v.

DOCKET F-2019-3011507

PECO ENERGY COMPANY

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

I. Procedural History

On July 5, 2019, Eileen Walden (“Complainant”) filed a formal Complaint against PECO Energy Company (“PECO”) with the Pennsylvania Public Utility Commission (“PUC”). In her Complaint, the Complainant indicated that there were incorrect charges on her bill and that she had a safety and reliability issue with her service.

On July 18, 2019, Respondent filed a responsive Answer indicating the Complainant does have electric service. PECO asserted that the Complainant’s bills are correct as charged and that they are based on actual meter readings. Additionally, PECO conducted a high bill investigation which found her bills to be in line with potential usage and no issues with the meter.

On July 19, 2019, a Hearing Notice was issued scheduling an initial hearing for Monday, September 9, 2019, at 10:00 a.m., and assigned to ALJ Marta Guhl. A Prehearing Order was issued on July 23, 2019.

On August 27, 2019, the Complainant filed an amended Complaint. The amended Complaint contained two additional paragraphs which addressed her informal Complaint to the Bureau of Consumer Services (BCS) and the BCS decision. Additionally, her amended Complaint also questioned the security on the smart meter and other issues related to communications between the meter and PECO and meter testing. Complainant requested the reimbursement of legal fees, if any were incurred.

On September 6, 2019, Respondent filed an Answer to the amended Complaint.

On September 6, 2019, an Order granting Complainant’s motion for continuance was issued. Additionally, a Hearing Notice was issued cancelling the September 9, 2019 hearing and rescheduling the hearing for October 23, 2019.

The initial hearing in this matter was held as scheduled on October 23, 2019. The Complainant appeared *pro se* and testified on her own behalf. The Complainant offered seven exhibits at the time of the hearing. Complainant Exhibit Nos. 1, 3, 4, 5, and 6 were entered into the record and Complainant Exhibit Nos. 7 and 2 were not entered into the record based on the sustained objection of PECO.

PECO appeared with counsel and provided testimony in opposition to Complainant's complaints. PECO Exhibits Number 1-7 were admitted into the record.

On March 4, 2020, ALJ Guhl issued her Initial Decision. ALJ Guhl Ordered that Amended Complaint be denied and dismissed.

Complainant filed Exceptions on March 24, 2020.

II. Legal Standards

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, the 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 should be noted that 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).

Regarding a high bill dispute, the burden of proof for “high bill” complaints has been explained in *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980). *Waldron* holds that while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission may consider the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding and used as additional factors for the consideration. *Waldron* at 100; see also *Nehemiah B. Thomas v. PECO Energy Company*, Docket No. C-2010-2187197, at 5 (Order entered November 15, 2011).

III. Discussion

The Commission should sustain the initial decision of ALJ Guhl. Complainant does not allege that the ALJ made an error of law or abused her discretion in any manner. Instead, Complainant excepts to the decision issued by ALJ Guhl, because she simply disagrees with the ALJ's decision and believes she submitted adequate proof to the ALJ to support her position. Moreover, Complainant is simply seeking to re-litigate the issues she raised in both of her Complaints and at the lengthy hearing of October 23, 2019.

On March 24, 2020, Complainant filed Exceptions to the Judge's Initial Decision. In her writing, Complainant seems to be challenging the evidence presented, the Judge's evidentiary rulings at the hearing and ultimately, the outcome of the hearing. These complaints were voiced to the Judge on October 23, 2019 and again in post-hearing letters to the Judge. At the hearing, the Judge advised the Complainant that if she wished to have further evidence submitted to support her case, she would need to file a Motion to Re-open the Record with the Secretary's Bureau. (October 23, 2019, Tr. Pp 89-90). Claimant did not do as the Judge instructed and never actually filed the aforementioned Motion. In fact, ALJ Guhl actually addressed the post-hearing correspondences in her March 4, 2020 Initial Decision:

"Complainant Requests after the Hearing

The Complainant sent multiple letters to my office after the hearing had taken place. The Complainant had been told at the hearing that if she wished to have further evidence submitted, she would need to file a Motion to Reopen the Record with the Secretary's Bureau and provide a specific reason as to why the record should be reopened and what she specifically would want to present at a further hearing in the motion. Tr. 89-90. The Complainant has failed to do that in this matter. Further, the correspondence sent by the Complainant to my office does not contain any specific request to reopen the record nor does it contain what evidence she would wish to present. The Complainant in her correspondence simply disputes PECO's position in the case and the evidence that they

presented at the hearing and does not indicate that there would be any new evidence which she would provide. The Complainant had the opportunity to cross examine the witnesses at the hearing in this case. The request is denied because the Complainant failed to present any “reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding.” *See* 52 Pa.Code § 5.571(d).”

See ALJ Guhl, Initial Decision, dated 3/4/2020, attached hereto as Exhibit “1”.

The Judge provided Complainant ample opportunity to present her evidence, cross examine PECO’s witnesses and present any objections to said evidence. ALJ Guhl and the parties engaged in on the record discussions regarding evidentiary objections and provided detailed the parties with reasons regarding her rulings on the objections. When Complainant advised that she had not yet had a chance to review PECO’s responses to her request for discovery (which was received by PECO via USPS on October 2, 2019 and properly completed within the required 20-day discovery deadline- October 22, 2019), the Judge clearly advised Complainant that she could review the responses and that if she wanted to respond or submit additional information in support of her burden, she must file a Motion to Re-Open the record with the Secretary’s Bureau. (10/23/2019 Tr. 89-90). In her post-hearing correspondences, Complainant failed to do so and failed to state any reason as to why the matter should have been re-opened.

Regarding the merits of the underlying litigation, the Initial Decision of ALJ Guhl should also be affirmed. PECO presented credible testimony from Mr. Pritchard and Mr. Saunders regarding the high bill investigation and the capabilities of the smart meter and it’s communication mechanisms. Both witnesses testified consistently with the exhibits provided by PECO which were accepted, without objection, into the record. Importantly, the witnesses

testified consistent with the documentation provided by Complainant regarding useage for the winter months in 2016-2017 and 2017-2018.

Based on the credible testimony from Mr. Saunders and the documentation provided, the Judge concluded that although the usage in Winter 2016-2017 was higher than the usage in Winter 2017-2018, Complainant's usage was still within her potential usage profile. In support of her discussion and findings, the Judge pointed out that there were two high bill investigations performed at the service address. At each of the visits, the meter at the service address was idled and a passing load test was performed.

In January 2018, Mr. Saunders performed a partial appliance analysis which found a furnace fan, baseboard heaters and two space heaters with a potential usage of 4,125 Kwh. (10/23/2019 Tr. pp. 45-46; PECO Ex. 3). Mr. Saunders testified that based on the appliance analysis and the passing load test, Complainant's usage was within her potential usage at the Service Address and he stated that there were no high bill issues. (10/23/2019 Tr. pp. 47-48). Mr. Saunders also confirmed that it is not possible for a meter to malfunction and then correct itself. Tr. 47. Mr. Saunders' testimony is consistent with that of Mr. Pritchard in this regard.

In April 2018, another PECO technician visited Complainant's residence to do a meter test and found that the meter was testing at 99.98% accurate on the first test and 99.96% accurate on the second test. PECO Exhibit 5 establishes the consistency between testing and underpins the credible testimony of Mr. Saunders that Claimant's usage for winter 2017-2018 was not

abnormal based on her usage potential. Moreover, Mr. Saunders' testimony and PECO's Exhibits confirm that the meter tested within Commission standards.¹

Complainant also alleged that the smart meter may have been "hacked" or subject to potential outside tampering. Mr. Pritchard provided reasoned, logical and unrebutted testimony that smart meters allow for highly encrypted, two-way communications as indicated in Pennsylvania Act 129 of 2008. 10/23/2019 Tr. p. 61). Mr. Pritchard noted that PECO cannot alter or change the meter readings and that smart meters only register the amount of energy that is being consumed and do not interface with appliances in the residence. (Id. at 63, 68).

Mr. Pritchard credibly explained that the Complainant's usage increases with temperature drops. (Id. at 64; PECO Exh. 6). Mr. Pritchard testified that in January 2018, the average daily temperature was 31 degrees Fahrenheit, while in January 2017, the average daily temperature was 39 degrees Fahrenheit. (Id. at 65).

IV. Conclusion

Based on the credible evidence of record, ALJ Guhl correctly determined that Complainant had not met her burden of proof that there were incorrect charges on her bills or that she had experienced a safety or reliability issue at her home. ALJ Guhl correctly concluded, that the Complainant has not met her burden of proof in this matter pursuant to 66 Pa.

¹ No watt-hour meter which has an error in registration of more than 2.0% at light load or heavy load may be placed in service or allowed to remain in service without adjustment. If, upon installation, periodic or other tests, a watt-hour meter is found to exceed these limits, it shall be adjusted or removed from service. 52 Pa.Code § 57.20.

C.S. § 332(a). Accordingly, ALJ Guhl's decision to dismiss the Complainant's case against PECO Energy should be upheld.

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

Respectfully submitted,

A handwritten signature in blue ink that reads "Angie Lorenz". The signature is written in a cursive, flowing style.

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215-618-3720

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EILEEN WALDEN	:	
Complainant	:	
v.	:	DOCKET NO. F-2019-3011507
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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: April 9, 2020

Angela M. Lorenz

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EILEEN WALDEN

:
:
:
:
:

v.

DOCKET NO. C-2019-3012082

PECO ENERGY COMPANY

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.

Via E-mail (neeliew@verizon.net)
Eileen Walden
1838 Cobden Road
Laverock, PA 19038

Dated at Philadelphia, Pennsylvania, April 9, 2020.



Angela M. Lorenz
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