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December 21, 2020

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

RE: Rashid El Malik v. PECO Energy Company
PUC Docket No. F-2020-3018838

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are *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.

Cc: Rashid El Malik (via email)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RASHID EL MALIK	:	
	:	
Mr. El Malik	:	
	:	
v.	:	Docket No. F-2020-3018838
	:	
PECO ENERGY COMPANY and	:	
RELIANT ENERGY NORTHEAST LLC	:	
d/b/a NRG RESIDENTIAL SOLUTIONS	:	
	:	
Respondents	:	

**REPLY EXCEPTIONS OF
OF PECO ENERGY COMPANY**

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Rashid El Malik (“Complainant”) on December 10, 2020.

On February 21, 2020, the Complainant filed a formal Complaint against PECO Energy Company (“PECO”) with the Pennsylvania Public Utility Commission (“PUC”). In his Complaint, the Complainant alleges that he did not enroll with supplier, NRG Retail Solutions, (“NRG”) for his electric and gas services.

On March 10, 2020, Respondent filed an Answer averring that PECO is not a party to that contract. PECO’s responsibility under its tariff is to provide notification of the switch and give the customer an opportunity to object to the enrollment if it is not proper. PECO complied with its tariff by providing the Complainant notification of the supplier enrollment.

On March 12, 2020, PECO filed Preliminary Objections, which were denied at the time of hearing. On July 1, 2020, a hearing was held before Administrative Law Judge Conrad Johnson (“ALJ Johnson”). At the hearing, PECO presented three (3) exhibits and two witnesses. The Complainant offered eight (8) exhibits and one (1) witness. NRG presented two exhibits and one witness at the time of the hearing. On December 1, 2020, ALJ Johnson issued an Initial Decision (“Initial Decision”), wherein he held in regard to PECO:

- (1) No evidence was present at hearing that PECO violated the Pennsylvania utility code 66 Pa.C.S. §101 *et seq.*, the Commission's regulations or any orders of the Commission in the manner in which it processed the electric supply switch from PECO to NRG retail and then back to PECO.
- (2) PECO's January 23, 2019, confirmation letter switching the Complainant's natural gas supplier from PECO to NRG Home, complied with PECO's Commission-approved Tariff that requires a 5-day waiting period, but is in violation of the regulation because it does not comply with 52 Pa.Code §59.93(2), which requires 10 days.

ALJ Ordered that Amended Complaint be sustained in part; denied in part. Complainant filed Exceptions on December 10, 2020.

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. Cmwlt. 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. Cmwlt. 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. Cmwlt. 1993); *See also*, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlt. 1984).

II. Legal Argument

a. The Complainant was properly notified of the electric and gas supplier switch

On December 10, 2020, the Complainant filed Exceptions to the Initial Decision. The Complainant alleges that PECO is in violation of 66 Pa.C.S. §3301 for what he purports to be providing conflicting evidence at the time of hearing. Specifically, the Complainant alleges that PECO mailed him a switch letter notification on January 22, 2019, yet the switch of his electrical service to NRG did not take place until January 23, 2019. These allegations are unfounded and without merit.

The Complainant in this proceeding has a residential account for electric and gas services at 249 Haverford Rd., Wynnewood, PA 19096. *Tr.86-86*. During the hearing, PECO’s

Manager of Energy Acquisition Operations, Carol Reilly, testified that on January 21, 2019, PECO received a supplier switch request from NRG. *Tr. 68; 70-73*; Initial Decision at 4-5. Ms. Reilly testified that the Complainant's account information is available to the supplier per PUC regulations.

Q. Okay. Now, do you know how a supplier could actually obtain account information from a customer without them specifically giving it to the supplier?

A. So PECO is required per PUC regulation to post 6 and update monthly what's called an eligible customer list to our supplier website. So the account number is part of the information that gets posted. The customer can choose the amount of information to share with the supplier from all of their information to don't put me on the list so no information is shared. PECO reminds customers annually of these release of information options, and the customer can change that release of information option at any time.

Q. Do you know the status of the Complainant's 16 account at the time the alleged [unintelligible] took place?

A. He was in what we call a release all information which means that his account number plus his name and 20 certain other information per the PUC guidelines would have been posted on our website.

Q. Okay. And who is responsible for making sure that a customer authorized a switch of their services to a supplier?

A. The supplier has the responsibility to maintain all records and provide proof if requested.

Tr. 70-71.

The Complainant's name, address, account number and a telephone number were provided by NRG to PECO. *Tr. 99; 100; 102-103.* Ms. Reilly further testified that the notification letter "is sent **the next business day** when we accept the enrollment from the supplier, and it is letting the customer know a supplier switch has been made and lists the supplier name and contact information and the effective date of when that service will begin with the chosen supplier." *Tr. 66-68; 71-72. (emphasis added)*

The Complainant testified that he received the notification letters of the change from PECO to an electric generation supplier and natural gas supplier. *Tr. 42-43.* As required, the

notice included the date service with the new supplier will begin unless the customer contacted PECO to cancel the change. On January 31, 2019, the Complainant called to dispute the enrollment with NRG and requested to be returned to PECO. *Id.* PECO sent the Complainant a drop supplier notification letter. *Id.* the Complainant's electric service was returned to PECO effective February 6, 2019 and the gas service was returned to PECO effective March 5, 2019. *Tr. 69; 81-82.*

Accordingly, PECO is in full compliance with Section 5.3.1(b) of its Supplier tariff, which requires upon receipt of the Complainant's enrollment request that PECO send a notification letter advising the customer that a switch has taken place. Ms. Reilly testified that PECO received notification of the switch on January 21, 2019. *Tr. 68; 70-73*; Initial Decision at 4-5. It is undisputed that the Complainant received both notification letters, dated January 22, 2019 for electric service and January 23, 2019 for gas service. *Tr. 42-43*. Therefore, this issue without merit and PECO is not subject to 66 Pa.C.S. §3301.

b. PECO is not in violation of the notification requirements of 52 Pa. Code §59.93

Within his Exceptions, the Complainant alleges that PECO is in violation of 52 Pa. Code §59.93(1) and (2). The Complainant fails to state any grounds upon which he alleges that a violation occurred. Pursuant to 52 Pa.Code § 59.93 – Customer Contacts with NGSs

When a contact occurs between a customer and an NGS to request a change of the NGS, upon receiving direct oral confirmation or written authorization from the customer to change the NGS, the customer's new NGS shall:

(1) Notify the NGDC of the customer's NGS selection by the end of the next business day following completion of the application process. The NGDC shall verify the accuracy of the information provided by the NGS by matching at least two data elements such as name and account number, or address and account number, with NGDC records.

(2) Upon receipt of this notification, the NGDC shall send the NGDC ratepayer of record a confirmation letter noting the proposed change of NGS. This letter shall include notice of a 10-day waiting period in which the order may be canceled before the change of the NGS takes place. The notice shall include the date service with the new NGS will begin unless the customer contacts the NGDC to cancel the change. The 10-day waiting period shall begin on the day the letter is mailed. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer's selection of a NGS.

See, 52 Pa.Code §59.93.

In this matter, the Complainant's name, address, account number and a telephone number were provided by NRG to PECO. *Tr. 99; 100; 102-103.* The supplier switch occurred on January 21, 2019 and it is undisputed that PECO notified the Complainant of the electric generation supplier switch on January 22, 2019 and the natural gas supplier on January 23, 2019. *Tr. 42-43; 68; 70-73; Initial Decision at 4-5.* Thus, PECO is in full compliance with the requirements of 52 Pa.Code §59.93(1).

The Initial Decision holds that PECO's January 23, 2019, confirmation letter switching the Complainant's natural gas supplier from PECO to NRG Home, complied with PECO's Commission-approved Tariff that requires a 5-day waiting period, but is violation of the regulation because it does not comply with 52 Pa.Code § 59.93(2), which requires 10 days. Initial Decision. at 9. The January 23, 2019, confirmation letter switching the Complainant's natural gas supplier from PECO to NRG Home provided for 6 days from the date on the letter for the Complainant to contact PECO if the information contained therein was incorrect. *Id.* The Initial Decision holds that PECO's Commission approved Tariff should comply with the applicable regulation and PECO's Tariff should require a 10-day waiting period in confirmation letters to customers advising of a natural gas supplier switch from PECO to an NGS. *Id.*

PECO respectfully submits that the Initial Decision is inconsistent with the provisions set forth in the Public Utility Commission Final Order, Interim Guidelines Regarding Standards For Changing a Customer's Electricity Generation Supplier, entered on October 25, 2012, under docket number M-2011-2270442 ("PUC Final Order"). The PUC Final Order waived the applicability of 52 Pa.Code § 59.93(2), which requires a 10 day notification, and shortened the notification time span to five (5) days, which it found to be "sufficient notice for customers and time to act to prevent an unauthorized switch." PUC Final Order at 45; 48-49. PECO complied with all of the requirements of the PUC Final Order. PECO's notification letter stated that if the information was incorrect, the Complainant had six (6) days from the date of the confirmation letter in which to contact PECO. Initial Decision at 9.

This issue was not broached by the Complainant during the Formal Complaint hearing. Had the Complainant raised the issue at the hearing, PECO would have had the opportunity to explain to the court that pursuant to the PUC Final Order, PECO is exempt from the ten (10) day waiting period requirement of 52 Pa.Code §59.93(2). PUC Final Order at 45; 48-49. That requirement has been waived. *Id.* Notwithstanding the requirements of 52 Pa.Code §59.93(2), the PUC Final Order, specifically addressed this issue. The Final Order acknowledged PECO's concerns within its Order.

PECO hopes it will be possible to maintain the same switching rules for both electric and gas service because doing so would reduce systems, training, IT and customer service burdens in implementing any changes and lessen customer confusion for those customers who receive both electric and gas from suppliers. PECO "supports taking a closer look at the impacts of accelerated switching on gas suppliers and customers."

See, Final Order at 43.

Thus, after careful consideration of the various Pennsylvania utilities' concerns, the PUC held:

On the issue of application of the proposed guidelines to the gas industry, we agree that the operational differences between the two industries warrant a separate proceeding involving the broader issues that will be focused solely on that industry. However, since we have substantially narrowed the focus of this proceeding to shortening the 10-day confirmation period, we see no reason why this narrow, focused change cannot also be applied to the gas industry. **Additionally, as PECO points out, we see value in keeping the rules for electric and gas as similar as possible. This makes sense for suppliers and utilities that sell both electric and gas – and for customers who shop for both electric and gas. Having a 10-day confirmation period for gas and a 5-day period for electric would simply invite confusion and frustration. Accordingly, we will waive 52 Pa. Code § 59.93(2) to the extent necessary to provide for a 5-day waiting period instead of a 10-day period:**

Upon receipt of the notification required by 52 Pa. Code § 59.93(1), the NGDC shall send the NGDC ratepayer of record a confirmation letter noting the proposed change of NGS. This letter should include notice of a 5-day waiting period in which the order may be canceled before the change of the NGS takes place. The notice shall include the date service with the new NGS will begin unless the customer contacts the NGDC to cancel the change. The 5-day waiting period shall begin on the day the letter is mailed. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer's selection of a NGS.

See, Final Order, at 48-49. (*emphasis added*)

Thus, PECO is in full compliance with the PUC Final Order. PECO therefore submits that this issue is without merit and respectfully requests that the Commission overturn the holding in the Initial Decision that PECO is in violation of 52 Pa.Code § 59.93(2).

III. Conclusion

For the reasons set forth above, PECO respectfully requests that the Commission deny the Exceptions and issue an Order denying the Complainant's Complaint in its entirety as to PECO.

Respectfully submitted,



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**BEFORE THE
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RASHID EL MALIK	:	
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Mr. El Malik	:	
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v.	:	Docket No. F-2020-3018838
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PECO ENERGY COMPANY and	:	
RELIANT ENERGY NORTHEAST LLC	:	
d/b/a NRG RESIDENTIAL SOLUTIONS	:	
	:	
Respondents	:	

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 e-mailing a copy to:

RASHID EL MALIK
1320 VIA MARGARITA
PALOS VERDES ESTATE, CA 90274
Via Email: elmaliksr@gmail.com

Dated at Philadelphia, Pennsylvania, December 21, 2020.



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