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6 **EXCEPTION TO THE INITIAL DECISION**  
7 **The Pennsylvania Public Utility Commission**

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11 **Rashid El Malik** : **F-2020-3018838**  
12 **1320 Via Margarita** :  
13 **Palos Verdes Estate, CA 90274** :  
14 **V** :  
15 **PECO Energy Company and Reliant Energy** :  
16 **Northeast LLC D/B/A NRG Retail Solution** :

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18 **INTRODUCTION**

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21 Complainant Rashid El Malik files this exception to the initial  
22 decision by Conrad A. Johnson Administrative Law Judge dated  
23 November 24, 2020. Appellant takes exception to;

24 **PECO**

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26  
27 1. No evidence was present at the hearing that PECO violated the  
28 Pennsylvania Public Utility Code 66 Pa. C.S. § 101 et seq the  
29 Commission’s regulations or any orders of the Commission in the  
30 manner in which it processed the electric supply switch from  
31 PECO to NRG Retail and then back to PECO. PECO processed the  
32

1 electronic data interchange enrollment transaction properly after  
2 receiving the switch request from NRG Residential. **(Pg. 8)**

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4 **NRG**

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7 2. The evidence entered in to record at the hearing did not shed  
8 much light on the unauthorized supplier switches, both electric  
9 and natural gas that occurred at the SEPTA Suburban Station on  
10 January 21, 2019.

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12 NRG Retail stipulated that the supplier switches were  
13 unauthorized, and that Complainant did not attend that retail  
14 event but that is all that is known about the transactions that  
15 occurred that day. Evidence is lacking regarding who signed the  
16 enrollment forms Evidence is also lacking with respect to any  
17 culpability by NRG Residential.  
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19  
20 Because the facts here are unknown, NRG Residential cannot be  
21 charged with improper conduct regarding the switches.  
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23  
24 The evidence does not establish a pattern of unauthorized  
25 enrollments by NRG Residential and any civil penalty discussion  
26 involving NRG Residential's EGS and NGS licenses is unwarranted.  
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28  
29 The evidence does not establish a pattern of unauthorized  
30 enrollments by NRG Residential. **(Pg. 12)**

## FINDING OF FACTS

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3 3. Complainant, PECO and NRG Residential stipulated that  
4 Complainant did not authorize the supplier switches on January  
5 21, 2019 at the retail event and that he was not present at the  
6 retail event **(Tr. 37-39)**  
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10 4. An employee working for NRG retail switched complainants  
11 electric supplier from PECO to NRG retail and natural gas supplier  
12 on January 21, 2019 for the service at a retail event held at  
13 SEPTA Suburban Station in Philadelphia PA Tr. 37-39 100 without  
14 complainant consent/ **(P.4)** complainants **Exhibit 8**  
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18 5. The same employee working for NRG had a similar complainant on  
19 his record Complainant **Exhibit 3**  
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- 22  
23 6. PECO's January 23, 2019, confirmation letter is in violation of the  
24 Regulation 66 Pa. C.S. § 3301 **(P. 9)**  
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- 27  
28 7. PECO's conformation letter dated January 22<sup>nd</sup> and 23<sup>rd</sup> is in  
29 conflict with the EDI dated January 23, 2019 **(Tr.)**  
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1 **DISCUSSION**

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4 Complainant in his proceeding had the burden of proof to show that  
5 PECO and NRG Residential are responsible and accountable for the  
6 problems described in the Complainant. See Patterson v. Bell Tel Co. of  
7 Pa., 72 Pa. PUC 196 (1990), Feinstein v. Philadelphia Suburban Water Co.,  
8 50 Pa. PUC 300 (1976)/ Complainant met this burden

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10 In addition, complainant must establish his case by a preponderance  
11 of the evidence. See Samuel J. Lansberry, Inc. v. Pa. Pub Util. Comm’n,  
12 578 A.2d 600 (Pa. Cmwlth. 1990), alloc den, 602 A.2d 863 (Pa. 1992) A  
13 preponderance of the evidence support complainant assertion that the  
14 defendants is responsible and accountable for the problem described in  
15 the Complainant/Complainant met this second burden

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18 **PECO**

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21 1. No evidence was present at the hearing that PECO violated the  
22 Pennsylvania Public Utility Code 66 Pa. C.S. § 101 et seq the  
23 Commission’s regulations or any orders of the Commission in  
24 the manner in which it processed the electric supply switch  
25 from PECO to NRG Retail and then back to PECO. PECO  
26 processed the electronic data interchange enrollment  
27 transaction properly after receiving the switch request from  
28 NRG Residential. **(Pg. 8)**

1 Complainant presented undisputed evidence that PECO violated 66 Pa.  
2 C.S. § 3301 and NRG Residential was liable for the unlawful switching of  
3 his electric supplier and natural gas supplier from PECO to NRG.

4 Judge Johnson acknowledged PECO violated 66 Pa C.S. § 3301;  
5 however, he concluded the civil penalty was not warranted. Here  
6 complainant disagrees with his conclusion. **(See Pg. 9)**  
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9 First, the language in 3301 clearly establishes civil penalties for  
10 violations of any public utility regulations.  
11 PECO January 23, 2019, confirmation letter is in violation of the regulation  
12 "52 Pa. Code § 59.93 (1) and 52 Pa code 59.93 (2)  
13 PECO also failed to verify the accuracy of the information provided by the  
14 NGS by matching at least two data elements such as name and account  
15 number, or address and account number, with NGDC records. This was a  
16 clear violation of the regulations to prevent slamming.  
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18 Complainant was a victim of a slamming operation, and the statute  
19 provide protection from such activities

20 At the hearing, PECO offered testimony from defendant Ms. Migliaccio  
21 that PECO received an EDI from NRG on January 23, 2019, and PECO  
22 transferred the EDI. Ms. Migliaccio testified PECO sent a letter to  
23 complainant for electric transfer on January 22, 2019, and gas transfer on  
24 January 23<sup>rd</sup>. However, a review of the EDI reported PECO did not receive  
25 the EDI until January 23, 2019, which was the earliest date the account  
26 was process; therefore, contradicting the record. Complainant was a  
27 victim of a slamming operation.<sup>1</sup>  
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32 <sup>1</sup> Complainant does not have copies of the transcript; however, complainant did write a detail  
memo after the hearing capturing the testimony of the defendants

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2 **NGR**

3 2. The evidence entered in to record at the hearing did not shed  
4 much light on the unauthorized supplier switches, both electric  
5 and natural gas that occurred at the SEPTA Suburban Station  
6 on January 21, 2019. NRG Retail stipulated that the supplier  
7 switches were unauthorized, and that Complainant did not  
8 attend that retail event but that is all that is known about the  
9 transactions that occurred that day. Evidence is lacking  
10 regarding who signed the enrollment forms Evidence is also  
11 lacking with respect to any culpability by NRG Residential.  
12 Because the facts here are unknown, NRG Residential cannot  
13 be charged with improper conduct regarding the switches. The  
14 evidence does not establish a pattern of unauthorized  
15 enrollments by NRG Residential and any civil penalty  
16 discussion involving NRG Residential's EGS and NGS licenses is  
17 unwarranted. **(Pg. 12)**

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20 The record provides clear and convincing evidence with testimony that  
21 an employee working for NRG retail switched complainant's electric  
22 supplier from PECO to NRG and failed to follow PUC regulations  
23 NRG Retail stipulated that the supplier switches were unauthorized, and  
24 that Complainant did not attend that retail. The evidence of record  
25 established an employee of NRG committed fraud by signing the form. The  
26 evidence also established NRG cited the same employee for the same  
27 fraudulent activity, and the employee was allegedly coached and provided  
28 additional training. **(See complainant exhibit 3 PUC Decision Pg.2**  
29 **section 7)**  
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1 Judge Johnson also stated; "Evidence is also lacking with respect to  
2 any culpability by NRG Residential. Because the facts here are unknown,  
3 NRG Residential cannot be charged with improper conduct regarding the  
4 switches. The evidence does not establish a pattern of unauthorized  
5 enrollments by NRG Residential and any civil penalty discussion involving  
6 NRG Residential's EGS and NGS licenses is unwarranted." **(Pg. 12)**  
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10 Testimony at the hearing by NRG defendant witness Spencer  
11 Halstead established that customers were complaining that NRG was  
12 transferring their accounts without their consent contradicting Judge  
13 Johnson statement that "NRG Residential cannot be charged with improper  
14 conduct regarding the switches". Complainant Exhibit 3 also provided the  
15 Judge with the facts that NRG acted with improper conduct regarding the  
16 switch since the same employee was cited for the improper behavior.  
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18 **(Exhibit 3 PUC Decision Pg.2 section 7)**  
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21 MR. Halstead testimony shed a lot of light on the slamming operation. He  
22 testified; whenever, a potential customer does not provide an e-mail  
23 address, which is required for the transfer "as in this case", the  
24 application, **is flagged**, and a letter is required to be sent to the signing  
25 customer. The defendant could not produce the letter at the hearing.  
26 Therefore, PECO and NRG were in violation of "52 Pa. Code § 59.93 (1) (2)  
27 A review of the signature page signed at the Suburban Station revealed an  
28 unrecognized signature that did not comply with PUC regulations. Now  
29 that the facts are known, NRG Residential can be and should be charged  
30 with improper conduct regarding the switches.  
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1 The testimony from the defendant does establish a pattern of  
2 unauthorized enrollments by NRG Residential and any civil penalty  
3 discussion involving NRG Residential's EGS and NGS licenses is  
4 warranted."

5 Complainant asked the defendant during the hearing what measure  
6 have NRG taken to prevent customers from fraudulent activities since the  
7 employee was cited for the same illegal behavior and customer were  
8 complaining about having their account switched. He could not provide  
9 any actions taken by NRG other than reversing the fees.  
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12 **In conclusion**

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- 14 1. PECO did not follow the PUC regulations when the EDI was  
15 transmitted by NRG and is culpable with NRG slamming  
16 operation.  
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  - 18 2. PECO violated PUC regulations by failing to protect complainant  
19 privacy and allowing the NRG to transfer his account without  
20 following PUC regulations.
  - 21 3. The EDI was transmitted to PECO on January 23<sup>rd</sup>. PECO could  
22 not explain how the letter for the switch was sent to the  
23 complainant on January the 22<sup>nd</sup>, before the EDI was transmitted.  
24
  - 25 4. NRG was in violation of the slamming regulations and allowed  
26 their employee to conduct such operations until he was again  
27 caught
  - 28 5. NRG was in violation of the PUC regulations and should be held  
29 culpable
  - 30 6. The evidence clearly shows the complaint was a victim of a  
31 slamming operation  
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Complainant seeks Judge Johnson order over turned.

Respectfully Submitted

Rashid El Malik, Sr, JD



**Rosalind P. El Malik**

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