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March 30, 2021

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

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

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is a ***Reply Exceptions of Respondent, 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.

Respectfully submitted,

Edward T. Fisher

Edward Fisher, Esq.

EF/ab
Enclosure

#: 5060029

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AGNES & STEVE ATUAHENE,	:	
	:	
Complainants,	:	
v.	:	**DOCKET NO. C-2019-3012904**
	:	
PECO ENERGY COMPANY	:	
	:	
Respondent.	:	
	:	

REPLY EXCEPTIONS OF RESPONDENT, PECO ENERGY COMPANY

PECO Energy Company ("PECO") hereby replies to the Exceptions filed by Agnes and Steve Atuahene (the "Atuahenes" or "Complainants") in the above-referenced matter on March 22, 2021.

I. STATEMENT OF THE CASE

The Atuahenes are noted abusers of the PUC process.[1] These exceptions to ALJ Jones' November 5, 2020 Initial Decision are the latest perpetuation of the Atuahenes' baseless arguments. The Complainants exceptions should be dismissed.

Complainants filed a formal complaint against PECO on September 13, 2019 alleging, *inter alia*, (1) PECO engaged in fraud because a third party, AEP Energy, supplied Complainant's electric service; (2) Complainants' "due process" was violated when they received bills containing transfer services from other properties owned by Complainants[2]; and

[1] *Atuahene v. PECO Energy Company*, No. F-2014-2422759, 2014 WL 8629983, at *5–7 (Mar. 27, 2014).

[2] These other properties are located at (1) 5512 Hadfield St., Philadelphia, PA; (2) 920 E. Price St., Philadelphia, PA; (3) 5520 Crowson St., Philadelphia, PA; (4) 5728 N. Marvine St., Philadelphia, PA; (5) 2124 N. 11th St. Philadelphia, PA; and (6) 6203 Limekiln Pk., Philadelphia, PA.

(3) PECO and AEP Energy conspired to extort money from Complainants.[3] After review of the Atuahenes' exceptions, the Atuahenes now claim:

1. ALJ Jones misunderstood Mrs. Agnes Atuahene's testimony at the hearing;

2. ALJ Jones misapplied 52 Pa. Code §§ 56.16 and 56.261, and "disregarded" Complainant's "property rights" and "due process";

3. PECO's transfer of the balances of the other properties (listed in Footnote 2 above) violated notice requirements codified in 52 Pa. Code § 56.261, and in violation of Complainants "property" and "due process" rights; and

4. PECO had no grounds to "threaten" termination of service because the above stated transfer accounts were "illegal" and violated Complainants "property" and "due process" rights.

See Complainants' Exceptions at 2-3.

II. 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, 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

[3] The Complaint also alleged PECO overbilled Complainants, ALJ Jones' decision granted the Complaint as it related to overbilling with respect to certain months, and PECO did not file exceptions.

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, this Commission's decision must be supported by evidence on the record 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).

III. DISCUSSION

A. PECO is Not a State Actor and Cannot Violate Complainant's Due Process Rights

Before PECO addresses the true substance of Complainant's exceptions, it is important to address Complaint's misguided due process arguments head-on. Underpinning nearly all of Complainant's arguments is the proposition that PECO, in one way or another, violated Complainants property rights and due process rights. This argument is meritless.

The Due Process Clause of the Fourteenth Amendment prohibits ***States*** from depriving any person life, liberty, or property, without due process of law—nearly from the time of its ratification, the United States Supreme Court explained the "essential dichotomy" of the Fourteenth Amendment is it only provides a shield against deprivation by States, ***not private actors***. *Jackson v. Metro. Edison Co.*, 95 S. Ct. 449, 452–53 (1974) (citing *Civil Rights Cases*, 3 S. Ct. 18, 27 (1883)). Admittedly, the question of whether conduct is "private" or "state action" is not always easy to answer. *Id.* at 453. However, long ago the Supreme Court ruled public utilities, like PECO, are not state actors and are not subject to the Fourteenth Amendment's Due Process Clause. *Id.* at 457 ("We conclude that the State of Pennsylvania is not sufficiently connected with respondent's action in terminating petitioner's service so as to make respondent's conduct in so doing attributable to the State for purposes of the Fourteenth Amendment."); *see also Povacz v. Pennsylvania Pub. Util. Comm'n*, 241 A.3d 481, 486 n. 9 (Pa. Commw. Ct. 2020) ("Constitutional protections apply against state actors. PECO is not a state actor."); *Anthony v. PPL Electric Utilities Corporation,* No. C-2018-3000490, 2020 WL 5876962, at *14 (Sept. 15, 2020) (holding PPL, as a private company, was not capable of violating the Complaint's Fourth Amendment rights).

In plain English, despite the heavily regulated nature of utility companies, PECO is a private corporation, not a state actor; accordingly, the Atuahenes' repeated citations to the Fourteenth Amendment, claims that PECO violated their "property rights" (ostensibly, a Fifth Amendment claim), and citations to equivalent provisions of the Pennsylvania Constitution are all meritless.

B. ALJ Jones Did Not Misinterpret Agnes Atuahene's Testimony, and was Correct in Concluding That PECO's Transfer of the Disputed Account Balances was Proper Under § 56.91(a)

Complainants takes issue with ALJ Jones' Findings of Fact in paragraphs 16, 21-22, 27-32, 37-38, erroneously arguing that ALJ Jones misunderstood and misinterpreted Mrs. Atuahene's testimony. Complainants' Exceptions at 4. Specifically, Complainants argue Mrs. Atuahene did not testify that she was responsible for electric service for the properties at issue. *Id.* ("Any interpretation that Mrs. Atuahene was responsible for electric service for the rental properties is completely erroneous and misunderstood."). However, a review of the transcript directly contradicts Complainants position.

The disputed findings of fact essentially boil down to (1) Mrs. Atuahene was responsible for the electric services received at the Limekiln service address before she sold it in June 2019 (Findings of Fact at ¶ 16); (2) Mrs. Atuahene had the electric service in her name at the relevant properties until she found a tenant, and only after she found a tenant would she contact PECO to discontinue the electric service in her name (Findings of Fact at ¶¶ 21-22); and (3) the various services charges from the relevant properties were all in Mrs. Atuahene's name, and were transferred to the service address account for the Atuahene's property located at 7500 N. 21st Street, Philadelphia, Pennsylvania (Findings of Fact at ¶¶ 27-32; 37-38). All of these finding are supported by evidence in the record such that a reasonable mind would accept as adequate to support ALJ Jones' conclusions. *See Norfolk & Western Ry.* Co, 413 A.2d 1037.

First, despite Complainant's assertion to the contrary, the clear reading of Mrs. Atuahene's testimony demonstrates she was responsible for the electric service at the Limekiln address before she sold it:

> JUDGE: Did you, at any time, tell PECO
> to discontinue electric service at 6203 Limekiln Pike?

THE WITNESS: Your Honor, it would have
been before it was sold. I had a tenant who just moved
in, so I give it time to apply before I call PECO.

JUDGE: So you had a tenant –

THE WITNESS: Yes.
. . .
JUDGE: So in June of 2019, was she -
was she your tenant or the new owner's tenant?

THE WITNESS: My tenant.

JUDGE: Okay.
Prior to your tenant moving in in June
of 2019, ***was there someone else who was responsible for the electric service*** for -?

THE WITNESS: ***Yeah, that was me***.

JUDGE: ***That was you***?

THE WITNESS: ***Yes***.

Initial In-Person Hearing Transcript, 82:24-84:4, Feb. 19, 2020 (emphasis added).

Second, Mrs. Atuahene's testimony was equally clear that she leaves the electric service in her name until she finds a tenant to lease the property, she assumes new tenants will contact PECO to discontinue the account in Mrs. Atuahene's name, but if they do not, Mrs. Atuahene contacts PECO herself about a month after the tenant moves in. *Id.* at 94-96. Looking at the controlling statute, the relevant portions of 52 Pa.Code § 56.16 provide:

> (a) A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered.
>
> (b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer.

The record supports ALJ Jones' findings that Mrs. Atuahene owned all six of the relevant properties at the times of the respective transfers; accordingly, the transfer was proper under 52 Pa.Code § 56.16(b).

In support of their exceptions on this point, the Complainants make two arguments. First, they argue "[i]t is completely false that Mrs. Atuahene owned all the six properties. She owed only 5." Complainants' Exceptions at 5 (The Atuahene's do not state which address they now allege was not owned by Mrs. Atuahene). This new assertion is completely unsupported by the record – the record supports ALJ Jones' finding that Mrs. Atuahene owed all six properties. Tr. at 90-94; 109-110. Second, Complainants argue that they gave PECO "at least 30 days" notice to discontinue service; and accordingly, Mrs. Atuahene "could not be held liable" for charges after the notice. *See* Complainant's Exceptions at 6-7. Complainant then connects this 30-day notice assertion with 52 Pa.Code § 56.261, which requires a utility company to render a bill once every billing period to every residential customers. Frankly, it is not entirely clear what Complainant's argument is here; however, it appears to relate to their misguided citations to the Fourteenth Amendment's Due Process Clause. *See* Complainant's Exceptions at 7. Complainant also seems to conflate the application of the *Waldron* Rule—which is applicable to overbilling complaints—with the issue relevant here, transfer accounts. *See id.* To the extent that Complainant is now arguing that the amount of the transferred bill is too high (thus triggering the *Waldron* Rule), the argument is improperly raised and should not be considered. *See* 52 Pa. Code § 5.533.

C. The Remainder of Complainants' Arguments Regarding the Transfer Balances are Meritless.

Sections III.C and III.D of Complainant's Exceptions are dense, but ultimately make no meritorious arguments that are not duplicative of arguments made in Sections III.A and III.B.

See Complainants' Exceptions at 8-21. Section III.C states it was a violation of Complainants' due process and property rights for PECO to transfer bills "which are unrelated to service address of [the] subject property." *Id.* at 8. As stated in Section III.A of this Reply, Complainants' constitutional arguments are frivolous. So long as the requirements of Section 56.16 are met (which they were in this case), it is appropriate for PECO to transfer bills as occurred here. *See Holmes v. PECO,* No. C-2015-2478698, 2016 WL 3615208, at *6–7(June 30, 2016). In Section III.D of Complainants' Exceptions, they attempt to distinguish *Holmes* because "[*Holmes*] did not implicate violation of due process of the complaints rights" neither does this case. *Jackson v. Metro. Edison Co.*, 95 S. Ct. at 452–53. Again, stripped of these Constitutional platitudes, Sections III.C and III.D make no proper arguments not previously raised in Sections III.A and B of the Exceptions. Therefore, all of Complainants' exceptions should be denied in their entirety.

D. ALJ Jones was Correct in Concluding it was Appropriate for PECO to Issue a Termination Notice to Complainants

Complainants' argument here is completely dependent on their earlier argument regarding the transfer accounts. *See* Complainants' Exceptions at 21. Essentially, Complainants argue ALJ Jones was wrong in ruling the transfers valid, and therefore any termination notice for delinquent payments of the same is improper. *See id.* at 21-22. The record clearly supports ALJ Jones' findings, and these exceptions should be dismissed.

IV. CONCLUSION

For the reasons stated above, the Complainants' Exceptions should be denied, and the Secretary should adopt the ALJ's initial decision. The Secretary should conclude:

1. That the formal Complaint of Agnes and Steve Atuahene v. PECO Energy Company at Docket No. C-2019-3012904 is denied regarding transfer of rental property account

balances to the Complainants' service account at 7500 N. 21st Street, Philadelphia, Pennsylvania.

2. That the formal Complaint of Agnes and Steve Atuahene v. PECO Energy Company at Docket No. C-2019-3012904 is denied regarding threatened termination of service.

March 30, 2021

Respectfully submitted,

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AGNES & STEVE ATUAHENE,	:	
	:	
Complainants,	:	
v.	:	**DOCKET NO. C-2019-3012904**
	:	
PECO ENERGY COMPANY	:	
	:	
Respondent.	:	
	:	

VERIFICATION

I, Edward T. Fisher, Esquire, 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.

Edward T. Fisher

Date: March 30, 2021

Edward T. Fisher

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AGNES & STEVE ATUAHENE,	:	
	:	
Complainants,	:	
v.	:	**DOCKET NO. C-2019-3012904**
	:	
PECO ENERGY COMPANY	:	
	:	
Respondent.	:	
	:	

CERTIFICATE OF SERVICE

I, Edward T. Fisher, Esquire, 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.

Agnes Atuahene
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Dated at Philadelphia, Pennsylvania, March 30, 2021.

Edward T. Fisher

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