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June 9, 2021

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

RE: Lacreteria Fluellen v. PECO Energy Company
PUC Docket No. F-2020-3021486

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: Lacreteria Fluellen (via email)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**LACRETIA FLUELLEN
COMPLAINANT**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

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Docket No. F-2020-3021486

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by LACRETIA FLUELLEN (“Complainant”) on June 2, 2021. On August 24, 2020, PECO Energy was served with a formal complaint filed by the Complainant against PECO Energy. In her formal Complaint, she disputed that she had incorrect charges on her bill relating to budget billing, was owed a \$7500.00 credit and that a PECO Energy employee signed her up with a third-party supplier without authorization. On September 14, 2020, PECO Energy filed an Answer to the Complaint denying all material allegations of the Complaint and averred that the Complainant’s charges were correct. Upon receipt of the Complainant’s supplier enrollment request, PECO Energy sent a notification letter advising the customer that a switch had taken place, as required by the Tariff. After the Complainant contacted PECO to dispute the enrollment with the supplier, PECO Energy dropped the supplier and returned the Complainant to PECO Energy as requested.

On January 7, 2021, a telephonic hearing was conducted before Administrative Law Judge Vero (“ALJ Vero”). At the hearing, the Complainant testified on her behalf. Eighteen (18) exhibits were admitted into evidence by the Complainant. PECO Energy’s associate business

analyst, Kelli Jefferson, and senior regulatory assessor, Renee Tarpley, testified on PECO Energy's behalf. Eight (8) exhibits were admitted into evidence by PECO Energy.

The record closed on February 6, 2021 with receipt of the hearing transcript. On May 12, 2021 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 the Complainant failed to meet her burden of proof that there were incorrect charges on her bill or that PECO Energy enrolled the Complainant with a supplier without authorization.

On June 2, 2021, the Complainant filed Exceptions to ALJ Vero's Initial Decision. In her writing, the Complainant seems to be challenging 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. 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).

II. Legal Argument

a. The Complainant does not have incorrect charges on her bill and is not entitled to an account credit

In the case at bar, the Complainant does not have incorrect charges on her bill and is not entitled to any account credits. At the time of hearing and within her exceptions, the Complainant states that she is owed an account credit because she settled an informal complaint with PECO Energy in July 2019, in the amount of \$7500.00 as a result of a Bureau of Consumer Services (“BCS”) decision. This assertion is without merit. PECO Energy did not enter into a settlement with the Complainant for any amount. Moreover, the Complainant does not dispute that at no time did she ever have an outstanding balance of \$7500.00 on her account. TR. 48-49.

JUDGE VERO: I understand. But in your -- you said that you were perplexed, where -- and you questioned the individual in July of 2019, the person that offered you this 7,500 credit to your account, and when your outstanding balance was much smaller than that, PECO was going to give 7,500 dollars to your account to keep, so that you could not pay for several years, out of the --

THE WITNESS: But -- [overtalking] --

JUDGE VERO: -- goodness of their heart because you're a customer of PECO and no other reason. I mean, I understand there are instances where companies offer settlement agreements in the instance where they feel they have maybe wronged you or maybe you would be involved in long litigation, but what would be the motivation, according to your understanding, for PECO to offer that?

THE WITNESS: Well, maybe her motivation was, she added up what my daggone bills was from -- for the winter months was '18 to '19. And she saw, if you add it all up -- I mean, right now, they're looking at me, telling me it's 3,000 dollars. So, if somebody is offering you 7500 dollars, it's not a lot of money. That 3,476 dollars credit sitting in that account would disappear at the end of this -- at the end of this winter season.

TR. 61-62

On July 18, 2019, the Complaint filed an Informal Complaint with the BCS regarding her budget billing. She disputed the increase in her billing from \$147.00 per month, to \$508.00 per

month. On March 13, 2020, the BCS issued a Decision Report, dismissing the Complainant's informal complaint. The BCS decided:

DECISION ISSUED: CO PROPERLY BILLED CUSTOMER.
CASE DISMISSED.

See, PECO Exhibit "8"

On July 25, 2019, the Complainant contacted PECO Energy to dispute her budget billing bills and requested that she be removed from budget billing. On July 25, 2019, that same day, PECO Energy stopped budget billing. The Complainant was advised that the deferred budget balance of \$1096.81 would be added into the account balance as of August 8, 2019. The Complainant was advised that an agreement would be established on the deferred budget balance of \$1096.81 over 12 months; monthly installments would be \$91.40 plus her current bill. On August 1, 2019, an agreement was established on the account balance of \$508.79. On August 6, 2019, the budget settled when a new bill rendered in the amount of \$1229.35¹. This bill included the deferred budget amount of \$1096.81 plus current charges for the month in the amount of \$132.54.

PECO Energy offered the Complainant a thirty-six (36) month agreement on the amount of \$1271.75 plus the existing agreement balance of \$466.39, which totaled \$1738.14. The monthly installments would have been \$48.28, in addition to the Complainant's monthly charges. The Complainant declined this payment agreement. Within her exceptions, the Complainant states that she sees two miscellaneous credits on the account activity statement² in the amounts of \$1563.20

¹ It can take up to a full billing cycle for an account to be removed from Budget Billing. Once the Budget settles, the deferred budget balance is added into the account balance.

² The Complainant was given an account activity statement when she visited PECO's Customer Solution Center.

and \$3476.28 which are credits that are a part of the alleged \$7500.00 settlement that she made with an attorney in PECO's legal department.

At the time of hearing, the Complainant testified that during the last week of July 2019, someone identifying themselves as an attorney, general counsel from PECO Energy, contacted her and offered her a settlement in the amount of \$7500.00 because she filed an informal complaint. TR. 13-14. During the hearing, senior regulatory assessor, Renee Tarpley, testified that informal complaints are neither directed to nor handled by PECO Energy's legal department. TR. 77-79. Furthermore, the Complainant's informal complaint was denied. *See*, PECO's Exhibit "8". Thus, PECO Energy had no reason to contact the Complainant at all, let alone offer her a \$7500.00 settlement, on a complaint that she lost, when her bill at the time was under \$2,000.00.

In addition, the Complainant is misinterpreting two internal accounting activity statement line items as "credits" that PECO placed on her account as a payment towards the alleged \$7500.00 settlement, that they later retracted. TR. 49-50. Notwithstanding the Complainant's assertion that an attorney from PECO contacted her to offer a \$7500.00 settlement for filing an informal complaint, the two miscellaneous credits on the account activity statement in the amounts of \$1563.20 and \$3476.28 are internal transactions that are involved in the process of providing the Complainant with a payment arrangement. TR. 84. Senior regulatory assessor, Renee Tarpley, testified at the time of hearing that the two line items are transactions that transpired in order to initiate a new agreement when an agreement already exists on a customer's bill. TR. 87 .

Q You said informal complaint was sent to an attorney.

A The informal complaint was served on the company I believe -- let me get the exact date. I believe it was in August. Let me just get the exact date it was served on the company. Only the formal complaints are served on our legal department. The informal complaints are not. One moment, please. It was served, via e-serve, on August the 24th, 2020

Q Okay. Could you tell me -- you made reference to your first exhibit, Exhibit 1, you made a reference to 1568-dollars-and-20-cents (sic) amount, but you never spoke on how you came up with that number. You stated that the budget bill had settled, that it's 1229 dollars and 35 cents. How did you come up with 1,563 dollars and 20 cents?

A You had a balance prior to -- you had the 508.79 balance, but you had a bill that was issued for 132 dollars and 54 cents. So, if you look on my exhibit, if you look on that Exhibit 1, you see your total balance at that time was 1,271 dollars and 75 cents before anything happened with the new agreement. So, you had the 1,279 plus any amount that you owed prior to that. So, when they canceled out -- and you had -- the first installment also had to be added back in there. So, when we cancel out the old agreement, all this comes back in. And that's your balance. That was your balance at that time. If you look at the line item, the 1271, and then you had the -- now, the -- the 3,000 amount, that is not -- that was not your balance at that time. They had to do a debit and credit in order to get to your existing balance. agreement, and you responded that the agreement was valid.

TR. 83-85

In this matter, 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 January 7, 2021.

Accordingly, the Complainant's exceptions must be dismissed. The Initial Decision of ALJ Vero must be affirmed.

b. The Complainant failed to prove that she was fraudulently enrolled with a supplier by PECO Energy

The Complainant further alleges that she was enrolled with a supplier without authorization as an act of retaliation by a PECO Employee. This argument is without merit.

The Complainant states that her utility service was signed up with a third-party supplier as retaliation by a PECO Energy customer experience employee, who was assigned to handle her Informal Complaint. Specifically, the Complainant states that she received a letter from PECO Energy advising that she signed up with supplier, Alpha Gas and Electric (“Alpha”) on August 22, 2019. On August 23, 2019, the Complainant states that she received notification from Alpha. PECO Energy’s records reflect that the Complainant enrolled with supplier, Alpha. Accordingly, on August 22, 2019, PECO Energy sent an enrollment notification letter to the Complainant. On August 28, 2019, the Complainant called to dispute the enrollment with Alpha and requested to be returned to PECO Energy. On August 28, 2019, PECO sent the Complainant a drop supplier notification letter.

Pursuant to Section 23 of the company’s supplier tariff, upon receipt of the Complainant’s enrollment request, PECO Energy is required to send a notification letter advising the customer that a switch has taken place, which PECO Energy did. The Complainant must contact PECO Energy to advise if they do not approve the switch.

PECO Energy avers that pursuant to Section 5.3.1 of PECO Energy’s Supplier tariff:

It is the EGS’s responsibility to maintain evidence of the Customer’s written authorization in the event of a dispute, in order to provide documented evidence of authorization to the Company or the Commission.

See Section 5.3.1 of PECO’s Supplier Tariff.

In this case, after the Complainant contacted PECO to dispute the enrollment with Alpha, PECO Energy dropped the supplier. However, PECO Energy is not a party to that contract. Consistent with Section 5.3.1 of the tariff, the company is not the supplier and is not responsible for maintaining evidence of the Complainant’s written authorization. PECO’s responsibility under Section 23.1 of the tariff is to provide notification of the switch and give the customer an

opportunity to object to the enrollment if it is not proper, which it did. PECO complied with Section 23.1 of the tariff by providing the Complainant notification of the supplier enrollment and dropping the Complainant when requested. The Complainant's formal complaint raising this issue is improperly placed against a PECO Energy employee and should be filed against the supplier who improperly enrolled her. There is no evidence of harassment or retaliation by the PECO employee who handled her Informal Complaint.

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

Ms. Tarpley testified that PECO does not enroll its customers with alternative electricity suppliers. Tr. 80. She explained that enrollment with an alternative electricity supplier must be initiated by the customer. Tr. 80. Ms. Tarpley further testified that on August 22, 2019, PECO received notification that Complainant was enrolled with Alpha Gas and Electric as her electric generation supplier. Tr. 90. On the same day, PECO's system generated notice requesting Ms. Fluellen's confirmation of her enrollment with an alternative supplier. Tr. 24-25, 80. Ms. Fluellen contacted PECO in a timely manner to state that she did not wish to enroll with an alternative supplier. Tr. 80-81. She was returned promptly to PECO as her default service provider. Tr. 81.

Ms. Jefferson testified in defense to Ms. Fluellen's claim of harassing behavior on her part. She explained that she had e-mailed Ms. Fluellen on several occasions in August of 2019, first seeking to discuss with her the issues raised in her informal complaint with BCS, and then to explain to her the return of the deferred budget billing amount to her account and to offer her an amendment to the August 1, 2019 payment arrangement issued by the Company. Tr. 117-18. Ms. Jefferson further testified that she and Ms. Fluellen had only communicated via e-mail. Tr. 119. Ms. Jefferson never spoke on the phone or personally with Ms. Fluellen, but they left each other several voice messages. Tr. 119. Ms. Jefferson admitted that she had made at least one call to Ms. Fluellen after 6:00 p.m. or on a Saturday, but she explained that all calls were made within PECO's business hours. Tr. 119, see also Tr. 21. Ms. Jefferson also testified that she was the first PECO employee who had initiated contact with Ms. Fluellen after she filed the informal complaint with BCS on July 18, 2019. Tr. 123-24.

Initial Decision at 12-13.

PECO's responsibility under Section 23.1 of the 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 Section 23.1 of the tariff by providing the Complainant notification of the supplier enrollment and dropping the Complainant when requested.

As ALJ Vero correctly stated:

Ms. Fluellen has failed to carry her burden of proving that PECO enrolled her with an alternative electric supplier without her consent, in retaliation for filing an informal complaint with the Commission. She failed to present a scintilla of evidence that it was PECO who enrolled her with Alpha Gas and Electric as her electric generation supplier, relying instead on the coincidence of the letter of notification being issued by PECO on August 22, 2019, just a few days after Ms. Fluellen visited PECO's offices to complain about Ms. Jefferson. See Tr. 21-22, 28, 90-91. However, mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pa. Bureau of Corr. v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987). On the contrary, PECO produced credible evidence in the form of sworn testimony that it had notified Ms. Fluellen of the change in the electric generation supplier and had promptly returned her back to PECO once she indicated that she had not requested the change. Tr. 24-25, 80-81. These actions comply with Commission's statutes at 66 Pa.C.S. § 2801 *et seq.* (Electricity Generation Customer Choice and Competition Act), and regulations at 52 Pa.Code §§ 57.172, 57.173, which provide that only a customer (or a person authorized to act on the customer's behalf) can request a change from the current electric generation supplier (EGS) or default service provider to a new selected EGS.

In particular, 52 Pa.Code § 57.173 states,

When a customer contacts an EGS to request a change from the current EGS or default service provider to a new selected EGS, the following actions shall be taken by the selected EGS and the customer's EDC:

- (1) The selected EGS shall notify the EDC of the customer's EGS selection at the end of the 3-business day rescission period under § 54.5(d) (relating to disclosure statement for residential and small business customers) or a future date specified by the customer. The selected EGS may notify the EDC by the end of the next business day following the customer contact upon customer consent.
- (2) Upon receipt of this notification, or notification that the customer has authorized a switch to default service, the EDC shall send the customer a confirmation letter noting the proposed

change of EGS or change to default service. The notice must include the date service with the new selected EGS or default service provider will begin. 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 an EGS or default service provider.

52 Pa.Code § 57.173.

Initial Decision at 14-15.

The Complainant's exceptions raising this issue is improperly placed against a PECO Energy employee and should be filed against the supplier who improperly enrolled her account. There is no evidence of harassment or retaliation by the PECO employee who handled her Informal Complaint. This issue is without merit and should be dismissed.

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. 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,



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**BEFORE THE
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Docket No. F-2020-3021486

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: June 9, 2021

Khadijah Scott

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**LACRETIA FLUELLEN
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**PECO ENERGY COMPANY,
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Docket No. F-2020-3021486

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-mail* to:

LACRETIA FLUELLEN
6855 OGONTZ AVE, FRNT 1ST
PHILADELPHIA PA 19138
Via Email: lacretia67@live.com

Dated: June 9, 2021



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