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June 12, 2020

**VIA ELECTRONIC MAIL**

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

**RE: Agnes & Steve Atuahene v. PECO Energy Company  
PUC Docket No. C-2019-3012904**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy's Reply Brief*.

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.

Respectfully submitted,



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Edward Fisher, Esq.

AL/ab  
Enclosure

Cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AGNES AND STEVE ATUAHENE,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2019-3012904
	:	
PECO ENERGY COMPANY,	:	
	:	
Respondent.	:	

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**PECO ENERGY COMPANY’S REPLY BRIEF  
IN OPPOSITION TO AGNES AND STEVE ATUAHENE’S MAIN BRIEF**

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PECO Energy Company (“PECO” or “Respondent”) hereby submits this Reply Brief in opposition to Agnes and Steve Atuahene’s (the “Complainants”) Main Brief.

**I. Introduction**

Complainants’ Main Brief was replete with misstatements of the record, improper evidence, and conclusory statements about general legal principles without proper application to the matter at hand. As the Complainants, Agnes and Steve Atuahene have the burden of establishing, by preponderance of the evidence, that the allegations in their Complaint are true and that PECO acted improperly. As PECO will show below, the Atuahenes have missed this burden by a fantastic measure.

**II. Statement of the Facts<sup>1</sup>**

This dispute centers around the allegations within Complainants’ September 13, 2019 Complaint alleging: (1) Complainants were overcharged because of a faulty electric meter; (2) PECO engaged in fraud because a third party, AEP Energy, supplied Complainants’ electric service; (3) Complainants’ “due process” was violated when they received bills containing transfer services from other properties owned by Complainants; and (4) PECO and AEP Energy conspired to extort money from Complainants.

Following the February 19, 2020 in-person hearing, PECO received Complainants’ Main Brief on May 27, 2020. In that brief, Complainants’ seemingly abandoned the most salacious of these accusations, limiting their argument to two main points: (1) PECO “defrauded” Complainants from June 2016 through May 2018 because of alleged overbilling; and (2) for

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<sup>1</sup> PECO incorporates by reference as if fully set forth herein the more detailed Factual History in its previously submitted Main Brief.

various reasons, PECO's service transfers from other properties were "fraudulent," counter to Complainants' due process rights, or otherwise improper.<sup>2</sup>

### III. Legal Argument

#### A. **Complainants did not meet the burden of proof necessary to establish that PECO overbilled Complainants from June 2016 through May 2018**

In their Main Brief, Complainants aver PECO engaged in overbilling practices for a nearly two-year period from June 2016 through May 2018. To support this argument, Complainants assert: (1) Complainant Steve Atuahene's, testimony at the in-person hearing established that the meter at the relevant property was not properly calibrated; (2) at the in-person hearing, PECO "failed to explain" Complainants' Kilowatt Hour (kWh) increase for the months between June 2016 and May 2018; and (3) PECO did not properly calibrate the equipment it used to gauge the accuracy of the Complainants' meter.<sup>3</sup> None of these arguments establish PECO overbilled Complainants by the preponderance of the evidence.

Complainants' first argument demonstrates a renewal of Complainants' improper offering of Steve Atuahene as an expert witness. *See* Initial In-Person Hearing Transcript ("Tr.") at 62:2-25; 63:10-22, Feb. 19, 2020, the relevant pages of which are attached to PECO's Main Brief as Exhibit "1."<sup>4</sup> It is well settled Pennsylvania law that an expert witness must be qualified and the discretion to determine that qualification is vested in the judge presiding over the hearing. *See McDaniel v. Merck, Sharp & Dohme*, 533 A.2d 436, 440 (Pa. Super. Ct. 1987). It is also well settled that Administrative Law Judge (ALJ) Angela T. Jones did not qualify Mr. Atuahene as an

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<sup>2</sup> Complainants' Main Br., May 27, 2020, at pp. 13; 15-22.

<sup>3</sup> Complainants' Main Br. at pp. 13-14.

<sup>4</sup> As discussed at the Status Conference on briefing, all citations to Exhibits 1 – 10 refer to the exhibits attached to PECO's Main Brief. In addition, Exhibit 11 attached hereto contains pages of the hearing transcript not attached or cited to in the Main Brief.

expert in any field. *See* Exhibit 1 at 62:2-25; 63:10-22. Opinion testimony should be excluded when the witness offering the testimony possess no more knowledge on the issue at hand than the trier of fact. *See Sweeney v. Blue Anchor Beverage Co.*, 189 A. 331, 333 (Pa. 1937).<sup>5</sup>

Given Mr. Atuahene's lack of qualification as an expert witness, any argument Mr. Atuahene makes regarding the meter's functionality or the proper calibration of the meter testing equipment—the bulk of Complainants' argument on page 13 of their Main Brief—should be excluded.

Complainants' second argument improperly brings in information not contained in the record, improperly places the burden of proof onto PECO, and does nothing to further Complainants' charge of overbilling. As a threshold issue, the various percentages of change Complainants offer in this argument and in their attached schedules should be excluded because it was not entered into the record at the in-person hearing.<sup>6</sup> While the numbers used to calculate these changes come from PECO's document, the Account Activity Statement, Complainants never asked PECO's witnesses about or offered testimony regarding these calculations at the in-person hearing. PECO's inability to have its witness testify or cross-examine either Complainant on these calculations presents a major prejudice on PECO. While PECO forms no opinion on the accuracy of these calculations, it is worth noting that during the in-person hearing, Mr. Atuahene attempted to make similar calculations and his math was ultimately found to be inaccurate by PECO's witness. *See* Exhibit 11 at 120:16-25; 121:1-16.

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<sup>5</sup> *See also* § 55:1. General rule excluding opinion evidence, 9 Standard Pennsylvania Practice 2d § 55:1 (citing *Freed v. Priore*, 372 A.2d 895 (Pa. 1977)).

<sup>6</sup> Complainants' Main Br. at 14; Schedule "A"; Schedule "B"; and Schedule "C."

Similarly, Complainants then attempt to argue that PECO “failed to explain” the price increases. PECO does not have the burden of proof. At the hearing, PECO offered evidence through two witnesses that the meter was accurate, this evidence should be balanced against the evidence that Complainants offered to attempt to demonstrate that the meter was inaccurate, which was only the anecdotal evidence that their energy utilization was low. As such, the Complainants failed to meet their burden of proof that the meter was inaccurate and Complainants’ allegations as to the meter should be rejected.

Complainants have also asserted that PECO did not properly calibrate the meter testing equipment. However, the Complainants are misinterpreting the testimony of PECO’s witnesses.<sup>7</sup> PECO witnesses testified that the meter was calibrated according to PECO policy and when tested the meter was “accurate and working within the PECO and PUC guidelines.” Exhibit 1 at 148:19-24; *see also* Exhibit 8. Accordingly, the Complainants have failed to meet the burden of proof that PECO did not properly calibrate the equipment it used to gauge the accuracy of the Complainants’ meter.<sup>8</sup> As such, Complainants’ allegations of a faulty meter must be rejected. Since the only admissible evidence Complainants have offered on the overbilling issue is the anecdotal testimony of Mr. Atuahene at the in-person hearing, and in light of the overwhelming evidence that PECO verified the accuracy of its meter both before it was installed and during the high bill investigation, the Complainants have failed to satisfy their burden and their application for relief should be denied.

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<sup>7</sup> It is possible the Complainants are confusing the calibration of the meter at their residence with the calibration of the meter tester used by PECO employees. *See* Exhibit 1 at 149: 1-6.

<sup>8</sup> Complainants’ Main Br. at 13-14.

**B. Complainants did not meet the burden of proof necessary to establish PECO improperly transferred services to the property located at 7500 North 21 Street**

Complainants' due process argument as to the transferred outstanding balances rings hollow and their reliance on *Vichosky v. Boucher*, 60 A.2d 381 (Pa. Super. Ct. 1948), is inapposite. As PECO established in its Main Brief, 52 Pa. Code § 56.16 provides that public utility service companies, such as PECO, "may transfer any unpaid balance to a new residential service account of the same customer." The same provision goes on to provide that "[n]othing in this section shall be construed to limit the right of a customer to dispute a bill within the meaning of §§ 56.141—56.143 (relating to dispute procedures; time for filing an informal complaint; and effect of failure to timely file an informal complaint)." The holding in *Vichosky*, a case from 1948 relating to irregularities in procedure from a judgment of a Justice of the Peace, has no bearing on the case before this tribunal, as it in no way addresses the automatic transfer of unpaid balances by utility companies. Accordingly, Pennsylvania law places the onus on the Complainants to challenge any transferred balance that they believe to be improper, and as such, Complainants have not been denied due process.

Finally, while Complainants attempt to argue that PECO had no legal right to transfer unpaid balances to their account, the Complainants are again misstating and misapplying controlling law. As discussed in-depth in PECO's Main Brief, in the context of rental properties, as is the case here, the payment of the bill may ultimately fall on the owner of the property if PECO is not given notice of the landlord/tenant arrangement. *See* 66 Pa.C.S.A. § 1529.1(b) (emphasis added) ("In the case of individually metered dwelling units, unless notified to the contrary by the tenant or an authorized representative, **an affected public utility shall list the account for the premises in question in the name of the owner, and the owner shall be responsible for the**

**payment for utility services to the premises.**)<sup>9</sup> Agnes Atuahene testified that the PECO accounts for all of the transferred properties were in her name. *See* Exhibit 1 at 90-94. This testimony corroborates PECO’s recorded Account History for Agnes Atuahene, which Regulatory Assessor, Elsa Leung, authenticated at the in-person hearing. *See* Exhibit 1 at 109:9-17; *see also* Account History for Agnes Atuahene attached as Exhibit “10.” Moreover, Mrs. Atuahene’s testimony established (1) at least some of the transferred properties were rented out by Mrs. Atuahene; (2) Mrs. Atuahene did not always notify PECO that the service at the rental properties should be discontinued in Mrs. Atuahene’s name; and (3) PECO bills would occasionally remain in Ms. Atuahene’s name when the rental properties were occupied if the tenant was delayed in contacting PECO. *See* Exhibit 1 at 92:7-14; 94:21-25; 95:1-10. As was the case in *Andrews*, Complainants’ private lease contracts do not control liability to PECO. Accordingly, just as in *Andrews*, unpaid balances from other accounts in the name of Agnes Atuahene were properly and lawfully transferred to the Account Activity Statement relating to 7500 N. 21<sup>st</sup> Street in accordance with 66 Pa.C.S.A. § 1529.1(b), and Complainants have failed to meet their burden of establishing that PECO’s service transfers violated any statute or order.

#### **IV. Conclusion**

The Complainants have the burden of proof as to each of their claims but have failed to establish, by a preponderance of evidence, that PECO improperly overbilled or transferred overdue balances to their account. The Complainants have been given opportunity after opportunity to prove their accusations against PECO but have failed – both at the hearing and in their briefing -

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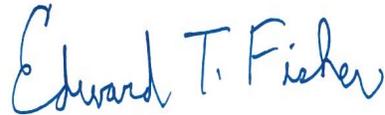
<sup>9</sup> *See also Andrews v. PECO*, No. C-2012-2283978, 2012 WL 6763613, at \*1 (Dec. 6, 2012) (Noting the owner of the property is still responsible for the unpaid bill regardless of what the lease with the tenant says because the private lease contract will not control liability to PECO).

because their claims do not pass muster. Accordingly, because the Complainants have not and cannot meet this burden, the Complainants' Complaint and requested relief should be denied.

Dated: June 12, 2020

Respectfully submitted,

**GRIESING LAW, LLC**



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Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AGNES AND STEVE ATUAHENE,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2019-3012904
	:	
PECO ENERGY COMPANY,	:	
	:	
Respondent.	:	

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**VERIFICATION**

I, Edward T Fisher, 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 Reply Brief 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: June 12, 2020

\_\_\_\_\_  
Edward T Fisher

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AGNES AND STEVE ATUAHENE,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2019-3012904
	:	
PECO ENERGY COMPANY,	:	
	:	
Respondent.	:	

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**CERTIFICATE OF SERVICE**

I, Edward T Fisher, hereby certify that I have this day served a copy of PECO Energy Company's Reply Brief in Support of Denying Agnes and Steve Atuahene's Complaint and Requested Relief in the above matter upon all interested parties via Email and by mailing a copy, properly addressed and postage prepaid to:

Agnes Atuahene  
Steve Atuahene  
7500 N. 21<sup>st</sup> Street  
Philadelphia, PA 19138

DATED: June 12, 2020

Respectfully Submitted,



---

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Counsel for PECO Energy Company  
Griesing Law, LLC  
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# EXHIBIT 11

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

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Agnes and Steve Atuahene  
v.  
PECO Energy Company  
Initial In-Person Hearing  
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Public Utility Commission  
801 Market Street  
4th Floor  
Philadelphia, PA 19107

Wednesday, February 19, 2020  
Commencing at 10:00 a.m.

BEFORE:

ANGELA T. JONES, Administrative Law Judge

APPEARANCES:

STEVE ATUAHENE, Pro Se  
AGNES ATUAHENE, Pro Se  
For the Complainants

EDWARD T. FISHER, Esquire  
PECO Energy Company  
1880 JFK Boulevard  
Suite 1800  
Philadelphia, PA 19103  
For the Respondent

Reporter: Danielle Breslin

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1                   JUDGE: Well, I don't understand why  
2 you're not sure what the question is. If you need for  
3 him to repeat the question? But I believe he's saying,  
4 do you know what the total amount is that was  
5 transferred from other properties to this account?

6                   MR. ATUAHENE: Precisely, Your Honor. I  
7 appreciate it.

8                   ATTORNEY FISHER: Okay.

9                   I withdraw the objection.

10                  THE WITNESS: I could read off the  
11 individual amounts for each transfer amount at this  
12 point if - and we could calculate and add up what each  
13 of those amounts are for the total. I do not have the  
14 total on hand right now.

15 BY MR. ATUAHENE:

16                  Q. If I may, it's \$11 - \$1,152.59.

17                  JUDGE: \$1,152?

18                  MR. ATUAHENE: Yeah, Your Honor.

19                  JUDGE: And 59 cents?

20                  MR. ATUAHENE: Yes. This is more than  
21 half the amount of the claim - of the -.

22                  JUDGE: Mr. Atuahene?

23                  MR. ATUAHENE: Yes?

24                  JUDGE: It's not your turn to testify.  
25 It's your turn to ask questions.

