

Direct Dial: 215.841.6841
khadijah.scott@exeloncorp.com

December 1, 2020

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

RE: Nellie Belder v. PECO Energy Company
PUC Docket No. F-2020-3019239

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the *Reply Exceptions of PECO Energy Company*.

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.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**NELLI BELDER
COMPLAINANT**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

:
:
:
:
:
:
:
:
:
:

Docket No. F-2020-3019239

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Nelli Belder (“Complainant”) on November 17, 2020. On February 28, 2020, the Complainant filed a formal complaint against PECO Energy. In her formal Complaint, she disputed a foreign wiring balance that was transferred to her account from a tenant because she did not receive timely notification of the issue. On April 2, 2020, PECO Energy filed an Answer to the Complaint denying all material allegations of the Complaint and averred that PECO Energy provided proper notice of the foreign wiring condition which was identified on May 17, 2018, at the Complainant’s rental property, located at 1615 N Allison St. 1st Fl., Philadelphia, PA 19131.

On June 26, 2020, a telephonic hearing was conducted before Administrative Law Judge Vero (“ALJ Vero”). At the hearing, the Complainant was represented by counsel. The Complainant’s spouse and business partner of B&Z Holdings, LLC, Michael Belder, testified on her behalf. No exhibits were admitted into evidence by the Complainant. PECO Energy high bill technician, Mary McQuilkin, and senior regulatory assessor, Renee Tarpley, testified on PECO Energy’s behalf. Five (5) exhibits were admitted into evidence.

The record closed on July 26, 2020 with receipt of the hearing transcript. On October 26, 2020 ALJ Vero issued a well-reasoned Initial Decision in this matter denying the claims made by the Complainant and dismissed the formal Complaint. ALJ Vero found that PECO Energy properly transferred the tenant's balance to the Complainant upon discovery of foreign wiring, gave adequate notice to the Complainant once the issue was discovered and did not violate any Commission statute or Order by placing and keeping service of the first floor unit in the Complainant's name.

On November 17, 2020, the Complainant filed Exceptions to ALJ Vero's Initial Decision. In her writing, the Complainant seems to be challenging the evidence presented, the Judge's evidentiary rulings at the hearing and ultimately, the outcome of the hearing. ALJ Vero provided the Complainant ample opportunity to present evidence, cross examine PECO's witnesses and present any objections to evidence during the hearing. ALJ Vero and the parties engaged in on the record discussions regarding evidentiary objections and she provided the parties with detailed reasons regarding her rulings on the objections.

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

I. 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 Energy, 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); *See also*, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In the matter of a foreign wiring dispute, the burden of proof for foreign wiring has been explained in *Ace Check Cashing Inc. v. Phila. Gas Works*, Final Order, (May 21, 2010). Upon discovering the existence of a foreign load a public utility is required to list the account, including any arrearages, in the name of the landlord. 66 Pa. C.S. §§ 1529.1. *See also, Santos v. Metro. Edison Co.*, No. C-00967757 (Pa. P.U.C. Aug. 7, 1997).

II. Legal Argument

a. The Complainant was properly notified of foreign wiring

In the case at bar, PECO Energy properly transferred the utility account of the tenant including arrearages, into the Complainant's name. The Complainant does not allege that the ALJ made an error of law or abused her discretion in any manner. ALJ Vero's Initial Decision is well-reasoned with ample support from the record. As detailed in the Initial Decision, the complaint does not set forth that PECO Energy violated any regulation, statute or order. Moreover, the Complainant is simply seeking to re-litigate the issues raised in both her complaint and hearing held on June 26, 2020.

Consistent with 66 Pa. C.S. § 1529.1, if foreign wiring is found at a property owner's premises, PECO Energy is required to transfer the service and the balance into the property owner's name until the condition is corrected. In her Exceptions, the Complainant argues that the balance that was transferred to her account was improper and should be reallocated to her tenant because she did not receive timely notification of the foreign wiring issue. This issue is without merit.

On April 30, 2018, tenant, Mr. Caraway, contacted PECO to complain of high bills and stated that he suspected foreign wiring. Accordingly, on May 17, 2018, a PECO technician investigated. The technician found that the common hallway light and porch light were being

billed to the 1st Floor. Two strips of electric baseboard, that the tenant was unaware of, was also identified. This is foreign wiring. As a result, the tenant's bill from the 1st floor, was properly transferred to the Complainant's name. Upon investigation, it was discovered that the property was owned by B & Z Holdings, LLC. On May 18, 2018, PECO sent the Complainant correspondence advising her that foreign wiring had been found and that the account and service had been transferred into the name of the Complainant's company, B&Z Holdings, LLC. Correspondence was sent to the Complainant at 1051 County Line Rd., Huntingdon Valley, PA, 19006, which is the address that was listed in the Philadelphia Office of Property Assessment ("OPA") – Real Estate Taxes. *See*, PECO Exhibit "3". The mail was not returned. Accordingly, effective May 18, 2018, PECO Energy established service in the Complainant's name at 1615 N Allison St. 1st Fl., Philadelphia, PA 19131, under account number 47073-33117. PECO transferred \$1,319.64 from Mr. Caraway's account 4707333108 for usage charges accrued at the property to the Complainant's new account.

On March 6, 2019, PECO Energy sent a demand letter, via certified mail, to the Complainant at the 1051 County Line Rd., Huntingdon Valley, PA, address, as well as, the property address, 1615 N Allison St. 1st Fl., Philadelphia, PA, advising that the past due balance had not been received. The mail was not returned. On April 15, 2019, additional addresses were located for the business name of the Complainant. On that date, a demand letter was again sent via certified mail to both 141 Dogwood Lane, Huntingdon Valley, PA 18966 and P.O. Box 506, Southampton, PA 18966. The mail was not returned. On April 19, 2019, the Complainant contacted PECO Energy stating that she was unaware of foreign wiring, that she wanted to make payment arrangements and that she would have the issue corrected within a month. The

Complainant confirmed that the tenant remained in the property, as well as, confirmed her mailing address as P.O. Box 506, Southampton, PA 18966.

At the time of hearing, the Complainant's witness, Michael Belder, testified that the Complainant had not utilized the address of 1051 County Line Rd., Huntingdon Valley, PA, address for many years. This is of no moment. At the time that the foreign wiring was identified, May 17, 2018, public records¹ identified the Complainant's address as 1051 County Line Rd., Huntingdon Valley, PA. *See*, PECO Exhibit "3". As such, notification of the foreign wiring condition was mailed to that address. The mail was not returned. Accordingly, the Complainant's exceptions must be dismissed. The Initial Decision of ALJ Vero must be affirmed.

b. The Complainant failed to notify PECO Energy that the service should be placed back into the tenant's name

The Complainant further alleges that the Complainant should not be held responsible for the tenant's balance after the foreign wiring was corrected. This argument is without merit.

In this case, ALJ Vero correctly articulated in her Initial Decision:

Ms. Tarpley explained that if a new tenant applies for service at the service address, the landlord's account would be closed, but the balance remained with the landlord. Tr. 121 . If a new tenant does not apply for service in their name, the landlord's account will continue to be billed, unless the landlord requested the service to the service address be disconnected. TR. 146. The complainant did not contact PECO to request that the service be disconnected or be placed back in the original tenant's name after the foreign wiring repairs were confirmed by PECO. Tr. 146-147. In addition, PECO has received no application for service following the discovery of foreign wiring on the 1st floor meter of the service address. TR. 180. B&Z Holdings, LLC has been a customer of record for the service address from May 21st, 2018 to the date of the hearing . TR. 168.

Initial Decision at 11.

¹ Philadelphia Office of Property Assessment ("OPA") – Real Estate Taxes

PECO Energy's actions are consistent with Pennsylvania law. In April 2019, when the Complainant contacted PECO Energy in response to the demand letter, she was informed of the foreign wiring process and it was explained that her tenant would need to reapply for service. Tr. 192, 237-39, 240. *See also*, Initial Decision at 10. However, at no point in time did the Complainant contact PECO Energy stating that she wanted the service disconnected or returned to the name of the tenant after the foreign wiring was corrected. On January 6, 2020, a high bill field technician went to the premises and confirmed that the foreign wiring condition had been corrected. The responsibility of notification lies with the landlord, as PECO has no knowledge of whether the original tenant remained at the property. The Complainant was informed via letter dated May 18, 2018 of the foreign wiring process, by PECO Energy in April 2019 when the Complainant inquired about the demand letter and by the Bureau of Consumer Services on January 14, 2020, in response to her Informal Complaint, in which it instructed that her "tenant may apply for service again." *See*, PECO Exhibits "3" and "5"; Initial Decision at 10.

ALJ Vero correctly stated:

Hence, there were multiple instances where the complainant was instructed to have its tenant apply for service in his or her name. In particular, PECO provided these instructions to the complainant in April of 2019 in January of 2020. The same instruction was also provided to the complainant on January 14, 2020 by the BCS.

Initial Decision at 13.

Thus, PECO Energy avers that the company properly determined that there was a foreign load condition at the Complainant's rental property and transferred the service and charges into the Complainant's name consistent with 66 Pa. C.S. §§ 1529.1(a), (c); and *Ace Check Cashing Inc. v. Phila. Gas Works*, Final Order, (May 21, 2010). Upon discovering the existence of a foreign load a public utility is required to list the account, including any arrearages, in the name

of the landlord. 66 Pa. C.S. §§ 1529.1(a), (c). *See also, Santos v. Metro. Edison Co.* The landlord is responsible for paying the utility bills until the foreign load is corrected. *Santos* at 16. Once the foreign load is corrected by the landlord and verified by the utility, the utility will place the account back in the name of the tenant and the arrearage, if any, will remain the landlord's responsibility. *Id.* The landlord has the responsibility to notify PECO Energy that service should be disconnected after corrections are completed or that the tenant will reapply for service. The record clearly demonstrates that the issue of foreign wiring and the balance transfer at the Complainant's property has been properly decided and dismissed. As ALJ Vero has determined, when a utility finds foreign load, the utility is required to transfer the tenant's account, including any arrearages, into the landlord's name. *See, 66 Pa.C.S.A. § 1529.1.*

Consistent with *I-A Realty v. PPL Electric Utilities Corp.*, Docket Nos. F-2010-2166554 and F-2010-2166976 (Order entered April 12, 2012), the landlord shall be responsible for payment for the utility services rendered to the rental property when in a foreign load is found. More recently, the Commission reached the same result in the matter *Phong Hoang v. PECO Energy Company*, Docket No. F-2013-2379929 (Final Order entered, February 27, 2014). In *Phong Hoang*, ALJ Long opined that "while it may seem that it is a harsh result where arrearages may be large and the foreign load may be small, the fact remains that Section 1529.1 mandates that the entire account balance be transferred to the landlord."

Through her Exceptions, the Complainant cannot attempt to revise current statutes and case law on the issue of 66 Pa.C.S. § 1529.1 and raise what is essentially a landlord tenant dispute, regarding the foreign wiring balance that should be attributable to her as opposed to the amount attributable to her tenant. That is a matter to be resolved in the Court of Common Pleas as it is outside the Commission's jurisdiction.

ALJ Vero correctly concluded that the Complainant's case should be dismissed because PECO Energy acted according to the law by transferring the arrearages and account to the Complainant.

c. The Initial Decision Addressed the High Bill Dispute

Within her Exceptions, the Complainant avers that the Initial Decision of ALJ Vero fails to address the issue of "abnormal billing." Exceptions at 33-39. The Complainant's tenant experienced a higher bill than expected because of foreign load, as well as, two strips of electric baseboard heat that existed at the property. Once the service was transferred to the Complainant, the Complainant was billed for actual usage at the property. The Complainant was not billed for estimated usage. It was not PECO's duty to analyze usage patterns if PECO Energy had no complaint from the customer of record, the Complainant, that a high billing issue persisted after the foreign load was corrected. *See, City of Pittsburgh v Duquesne Light Company*, 54 Pa. PUC 460 (1980)(holding utility is not responsible for monitoring a customer's energy consumption and costs.) The Complainant neither raised an issue of "abnormal billing" within the Complaint or with PECO Energy at any point in time. Tr. 159-160, 219-220, 222; Initial Decision at 14. Thus, the bills and balance are correct. This issue is without merit.

III. Conclusion

Based on the credible evidence of record, ALJ Vero correctly determined that the Complainant had not met her burden of proof in this matter pursuant to 66 Pa. C.S. §§ 1529.1. PECO Energy properly transferred the tenant's balance to the Complainant upon discovery of foreign wiring, gave adequate notice to the Complainant once the issue was discovered and did not violate any Commission statute or Order by placing and keeping service of the first floor unit

in the Complainant's name. Accordingly, ALJ Vero'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,



Khadijah Scott
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
Direct Dial: 215.841.6841
Fax: 215.568.3389
Khadijah.scott@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**NELLI BELDER
COMPLAINANT**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

:
:
:
:
:
:
:
:
:
:

Docket No. F-2020-3019239

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: December 1, 2020



Khadijah Scott

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**NELLI BELDER
COMPLAINANT**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

:
:
:
:
:
:
:
:
:
:

Docket No. F-2020-3019239

CERTIFICATE OF SERVICE

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

NELLI BELDER
P.O. Box 506
SOUTHAMPTON, PA 18966

DIMITRI SMIRNOV, ESQUIRE
306 LAKESIDE PARK
SOUTHAMPTON, PA 18966
Via Email: dimitri@smirnovlaw.com

Dated: December 1, 2020



Khadijah Scott
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
Direct Dial: 215.841.6841
Fax: 215.568.3389
Khadijah.scott@exeloncorp.com