

DAVID HATCHIGIAN
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October 6, 2021

Administrative Law Judge, Darlene Heep Commonwealth of Pennsylvania Pennsylvania Public Utility Commission 801 Market Street Philadelphia Pa. 19107	Rosemary Chiavette, Secretary Pennsylvania Public Utility Commission 400 North Street, Commonwealth Street Second Floor Harrisburg, Pa. 17120
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Re; David Hatchigian vs PECO Energy Company PUC No. C-2020-3021199

Dear Judge Heep:

Please find Plaintiff's response to PECO EXCEPTIONS and Plaintiff's response to AUGUST 18, 2021 INITIAL DECISION

Any questions please call or e/m.

Thank you.

Respectfully submitted,

David Hatchigian

Forward e-mail dheep@pa.gov, Athena Delvillar, Legal Assistant, at sdelvillar@pa.gov, dheep@pa.gov, Khadijah.scott@exeloncorp.com PECO General Counsel_USPS
PECO Energy Company
2301 Market Street, S23-1
Philadelphia Pa. 19103
215-841-6841 / fax 215-568-3389

Please confirm receipt. Thank you.

Enclosures (20) +(24)

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DAVID HATCHIGIAN

Complainant

v.

DOCKET NO. C-2020-3021199

PECO ENERGY COMPANY

Respondent

**COMPLAINANT’S RESPONSES TO THE EXCEPTIONS OF
PECO ENERGY COMPANY AND HATCHIGIAN’S EXCEPTIONS TO THE AUGUST
18, 2021 INITIAL DECISION**

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Pursuant to 52 Pa Code§ 5.533, Complainant DAVID HATCHIGIAN ("Complainant"; "Hatchigian") hereby files his Response to PECO ENERGY COMPANY ("PECO")'s Exceptions to the August 16, 2021 Initial Decision ("I.D.") of Administrative Law Judge Darlene Heep ("ALJ Heep") in the above-referenced matter, and respectfully states:

I. BACKGROUND

The facts in Complainant’s Fourth Amended Class Action Complaint are incorporated by reference as if reproduced verbatim herein. On August 19, 2020, PECO filed an Answer to the Complaint. PECO denied all material allegations of fact. PECO asserted that the Complainant is not the customer or ratepayer of record at the service address. PECO averred in its Answer that PECO Energy’s Tariff has been reviewed and approved by the PUC and that tariffs that have been approved

by the Commission have the full force and effect of law and are binding on both the utility and its customers. On August 27, 2020, this matter was referred to the Office of Administrative Law Judge's Mediation Unit. However, the parties could not resolve the matter. On October 20, 2020, an Initial Telephonic Hearing Notice was issued, setting a hearing for January 6, 2021. A Prehearing Order was issued on December 1, 2020.

II. ARGUMENT

A. PECO failed to notify TENANTS on the first and second floor at the service address under § 1406(b).

Complainant Hatchigian alleges that on May 19, 2016, the Complainant received two phone calls from the tenants living at the service address, complaining that their electricity was shut off without prior notice. Fourth Amended Complaint, ¶51; see also May 5, 2021 letter of intent, Exhibit P-14 [Jaclyn Mahoney Affidavit, dated July 2, 2016] and Exhibit P-15 [Bridjette Cannady Affidavit, dated Aug 20, 2016]. Service was on continuously on both floors of 7512 Brentwood Road. In May of 2016, PECO told the first floor tenants **who had continuously been living at the service address since November of 2015**, only after their lights were already out, that an underwriter's certificate was needed (Tr. at 117), which clearly did not equate to the provision of statutory Ten day Notice prior to shut off. The failure to provide notice was predictable given that PECO did not have a customer of record designated for the first floor when it decided to terminate service on May 18, 2016. See Tr. at 67. Further contrary to PECO's exceptions only a nonpayment notice [not a Ten day Notice] was issued to the second

floor customer of record the day Service was terminated (May 18, 2016) not ten days prior to shut off. ¹ See Ex. p-12,p-21,p-22,p-23

The Initial Decision is incorrect when it infers that “There is no requirement in the Public Utility Code, regulations or Commission Order that PECO notify the owner or landlord prior to shut off under these circumstances [ID p18] Moreover, the PUC is careful to require utility companies to notify electricity customers ten days in advance, which is why Respondent PECO has been fined in the amount of eight hundred dollars for its noncompliance with the notice requirement. See Fourth Am. Compl. Ex p-12,21,22,23,. As a separate matter, PECO had a duty to provide tenants who were billed by PECO directly with the Ten-day Notice prior to the May 2016 shutoff. Landlords and tenants were entitled to prior written notice pursuant to § 1406(b); apart from the fact that Complainant is the lessor, PECO further failed to provide a Ten-day Shut off Notice the tenants on either floor before their lights went out on May 18, 2016. When PECO tried to object to admission of the exhibits as to this issue, contending that they were inadmissible hearsay [Tr. at 108], ALJ Heep properly overruled the objection, noting that:

PECO’s testimony that Jaclyn Mahoney and Brijitte Cannady were not issued ten-day shut off notices corroborates the affidavits. See Tr. at 68-69. Therefore, the objection is overruled and P-14 and P-15 will be admitted into the record. See Ex. p-12,21,22,23,

- I.D., page 6

§1406 of the Public Utility Code provides, in pertinent part:

§ 1406. Termination of utility service

(b) Notice of termination of service.-- (1) Prior to terminating service under subsection (a), a public utility: (i) Shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination. The termination notice shall

¹ The same-day nonpayment notice stated only that service was off because “You did not pay your past due bill” and did not substitute for the Ten-day Notice.

remain effective for 60 days. . . . (2) The public utility shall not be required by the commission to take any additional actions prior to termination.²

Based on the evidenced admitted, there was no notice to the customer ten (10) days prior to termination as required under § 1406(b). Further, Exhibit P-14 is a notarized affidavit from tenant Jaclyn Mahoney stating that she resided at the service address on May 18, 2016, when the service was shut off, and that she did not receive a ten-day shut off notice from PECO. Exhibit P-15 is a notarized affidavit from Brijitte Cannady stating that she resided at the service address on May 18, 2016, when the service was shut off and that she did not receive a ten-day shut off notice from PECO.

B. ALJ Heep's Initial Decision should be upheld as to the unreasonable application of § 9.2.

In November 2015, PECO asked tenant Branconi for certification when moving in, but admittedly had no customer of record or active meter for the six (6) month period from November 2015 to May 2016. According to PECO, 9.2 requires an Underwriter Certificate of Inspection before service is energized (in the case of a hazardous condition, meter removed, or service is off 6 months or longer) yet PECO reenergized Branconi's first floor apartment on or around November-December 2015, and any genuine risk of a potential electrical hazard [the legislative purpose behind Sec. 9.2] could no longer be a factor once the first floor was reenergized.

² As noted in the I.D., "21. PECO records show that for the first floor of the service address, there was a PECO customer of record until March 2015; that between March 2015, and May 4, 2016, there was no PECO customer of record; and that from May 20, 2016 through October 15, 2018, there was a different customer of record. PECO's Exhibit 4; Tr. at 130. 22. PECO records show that there was a PECO customer of record on the second floor of the service address through August 18, 2014, and then no customer of record until March of 2015. Tr. at 131, 132."

PECO's exception does not raise any new evidence of discontinuity since the Aug. 2014-Feb. 2015 and fails to overcome ALJ Heep's presumption of continuity of service from Dec. 2015 to May 2016.

More importantly, Respondent's contention in this case has always been that its policy requires an underwriter certificate when a hazardous condition exists, when the service has been off for more than six months, or when one of the employees deems it unsafe to energize the service [Tr. at 27, 32; PECO Ex. 4], it has failed to present any cognizable proof that would establish its 2016 request for an underwriter's certificate was reasonable and based on any potential unsafe condition.

On the other hand, the May 2016 shutoff was not a "Safety Termination" implemented by PECO under 18.4 of the Code. [§ 18.4 provides "The Company may terminate without notice if the customer's installation has become hazardous or defective."] Respondent may try to contend that the facts are irrelevant because it was concerned about the safety of the electrical service, the customer's property and the public, however to the extent 9.2's ostensible purpose is to minimize the potential for electrical hazards due to long periods of disconnection, the risk to owner and tenant safety from the strictly electrical standpoint was no longer a factor once PECO restored tenant Branconi's service in Dec. 2015.

After the first floor's August 8, 2014 to February 26, 2015 disconnection, the first floor was reenergized for Mr. Branconi, who applied for service, asked to be direct billed by PECO and submitted his Underwriter's Certificate in November of 2015, which was received by PECO as of Nov. 20, 2015.³ Therefore, ALJ Heep found it *implausible that the tenants were*

³ The first floor meter showed zero usage, was admittedly not working and would require replacement by PECO. See PECO's Late Filed Ex. 4. Whereas PECO had no customer of record or working meter in its system for the first floor from 2014 to 2015. [See PECO's Late

without electric service from November of 2015 until May of 2016, when the underwriter's certificate was requested by PECO." ID, page 16.

Neither the tariff provision nor the underwriter policy calls for an underwriter's certificate when there is no customer of record for six months. Under the PECO policy, as explained by PECO, an underwriter's certificate is required when a service address is not energized for six months. Tr. at 63. Further, the substantial evidence established that the service address was energized at the time of the shut off on May 18, 2016. The Complainant's credible testimony was that both apartments were energized on May 18, 2016, the day the service was shut off, and that he received calls from tenants in both apartments when the service was shut off. Tr. at 14-15, 120-121. [Id.]

- ID, page 15.

The evidence presented by the Complainant outweighed that presented by PECO. It is unreasonable for PECO to equate absence of a customer of record with absence of electricity at a service address. It is also unreasonable to require an underwriter's certificate to restore service where the company just shut off service for nonpayment. PECO unreasonably applied its underwriter policy here in violation of 66 Pa. C.S. § 1501.

- I.D. p16. ⁴

Thus, on May 18, 2016 Service to both floors at the service address was improperly terminated based on the earlier Holloway service disconnection of 2014-2015 [See Respondent's Late Filed Exhibit 5, reflecting Holloway's service was disconnected on February 9, 2015], at a time when the electrical hazard theoretically posed by a six month disconnection was no longer a factor. Based on the foregoing, the Initial Decision is due to be affirmed on the issue of the unreasonable application of § 9.2.

C. Complainant's facial challenge to §9.2 is Not Res Judicata.

Filed Exhibits 4 and 5], the Initial Decision does not accept the conjecture that Branconi lived on the first floor without any electrical service from November 2015 through May 2016.

⁴ As noted at I.D., ¶ 21-¶ 22, "21. PECO records show that for the first floor of the service address, there was a PECO customer of record until March 2015; that between March 2015, and May 4, 2016, there was no PECO customer of record; and that from May 20, 2016 through October 15, 2018, there was a different customer of record. PECO Exhibit 4; Tr. at 130. 22. PECO records show that there was a PECO customer of record on the second floor of the service address through August 18, 2014, and then no customer of record until March of 2015. Tr. at 131, 132."

ALJ Heep fully acknowledged that "The Commission has previously affirmed the reasonableness of PECO Electric Tariff Section 9.2." [See Finding of Fact #8]

However, contrary to PECO's exceptions, the ALJ found that even if section 9.2 is unreasonable the ALJ lacked jurisdiction to adjudicate Hatchigian's facial challenge, and Complainant Hatchigian has not alleged that the service at his rental property was off for six months however there were no safety or hazardous issues. [P4, PECO's Exceptions].

Furthermore, in light of the Commission's findings in this case, the Complainant's facial challenge seeks not repeal of § 9.2 but just amendment of its underwriter certification requirement to exempt single family units with no visible construction or fire damages. It does not seek repeal of the tariff itself. The Supreme Court has cautioned that a state-court judgment is subject to collateral attack when "the policy underlying the doctrine of res judicata is outweighed by the policy against permitting the court to act beyond its jurisdiction." *Durfee v. Duke*, 375 U.S. 106, 115 n. 12, 84 S.Ct. 242, 11 L.Ed.2d 186 (1963) (quoting Restatement (First) of Conflict of Laws § 451(2) (Supp.1948)). In *Travelers Indemnity, Co. v. Bailey*, the Court provided similar guidance, noting that collateral attack is warranted under circumstances where "[a]llowing the judgment to stand would substantially infringe the authority of another tribunal or agency of government[.]" 557 U.S. 137, 153 n. 6, 129 S.Ct. 2195, 174 L.Ed.2d 99 (2009).

Additionally, the Third Circuit Court of Appeals has noted:

When Congress intends a particular forum to have exclusive jurisdiction to determine the rights of the parties in a particular situation, that policy decision deprives other fora of subject matter jurisdiction. This doctrine of "forum preemption" implements Congressional determinations that development of the substantive law in a particular area should be left to a particular administrative agency created for that purpose.

- *Metro. Edison Co. v. Pa. Pub. Util. Comm'n*, 767 F.3d 335 (3rd Cir. 2014), citing *Ry. Labor Exec. Ass'n v. Pittsburgh & Lake Erie R.R. Co.*, 858 F.2d 936, 939 (3d Cir.1988).

Here, ALJ Heep has opined thatfff "**Given that electricity is needed for safety equipment, such as fire alarms and smoke and carbon monoxide detectors, PECO should consider whether a shut off notice should be sent to the owner/landlord when there is a shut off at a service address for which it has no customer of record or when service is shut off to require an underwriter's certificate.** See P-9, Tr. at 9.") Moreover, it is clear that the policy interest in defining the reasonable scope of 9.2 outweighs the policy interest of applying issue preclusion. Allowing the state court's judgment on reasonableness to stand without clarification, substantially infringes upon the Commission's exclusive authority over its own orders. Furthermore, the Respondent should not be permitted to use unsecured and broken meters as a pretense for construing state court rulings solely to benefit its own bottom line, at the expense of ratepayers who form the constituents of the PUC. The state court's assessment of 9.2.'s reasonableness on its face is subject to collateral attack as inherently ambiguous. See *Metro. Edison Co. v. Pa. Pub. Util. Comm'n*, 767 F.3d 335 (3rd Cir. 2014) For the doctrine of *res judicata* to apply all four requirements must be met: (1) identity of the issues; (2) identity of the causes of action; (3) identity of the persons and parties to the action; and (4) identity of the quality or capacity of the parties. *Mendozav. Peoples Nat. Gas Co. LLC*, Docket Number F-2019-3015189 (Order entered July 15, 2021) (citing *Winston v. Phila. Gas Works*, Docket C-2010-2181504 (Order entered April 16, 2012))

Here, Respondent failed to establish at the hearing that the applicable requirements were met, i.e., it is only now that it revives the *res judicata* issue by summarizing the ALJ "...dismissed the Complainant's direct challenge of the reasonableness of Tariff Section 9.2 itself under the doctrine of *res judicata*." However, on May 5, 2021, the second of two hearings on PECO's Tariff 9.2 was conducted before ALJ Heep [The first hearing was held on Jan 6, 2021.] PECO's current *res judicata* contention is untimely raised given that the defense is being addressed by

way of Exceptions filed with Commission only after the two separate hearings were held regarding Complainant's facial challenge.

D. Complainant's facial challenge to §9.2 as unreasonable on its face should be upheld.

Based on the plain language of 9.2, the utility company has unlimited discretion to subject both landlords and tenants to any chosen method of tariff enforcement however inappropriate from an electrical standpoint or negligent on the part of PECO. Based on the hearing evidence before ALJ Heep, Respondent's tariff enforcement in the case of Hatchigian's rental property relied on admittedly unreliable, intermittent and unsecured metering of customers' electricity usage, disregarded major temporal gaps in metered usage and was implemented absent a designated customer-of-record; there was thus an evidentiary basis to overcome the presumption of reasonableness in that there was no PECO customer of record for the first-floor apartment at the service address from March 2, 2015 to May 20, 2016. [Tr. at 130] Service was requested in Nov. 2015 for Mr. Branconi's first floor apartment [See Exceptions, page 7 (citing "...at the time that service was requested in November 2015")], but PECO has admitted it had no reliable first floor meter to monitor electricity usage from Nov. 2015 to May 2016, only further implying that the objective of electrical hazard mitigation cannot be served by § 9.2 as currently enacted. ALJ Heep agreed with Complainant that a six month gap in recordkeeping was not a valid reason to require an underwriter's certificate to re-energize apartments at the service address, and further opined at footnote 7 of her August 16, 2021 initial order that:

"Given that electricity is needed for safety equipment, such as fire alarms and smoke and carbon monoxide detectors, PECO should consider whether a shut off notice should be sent to the owner/landlord when there is a shut off at a service address for which it has no customer of record or when service is shut off to require an underwriter's certificate. See P-9, Tr. at 9."

- I.D. Footnote 7.

Even accepting arguendo that the Commission-approved tariff is by definition reasonable *per se*⁵ the tariff as written thereby not only interferes with pre-existing lease agreements with paying tenants [See Fourth Am. Compl., ¶¶ 37-59] but compels lessors to violate rules and regulations that govern the ongoing maintenance of their rental properties. [Id., ¶ 57]

Further, Respondent PECO has implied in this case that Plaintiffs' claims for damages other than those provided by the tariff are foreclosed. However, several courts have held that tariff provisions purporting to exculpate a utility from its own negligence or that limit its liability for damages are unreasonable or invalid. See *McNally Pittsburg Mfg. Corp. v. Western Union Tel. Co.*, 186 Kan. 709, 353 P.2d 199, 203—05 (1960) (holding that no Kansas statute gives the Commission authority to limit a utility's liability); *Forte Hotels, Inc. v. Kansas City Power & Light Co.*, 913 S.W.2d 803, 804—06 (Mo.Ct.App. 1995) (applying Kansas law) (holding that the tariff's limitation of liability is unreasonable and unenforceable). See *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 67 N.M. 108, 353 P.2d 62, 68—71 (1960) (holding that a regulatory commission cannot absolve a utility of liability for negligence through its tariff because that would contravene public policy). See also, Drechsler, Annotation, *Validity of Contractual Provision by One Other Than Carrier or Employer for Exemption from Liability, or Indemnification, for Consequences of Own Negligence*, 175 A.L.R. 8, 39—40 (1948) (stating that public policy prohibits power companies from contracting against their liability for negligence). See also, *Danisco Ingredients USA, Inc. v. Kansas Power & Light Company*, 986 P.2d 377, 385 (Kan. 1999)(any attempt to limit liability for greater than ordinary negligence is

⁵ The Commission-approved tariff provisions are presumed to be reasonable, have the full force of law, and are binding on the utilities and their customers. *Pennsylvania Electric Co. v. Pennsylvania Public Utility Commission*, 663 A.2d 281(Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *State Farm Fire & Casualty Co. v. PECO Energy Co.*, 54 A.3d 921 (Pa. Super. 2012); *Sitelerv. Bell Telephone Co. of Pennsylvania*, 379 A.2d 339 (Pa. Cmwlth. 1977). *Respond Power, LLC v. Pa. Pub. Util. Comm'n*, 250 A.3d 547(Table) (Pa. Commw. Ct. 2021)

P.2d 377, 385 (Kan. 1999)(any attempt to limit liability for greater than ordinary negligence is not reasonable and, is therefore, unenforceable). Missouri requires the utility to use “reasonable care” to prevent outages. *National Food Stores, Inc. v. Union Elec. Co.*, 494 S.W.2d 379 (Mo .App. 1973) See also, *Bearden v. Lyntegar Elec. Co-op., Inc.*, 454 S.W.2d 885, 887 (Tex. Civ. App. 1970) (“While a public utility is not an insurer of continuous service, it will be liable for damages which result from its negligence.”).

E. CONCLUSION

Wherefore, for all reasons stated hereinabove, PECO respectfully requests that the Commission issue an Order that:

1. PECO’s Exceptions are OVERRULED;
2. The Commission’s previous ruling as to PECO’s failure to provide notice of disconnection to tenants is REVERSED based on the undisputed facts of record;
3. The Initial Decision is affirmed as to PECO’s Unreasonable Application of Tariff 9.2 since PECO has not rebutted Complainant’s prima facie case; and
4. The facial challenge is deemed ripe and not barred by res judicata.

Dated: October 6, 2021

Respectfully submitted,

David Hatchigian

**David Hatchigian
Plaintiff Pro se**

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PA PUC
SECRETARY'S BUREAU
OCT 13 2021

5521954

DAVID HATCHIGIAN
2414 Township Line Road
Havertown, PA 19083-5236
david3091@outlook.com

May 5, 2021

Administrative Law Judge, Darlene Heep
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
801 Market Street
Philadelphia pa. 19107

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MAY 10 2021
SECRETARY OF REVENUE

Re; David Hatchigian vs PECO Energy Company PUC No. C-2020-3021199

Dear Judge Heep:

Plaintiff objects to defendants late filed exhibit : *the archived customer contacts and the available meter activity shows zero (0) registration. If service was on at the property, someone bypassed the meter. OBJECTION HERESAY, NO PROOF!*

Any questions please call or e/m.

Thank you.

Respectfully submitted,

David Hatchigian

Forward e-mail dheep@pa.gov, Athena Delvillar, Legal Assistant, at sdelvillar@pa.gov, dheep@pa.gov, Khadijah.scott@exeloncorp.com

Please confirm receipt. Thank you.

P-①





COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

C-2020-3021199

September 13, 2021

Re: David Hatchigian v. PECO Energy Company
Docket No. C-2020-3021199

TO ALL PARTIES:

By Secretarial Letter dated August 16, 2021, the Commission issued the Initial Decision of Administrative Law Judge Darlene Heep in this matter. Exceptions were due within twenty days of that letter (i.e., September 5, 2021). Reply Exceptions were due within ten days after the date that Exceptions were due (i.e., September 15, 2021).

On September 3, 2021, PECO Energy Company (PECO) filed Exceptions. On September 10, 2021, David Hatchigian, the Complainant, filed a letter requesting an additional 30 (thirty) day extension of time to file Reply Exceptions. Mr. Hatchigian requested the extension due to receiving a copy of PECO's Exceptions five (5) days before Reply Exceptions were due.

The Commission's Regulation at 52 Pa. Code § 1.15 permits the Commission to grant an extension of time for good cause shown before the pertinent time period has expired. The Commission finds that Mr. Hatchigian has established good cause for the requested extension of time. In addition, the Commission also recognizes that unique and extenuating circumstances exist as a result of federal and state guidelines that have been implemented to address the ongoing COVID-19 pandemic. As a result, the Commission will extend the period for filing Reply Exceptions by twenty-three (23) days. Reply Exceptions, therefore, shall be filed on or before October 8, 2021.

Should you have any questions, you may contact the Office of Special Assistants, Kathryn G. Sophy, Director. Please direct your inquiry to (717) 787-1827 or RA-OSA@pa.gov.

Very truly yours,

Rosemary Chiavetta
Secretary

P-2

#57

42521617

AFFIDAVIT

I Jaclyn Mahoney residing at 7512 Brentwood Road Philadelphia Pa. 19151 on May 18, 2016 and have never received ten (10) day shut of notice from PECO.

I further verify that statement made in this affidavit are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of Pa. 18 C. S. §. 4909, relating to unsworn falsification to authorities.

Date 7/21/16

[Handwritten Signature]
Signature

Commonwealth of Pennsylvania Philadelphia County

BEFORE ME, the undersigned Notary ANGELICA M. BELTRANTE

On this day 21st July 2016, personally appeared Jaclyn Mahoney know to me to be a credible person and of lawful age, who being by me first duly sworn, on her oath deposes and says the above.

[Handwritten Signature]
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Angelica M. Beltrante, Notary Public
City of Philadelphia, Philadelphia County
My Commission Expires May 23, 2017
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

IN FILE JULY 24, 2016 (4) P-14

#58

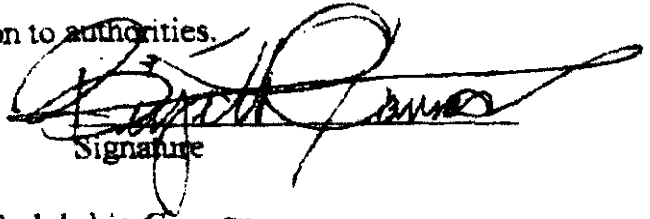
42521617

AFFIDAVIT

I Brijette Cannady residing at 7512 Brentwood Road Philadelphia Pa. 19151 on May 18, 2016 and have never received ten (10) day shut of notice from PECO.

I further verify that statement made in this affidavit are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of Pa. 18 C. S. §. 4909, relating to unsworn falsification to authorities.

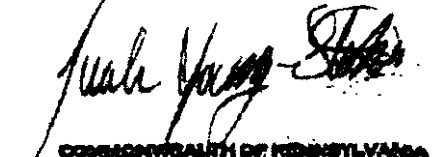
Date 8/20/16


Signature

Commonwealth of Pennsylvania Philadelphia County

BEFORE ME, the undersigned Notary Juella Young-Stokes

On this day 20 August 2016, personally appeared Brijette Cannady know to me to be a credible person and of lawful age, who being by me first duly sworn, on her oath deposes and says the above.


COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
JUELLA YOUNG-STOKES, Notary Public
City of Philadelphia, Phila. County
My Commission Expires March 18, 2018.

IN FILE AUGUST 21, 2016 (5) P-15

... 10 years. The new law revised some Chapter 14 provisions related to low-income programs, Protection from Abuse Orders and medical certificate filings, and added some new regulations and reporting requirements. Chapter 14 rules apply to cash deposits; reconnection of service; termination of service; payment arrangements; and the filing of termination complaints by consumers for electric, gas and water. Under the law, a customer can only establish one payment arrangement with the PUC. The utility company has the discretion to offer more than one payment arrangement. The Public Utility Commission will work beginning in early 2015 to implement the new law with new and amended regulations, and continue to work with all parties to ensure compliance with the law, as well as protect the health and safety of Pennsylvanians. The Act protects responsible bill-paying customers from rate increases attributable to the uncollectible accounts of customers that can afford to pay their bills, but choose not to pay.

Your utility company can **SHUT OFF** your service if you **FAIL** to do the following:

- ✓ **PAY YOUR BILL**
- ✓ **FOLLOW THROUGH ON PAYMENT ARRANGEMENTS**
- ✓ **PAY A DEPOSIT, IF REQUIRED**
- ✓ **ALLOW THE COMPANY ACCESS TO ITS EQUIPMENT**

Before your service is shut off, your utility company will take the following steps:

- Send you a 10-Day Notice. Once you get the notice, the utility company has up to 60 days to shut off your service.
- Attempt to contact you three days prior to your shut-off date.
- During winter months (December 1 through March 31), if the utility company cannot reach you at the time of termination, they will leave a 48-hour notice at your residence.

Medical Certification

Your utility service will not be shut off if you or someone living in your home is certified as seriously ill by a licensed physician, physician's assistant or nurse practitioner. The utility company will require you to provide a letter from a licensed physician, physician's assistant or nurse practitioner, stating that shutting off your utility service will harm the ill person in the home.



The initial medical certification can be up to 30 days, with renewals possible.

You are still responsible to pay your bill even if there is a medical certificate for someone in your home.

The utility company can **SHUT OFF YOUR SERVICE WITHOUT GIVING YOU NOTICE** for the following reasons:

- ✓ **STEALING UTILITY SERVICE**
- ✓ **GETTING SERVICE THROUGH FRAUD**
- ✓ **TAMPERING WITH YOUR METER**
- ✓ **UNSAFE SERVICE CONDITIONS**
- ✓ **GIVING THEM A BAD CHECK TO STOP TERMINATION**

YOUR UTILITY SERVICE CAN BE SHUT OFF ANY WEEKDAY, EXCEPT FRIDAY.

If your service is shut off, the utility company will leave a notice telling you what you need to do to get your service restored.

Winter Termination

Your utility service can be shut off during the winter months (December 1 through March 31) without the PUC's prior approval if you fail to be a responsible utility customer, and provided that your household's income exceeds 250 percent of the federal poverty level (for customers of the Philadelphia Gas Works, the income exceeds 150 percent of the federal poverty level). The utility company will give you notice first and allow you the opportunity to contact them to make arrangements to avoid termination. If your income is low, you may qualify for special programs and termination protections. Please call your utility to see if you qualify.

P-12

Size of Household	Annual Income	Monthly Income
1	\$12,060	\$1,005
2	\$16,040	\$1,337
3	\$20,020	\$1,668
4	\$24,000	\$2,000
For each additional person, add	\$3,980	\$332

Note: Monthly Federal Poverty Income Guidelines are updated every February.
Source: Federal Register

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Bureau of Consumer Services / Chapter 56 Information Sheet

Standard Residential Service Termination Procedures
(52 PA Code §56.91-99)

Chapter 56 of the Commission's regulations explains termination of service procedures for nonpayment of residential bills. The following is an outline of those procedures for standard residential service accounts:

1. **Ten (10) Days Prior to Service Termination**

Mail or deliver a written notice to the customer at least ten (10) days prior the proposed date of termination (§56.91). (see Attachment A)

2. **Three (3) Days Prior to Service Termination**

Attempt to make personal contact, by telephone on two separate days at two different times of day or one time in person, at least three (3) days prior to the proposed termination date (§56.93). (see Attachment B)

3. **Day of Service Termination**

- a. Make personal contact on the date of termination with a responsible adult. If personal contact is made, the company may terminate service.
- b. If no personal contact is made, the company must leave another notice and wait forty-eight (48) hours before terminating service. After forty-eight (48) hours service termination is permitted (§56.94). (see Attachment C).
- c. When service is terminated, a post termination notice must be left at the affected dwelling (§56.95) (see Attachment D).

Other issues to remember are:

1. Terminations are prohibited on Friday, Saturday, Sunday, a bank holiday, a Commission holiday, or any day preceding a holiday described above (§56.82).
2. Companies must comply with the medical emergency provisions (§56.111-.118).
3. If the customer contacts the company to dispute either the bill or the specific reason for termination, the company is to make a diligent attempt to settle the dispute. The company is to explain its position if they cannot reach a mutually satisfactory conclusion.
4. In all cases, the customer has ten (10) days to appeal the company's decision to the Commission. The company must inform the customer of this right. This is called an appeal period and the company cannot take any action to terminate until after the appeal period. Chapter 56.141 - .181 further outlines the requirements for handling disputes.

Please read Subchapter F of Chapter 56 for further details on the termination process.

The following four pages are samples of the termination notices to be used in this process. The Bureau suggests that companies use similar formats.

That pursuant to 52 Pa. Code §1.96, this informal opinion is provided solely as an aid to you. It is not binding upon the Commonwealth or the Commission. Informal opinions are subject to withdrawal or change at any time to conform to new or different interpretations the law.

Attachment A

Date, 2009
Date Notice Issued

10-DAY SHUT OFF NOTICE

Your bill for \$XXX.xx is overdue. Because your bill is overdue, we will shut off natural gas service to **Service address** on or after **Time a.m./p.m.** on **Date, 2009**.

To stop the shut off, you must do one (1) of the following at once:

1. Pay the total amount overdue.
2. Call **Company phone number** or visit **Company address** to make a payment, to let us know that you made a payment; or to dispute the overdue bill.
4. Call **Company phone number** if you or someone in your home has a serious illness or a medical condition. Read the Medical Emergency Notice shown below.

MEDICAL EMERGENCY NOTICE

If someone living in your home is seriously ill, we will turn your natural gas service back on during this illness if you do two (2) things:

1. Have a doctor certify by phone or in writing to the Company that the illness exists and that the person will be in danger if you do not have natural gas service.

AND

2. Make arrangements to pay your overdue and current bills by calling the **Company Name at Company phone number**.

If we shut off your natural gas service, you may have to pay the following charges to have your natural gas service turned back on.

Overdue Amount	\$XXX.xx
Turn-on Charge	\$ XX.xx
Security Deposit	\$ _____
Total Amount Due	<u>XXXX.xx</u>

If you have questions or need more information, please call us. If you are not satisfied after you talk to us, you may file a complaint with the Public Utility Commission by calling (800)-692-7380 toll free, or by writing to P. O. Box 3265, Harrisburg, PA 17105-3265. The Public Utility Commission will delay the shut off if you file the complaint before the shut off date.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Hatchigian

v.

PECO Energy Company

:
:
:
:
:

C-2020-3021199

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

PECO Electric Tariff Section 9.2 provides that PECO reserves the right to refuse the introduction of service unless a written certificate of approval has been received from a competent inspection agency. PECO implements Tariff Section 9.2 through a policy of requiring an underwriter's certificate before reintroducing service to a service address that was not energized for six months or longer. The Complainant contends that Tariff Section 9.2 is unreasonable on its face and that PECO unreasonably applied its underwriter's certificate policy. The Complainant also contends that he was not notified of a shut off of service at the service address.

This decision finds in favor of the Complainant's claim that PECO's application of the underwriter's certificate policy pursuant to Tariff Section 9.2 was unreasonable. PECO will be ordered to pay a penalty of \$100 per day for eight (8) days of violation, for a total of \$800. This decision dismisses Complainant's direct challenge of the reasonableness of Tariff Section 9.2 itself under the doctrine of *res judicata* and dismisses the Complainant's claim of inadequate shut off notice because he did not meet his burden of proof.

HISTORY OF THE PROCEEDING

On July 16, 2020, David Hatchigian, Complainant, filed a formal complaint against PECO Energy Company with the Pennsylvania Public Utility Commission (“Commission” or “PUC”). The Complainant is the landlord/owner of 7512 Brentwood Road, Philadelphia, Pennsylvania 19151 (“service address”). In his Complaint, Mr. Hatchigian alleged that PECO was threatening to shut off his service or had already shut it off and that he was having a reliability, safety or quality problem with his utility service. The Complainant also referred to a complaint he filed in the Court of Common Pleas of Philadelphia County, and he attached various documents related to that civil action to this Complaint.¹

Mr. Hatchigian is challenging PECO’s application of PECO Electric Tariff Section 9.2, which requires an inspection agency’s certificate of approval before electric service is introduced at a service address. Mr. Hatchigian contends that, without notice, PECO shut off the service of two of his tenants in error and that, subsequently, PECO claimed that the service address had been unoccupied for six months and therefore a certificate from an electrical underwriter firm was required before service could be restored. He further alleged that after paying \$130 for the inspection and certificate, PECO then refused to connect service until there was a re-inspection of all electric wiring at the service address. As a result, the Complainant alleged, due to service interruption, he was in violation of various Philadelphia municipal codes and tenants were unable to move into the apartments on time.

On August 19, 2020, PECO filed an Answer to the Complaint. PECO denied all material allegations of fact. PECO asserted that the Complainant is not the customer or ratepayer of record at the service address. PECO further stated that the electrical service at the service

¹ The documents that Complainant attached to his formal Complaint show that Mr. Hatchigian initially sought relief against PECO in the Court of Common Pleas of Philadelphia County, which action was docketed in that court at Civil Action, No. 16080065 (August 2016). On August 6, 2019, the Superior Court of Pennsylvania, found that the trial court erred in dismissing Complainant’s fourth amended complaint with prejudice and remanded the action to the trial court for the entry of an order transferring the case to the PUC for certain claims it found the PUC has primary and exclusive jurisdiction. (No. 142 EDA 2018) (Pa.Super. 2019). On February 19, 2020, the Supreme Court of Pennsylvania denied Complainant’s petition for an allowance of an appeal. (No. 442 EAL 2019) (Pa. 2020).

address was disconnected on August 18, 2014, and the request to connect service was made on February 26, 2015. PECO asserts that it was within its rights pursuant to the PECO Electric Tariff No. 9.2 to request an underwriter's certificate before service would be rendered at the property.

PECO further asserts in its Answer that the underwriter's certificate is required when service has been disconnected for six months or more, or if there has been a fire or other property damage, and that the certificate is requested as a safety precaution for both the resident and the property. PECO also averred in its Answer that PECO Energy's Tariff has been reviewed and approved by the PUC and that tariffs that have been approved by the Commission have the full force and effect of law and are binding on both the utility and its customers, *citing Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

On August 27, 2020, this matter was referred to the Office of Administrative Law Judge's Mediation Unit. However, the parties could not resolve the matter.

On October 20, 2020, an Initial Telephonic Hearing Notice was issued, setting a hearing for January 6, 2021. A Prehearing Order was issued on December 1, 2020.

The hearing began as scheduled on January 6, 2021. Mr. Hatchigian appeared *pro se*. He testified on his own behalf and offered 30 exhibits, C-1 through C-5 and P-1 through P-25, as pre-marked by the Complainant. During the hearing, the Complainant was directed to resubmit to me and send to PECO an exhibit previously emailed to the Commission and PECO that was not received due to email attachment size restrictions.²

PECO was represented by Khadijah Scott, Esquire. She presented two witnesses, Renee Tarpley, PECO Senior Regulatory Assessor, and Danielle Green, a PECO New Business

² On at least four occasions, email sent by the Complainant containing his exhibits was rejected due to the large size and an unreadable format. The Complainant was directed to provide the documents in an accessible form. An email with the Complainant's exhibits was subsequently received but the attached exhibits could not be opened or read. Complainant's exhibits were eventually converted to documents in a readable format and filed and accepted into evidence as marked by the Complainant in that readable format.

Manager. PECO also offered 3 exhibits, PECO 1 through PECO 3. PECO Exhibits 1, 2 and 3 were admitted into the record.

PECO objected to admission of P-9 (Copy of City Code requiring fire alarms) as irrelevant, P-11 and P-12 (a 2- page document regarding fire alarm certification) as illegible, P-14 and P-15 (notarized affidavits of two tenants stating that they did not receive a ten-day shut off notice from PECO) as hearsay and P-16 (City of Philadelphia License and Inspection letter re: Rental Suitability Certificate) as irrelevant.

In ruling on the objections, the Complainant was directed to file legible copies of P-11 and P-12, the objection to P-9 was overruled, and objections to P-14 and P-15 were taken under advisement until receipt of additional documents from the Complainant. No ruling was made with respect to P-16. ³

During the hearing, PECO was directed to provide customer records for both apartments at the service address for the year 2016 and shut off records for the service address for the year 2016. The Complainant was directed to file legible copies of P-11 and P-12 and copies of the relevant leases. Both parties were to file these documents no later than January 29, 2021.

On January 10, 2021, the Complainant submitted Complainant Late-filed Exhibits 1-5. On January 11, 2021, the Complainant submitted copies of P-11 and P-12. On January 28, 2021, PECO submitted customer account records and contacts for both service address apartments. PECO Late-filed Exhibit 4 and PECO Late-filed Exhibit 5. Also on January 28, 2021, PECO submitted a letter objecting to Complainant Late-filed Exhibit 2 (letter from City of Philadelphia Department of Licenses and Inspections regarding fire alarm requirements) and Complainant Late-filed Exhibit 3 (City of Philadelphia Document regarding alarm systems for rental units) as irrelevant.

³ See fn. 2.

After review of the record, it was determined that a Further Hearing was required. On April 12, 2021, a Further Telephonic Hearing Notice was issued, setting the further hearing for May 5, 2021. A Prehearing Order for the Further Telephonic Hearing was issued on April 14, 2021.

The Further Hearing was held as scheduled on May 5, 2021. The Complainant testified on his own behalf. PECO was represented by Attorney Scott. Ms. Tarpley and Ms. Green again testified on behalf of PECO.

On May 5, 2021, the Complainant sent an email objecting to PECO Late-filed Exhibit 5 from PECO archives.

The record closed on May 21, 2021, upon receipt of the transcript. The record consists of a 156-page transcript and exhibits as set forth below.

Ruling on Exhibits

The Complainant filed legible copies of P-11 and P-12. They will be admitted into evidence.

Exhibit P-14 is a notarized affidavit from Jaclyn Mahoney stating that she resided at the service address on May 18, 2016, when the service was shut off, and that she did not receive a ten-day shut off notice from PECO. Exhibit P-15 is a notarized affidavit from Brijitte Cannady stating that she resided at the service address on May 18, 2016, when the service was shut off and that she did not receive a ten-day shut off notice from PECO. PECO objected to admission of these exhibits, contending that they were inadmissible hearsay. *See Tr.* at 108.

In *Norman v. PECO Energy Co.*, the Commission stated:

[A]n affidavit is inadmissible hearsay unless it is corroborated by other evidence or falls within an exception to the hearsay rules. *In re Farnese I*, citing *Dale v. Philadelphia Board of Pensions and Retirement*,

702 A.2d 1160 (Pa. Cmwlth. 1997), *appeal denied*, 556 Pa. 696, 727 A.2d 1123 (1998); *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (Pa. Cmwlth. 1976); Pa. R.E. 802. The notarization of an affidavit does not negate the hearsay nature of the affidavit, *i.e.*, notarization does not make the affidavit admissible evidence. The notarization does not convert the hearsay statements within an affidavit into proof of the truth of those statements. *In re Farnese I.*

Docket Number F-2018-2640713 at 26-27 (Order entered June 18, 2020). In the instant matter, PECO's testimony that Jaclyn Mahoney and Brijitte Cannady were not issued ten-day shut off notices corroborates the affidavits. *See* Tr. at 68-69. Therefore, the objection is overruled and P-14 and P-15 will be admitted into the record.

P-16 is a letter from the Philadelphia Department of Licenses and Inspections indicating that it is granting a license to the Complainant to rent the service address. The letter also states that the license is subject to immediate cancellation for violations of City Ordinances and Regulations. Complainant Late-filed Exhibit 2 is a letter the from City of Philadelphia Department of Licenses and Inspections regarding fire alarm requirements and Late-filed Exhibit 3 is City of Philadelphia Document regarding alarm systems for rental units. PECO objected to these documents as irrelevant.

The Complainant contends here that PECO's application of PECO Electric Tariff Section 9.2 and the underwriter's certificate policy is unreasonable in part because when the service is shut off without notice, and an inspection agency's written certificate of approval is required, he is subject to cancellation of his license to rent the service address. As explained by the Complainant, the disconnection of the electric service causes noncompliance with a City of Philadelphia ordinance that requires a landlord to maintain a 120-volt electric fire alarm system and smoke detector and carbon monoxide detectors. Tr. at 9-10. Complainant Exhibit P-16, Complainant Late-filed Exhibit 2 and Complainant Late-filed Exhibit 3 are relevant to that allegation and therefore the objections are overruled, and the exhibits will be admitted into the record.

Therefore, the record consists of the hearing transcript and the following exhibits:

- C-1 Complaint
- C-2 Decision
- C-3 March 9 Cover Letter
- C-4 February 19, 2020 Order
- C-5 4th Amended Complaint
- P-1 Shut Off Notice
- P-2 Second Page of Notice
- P-3 Municipal Inspection
- P-4 Copy of Check
- P-5 Receipt
- P-6 Copy of Check
- P-7 Giant Receipt
- P-8 Giant Receipt
- P-9 February 1998 Letter
- P-10 Second Page of Letter
- P-11 Attachment to Letter
- P-12 PUC Document
- P-13 Second Page of P-12
- P-14 Affidavit
- P-15 Affidavit
- P-16 L&I Letter
- P-17 March 8, 2014 Letter
- P-18 Copy of Envelope
- P-20 Commission ⁴
- P-21 PUC Document
- P-22 PUC Document
- P-23 PUC Document
- P-24 PUC Document
- P-25 PUC Document

RECEIVED
MAY 13 2021 11:31
PA PUC
SECRETARY'S BUREAU

⁴ P-19 was omitted by the Complainant.

Complainant Late-filed 1 - Brijette Cannady & Tyrone Zachary & Leticia S. Marks and Jaclyn Mahoney, Joseph J. Branconi, & Michele D. Mahoney residential lease's

Complainant Late-filed 2 - City of Philadelphia Department of Licenses and Inspections to Electrical Contractors date February 1998 requiring that all apartment owners install a hard wire fire alarm system

Complainant Late-filed 3 - Partners for Good Housing Requirements for one and two-family dwellings are required to install smoke alarms powered by the building's primary power or a non-removable (sealed) 10-year battery

Complainant Late-filed 4 - PECO LOI TO Plaintiff dated March 6, 2014

Complainant Late-filed 5 - Pa. Energy Consumer Bill of Rights

PECO Exhibit 1 - Tariff

PECO Exhibit 2 - Underwriter Certification Information

PECO Exhibit 3 - Inspection record

PECO Late-filed Exhibit 4 - Customer Service Information

PECO Late-filed Exhibit 5 - Account Transaction History⁵

FINDINGS OF FACT

1. *The Complainant is David Hatchigian, the owner of the service address at issue, 7512 Brentwood Road, Philadelphia, Pennsylvania 19151. Tr. at 8.*

2. *PECO Energy Company, a jurisdictional public utility, is the Respondent.*

3. *The service address is a duplex with two apartments, a first-floor and a second-floor apartment. Tr. at 8.*

⁵ In an email dated May 5, 2021, the Complainant objected to a statement in the cover letter sent by PECO with its late filed exhibits. The cover letter is not evidence and therefore any statement offered as fact will not be considered in the decision here.

4. PECO Electric Tariff, Section 9.2, provides that PECO reserves the right to refuse the introduction of service unless a written certificate of approval, satisfactory to the Company, has been received from a competent inspection agency authorized to perform this service in the specific locality in which service is to be provided.

5. One method by which PECO implements Tariff Section 9.2 is through a policy of requiring an underwriter's inspection certificate to re-energize a service address that was not energized for six months or more. Tr. at 70, 72, 92. Exhibit P-17.

6. Beginning November of 2015, the tenants on the lease for the first floor of the service address were Jaclyn Mahoney, Joseph J. Branconi, and Michelle D. Mahoney. Tr. at 117.

7. Beginning March of 2016, the tenants on the second-floor lease of the service address were Brijette Cannady, Tyrone Zachary and Leticia Marks. Tr. at 118.

8. PECO electric service was on when the tenants moved into the service address in November 2015 and March 2016. Tr. at 119.

9. On April 4, 2016, a ten-day shut off notice was issued to PECO's customer of record, a Ms. Walker, for the second floor of the service address. PECO Exhibit 3. Tr. at 137; PECO Late-filed Exhibit 4.

10. PECO shut off electricity to the service address on May 18, 2016. Tr. at 14-15.

11. Tenants from each apartment at the service address called the Complainant on the day of the shut off. Tr. 14-15.

12. Subsequent to the shut off, the Complainant called PECO and was told that money was owed and that he needed an underwriter's certificate to have service restored for both apartments at the service address. Tr. at 14-15,150.

13. Both units at the service address were occupied and had electric service on May 18, 2016, the day PECO shut off electric service. Tr. at 120-121.

14. The tenants for the second-floor apartment at the service address - Cannady, Zachary and Marks - were not PECO customers of record at the time of the shut off on May 18, 2016. Tr. at 64-65.

15. PECO did not have a customer of record for the first floor at the time of the shut off at the service address on May 18, 2016. Tr. at 67.

16. On the day of the shut-off, May 18, 2016, PECO issued a "YOUR ELECTRIC/GAS SERVICE HAS BEEN SHUT OFF" notice to its customer of record on the second floor of the service address, which stated that the service was shut off because "You did not pay your past due bill." Exhibit P-1.

17. PECO records dated May 18, 2016, and May 19, 2016, indicate that the Complainant and the tenant on the first floor contacted PECO and were advised by PECO that an underwriter's certificate was needed to reintroduce service. PECO Late-filed Exhibit 4.

18. On May 19, 2016, the Complainant, at his expense, had both units at the service address inspected to obtain an underwriter's certificate to reintroduce service. Exhibits P-5, P-6; Tr. at 120

19. PECO received an underwriter's certificate for the first floor of the service address on May 19, 2016. Tr. at 131; PECO Late-filed Exhibit 4.

20. From 2015 to 2017, PECO electric service at the service address was not off for a period of six months or more. Tr. at 121.

21. PECO records show that for the first floor of the service address, there was a PECO customer of record until March 2015; that between March 2015, and May 4, 2016, there was no PECO customer of record; and that from May 20, 2016 through October 15, 2018, there was a different customer of record. PECO Exhibit 4; Tr. at 130.

22. PECO records show that there was a PECO customer of record on the second floor of the service address through August 18, 2014, and then no customer of record until March of 2015. Tr. at 131, 132.

DISCUSSION

As the proponent of a rule or order, the Complainant bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Public Utility Code or a regulation or order of the Commission.

The Pennsylvania Public Utility Code requires each public utility to provide reasonable service as follows:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

The statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa.Cmwlt. 1995). The Code defines “service” as:

“Service, used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them.”

6 Pa.C.S.A. § 102.

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent public utility violated either its duty under the Public Utility Code or the orders or regulations of the Commission, 66 Pa.C.S. § 701, or that the utility is responsible or accountable for the problem described in the Complaint. *Griggs v Phila. Gas Works*, Docket Number F-2020-3021754 (Order entered July 21, 2021) (citing *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990)); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa.Cmwlt. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm’n*, 447 A.2d 1100 (Pa.Cmwlt. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm’n*, 623 A.2d 6 (Pa.Cmwlt. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. Dep’t of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa.Cmwlt. 1984).

A public utility’s Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa. C.S. § 316, *Kossmann v. Pa. Pub. Util. Comm’n*, 694 A.2d 1147 (Pa. Cmwlt. 1997); and *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlt. 1977)

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 461 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. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

The Complainant presents the following claims: 1) that PECO Electric Tariff Section 9.2 is itself unreasonable; 2) that, under the circumstances here, PECO unreasonably applied its policy under Tariff Section 9.2 of requiring an underwriter's inspection certificate before re-energizing a service address that was not energized for six months or more; and 3) that the Complainant did not receive notice of the May 18, 2016 shut off.

PECO Electric Tariff Section 9.2 is itself unreasonable

The PECO Electric Tariff, Section 9.2 states:

INSPECTION. The Company reserves the right to refuse the introduction of service unless a written certificate of approval, satisfactory to the Company, has been received from a competent inspection agency authorized to perform this service in the specific locality in which service is to be provided.

Currently effective tariffs are *prima facie* reasonable. 66 Pa. C.S. § 316, *Pa. Pub. Util. Comm'n v. PECO Energy Co.*, Docket Number C-2018-3006242 (Order entered June 17, 2021); *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997). The Commission has previously affirmed the reasonableness of PECO Electric Tariff Section 9.2. *See Hatchigian v. PECO Energy Co.*, Docket Number C-2015-2477321 (Order entered December 8, 2016).

The doctrine of *res judicata* prevents a suit between the same parties on the same cause of action after a court of competent jurisdiction has rendered a final judgment on the merits. See *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983) (*Day*). For the doctrine of *res judicata* to apply, all of the following four requirements must be met: (1) identity of the issues; (2) identity of the causes of action; (3) identity of the persons and parties to the action; and (4) identity of the quality or capacity of the parties. *Mendozav. Peoples Nat. Gas Co. LLC*, Docket Number F-2019-3015189 (Order entered July 15, 2021) (citing *Winston v. Phila. Gas Works*, Docket C-2010-2181504 (Order entered April 16, 2012)); *Day*, 464 A.2d 1313. In Docket Number C-2015-2477321, the Complainant, as here, challenged the reasonableness of PECO Tariff Section 9.2 itself before the Commission. Therefore, all four requirements are met. This claim will be dismissed under the doctrine of *res judicata*.

Application of Tariff Section 9.2 and underwriter's certificate policy

One manner in which PECO implements Electric Tariff Section 9.2 is requiring an underwriter's inspection certificate to re-energize a service address that was not energized for six months or more. The Complainant objects to PECO requiring an underwriter's certificate under the circumstances presented here.

The evidence established the following: The Complainant is the owner of the service address, a building with a first-floor apartment and a second-floor apartment. Tr. at 8. PECO shut off the electric service at the service address on May 18, 2016. Tr. at 14-15; PECO Late-filed Exhibit 4; Complainant Exhibits P-14 and P-15. The day that PECO shut off the electric service at the service address, both units at the service address were occupied and had PECO electric service. Tr. at 117, 118; 120, 121; Complainant Late-filed Exhibit 1; PECO Late-filed Exhibit 4. On the day of the shut off, May 18, 2016, PECO issued a "YOUR ELECTRIC/GAS SERVICE HAS BEEN SHUT OFF" notice to its customer of record at the service address, stating that the service was shut off because "You did not pay your past due bill." Exhibit P-1. The Complainant had to pay for inspection and an underwriter's certificate to have both apartments at the service address energized. PECO Exhibit 4; Tr. at 150. The

Complainant has established a *prima facie* case that PECO misapplied its underwriter certificate policy.

In response, PECO presented testimony and evidence establishing the following: PECO's underwriter policy is to assure safety and that the facility meets the requirements to restart electricity. Tr. at 73, 92. At the time of the shut off on May 18, 2016, the tenants on the leases for the service address were not listed as PECO customers in PECO records. Tr. at 64-65, Tr. at 67, 131,132; PECO Exhibit 4. There was no PECO customer of record for the first-floor apartment at the service address March 2, 2015, to May 20, 2016. Tr. at 130. As for the second floor, there was no customer of record for the period August 18, 2014, to March 2015. Tr. at 131-132. PECO essentially contends that because there was no customer of record for a six-month or more period, the company was within its rights to require an underwriter's certificate to re-energize the apartments at the service address.

PECO has not sufficiently rebutted the Complainant's *prima facie* case. The bare Tariff Section 9.2 is not unreasonable, as previously determined by the Commission. However, PECO's application of the underwriter's certificate policy was unreasonable under the present circumstances.

Neither the tariff provision nor the underwriter policy calls for an underwriter's certificate when there is no customer of record for six months. Under the PECO policy, as explained by PECO, an underwriter's certificate is required when a service address is not energized for six months. Tr. at 63. Further, the substantial evidence established that the service address was energized at the time of the shut off on May 18, 2016.

The Complainant's credible testimony was that both apartments were energized on May 18, 2016, the day the service was shut off, and that he received calls from tenants in both apartments when the service was shut off. Tr. at 14-15, 120-121. PECO issued a shut of notice for the second-floor apartment and acknowledges that the company shut off service on the second floor on May 18, 2016. PECO also did not directly dispute that an underwriter's certificate was requested for the second floor.

PECO records show that tenants who were in the first-floor apartment since November of 2015 were told by PECO in May of 2016 that an underwriter's certificate was needed. Tr. at 117; Complainant Late-filed Exhibit 1; PECO Late-filed Exhibit 4. It is implausible that the tenants were without electric service from November of 2015 until May of 2016, when the underwriter's certificate was requested by PECO.

There was also the testimony of the Complainant that there was no period from 2015-2017 that the apartments at the service address were not energized. Tr. at 121. PECO, the company that controls the energy switches and records, presented no substantial evidence to the contrary.⁶ Nevertheless, PECO required the Complainant to obtain an underwriter's certificate to re-energize both apartments after the company shut off the service on May 18, 2016. Tr. at 150.

The evidence presented by the Complainant outweighed that presented by PECO. It is unreasonable for PECO to equate absence of a customer of record with absence of electricity at a service address. It is also unreasonable to require an underwriter's certificate to restore service where the company just shut off service for nonpayment. PECO unreasonably applied its underwriter policy here in violation of 66 Pa.C.S. § 1501.

Notice of Shut-off

The Complainant also contends that he did not receive a ten-day notice of the shut off on May 18, 2016. Section 1406 of the Code provides, in pertinent part:

§ 1406. Termination of utility service

(a) Authorized termination.--A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection (b) for any of the following actions by the customer:

- (1) Nonpayment of an undisputed delinquent account.
- (2) Failure to comply with the material terms of a payment agreement.

⁶ PECO submitted PECO Late-file Exhibit 5, the Account Transaction History of one first floor tenant and customer of record with an entry dated 6/8/2016 showing zero kWh used. This document is given no weight on the issue of whether the apartments at the service address were energized at the time in question because the document dates are inconsistent, the document appears to be a compilation of information with unknown original sources, there was no supporting testimony, and it pertains to one customer in one apartment.

(3) Failure to complete payment of a deposit, provide a guarantee of payment or establish credit.

(4) Failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading.

(b) Notice of termination of service.--

(1) Prior to terminating service under subsection (a), a public utility:

(i) Shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days.

(2) The public utility shall not be required by the commission to take any additional actions prior to termination.

(c) GROUNDS FOR IMMEDIATE TERMINATION.--

(1) A public utility may immediately terminate service for any of the following actions by the customer:

(i) Unauthorized use of the service delivered on or about the affected dwelling.

(ii) Fraud or material misrepresentation of the customer's identity for the purpose of obtaining service.

(iii) Tampering with the meters or other public utility's equipment.

(iv) Violating tariff provisions on file with the commission so as to endanger the safety of a person or the integrity of the public utility's delivery system.

(2) Upon termination, the public utility shall make a good faith attempt to provide a post termination notice to the customer or a responsible person at the affected premises, and, in the case of a single meter, multiunit dwelling, the public utility shall conspicuously post the notice at the dwelling, including in common areas when possible.

66 Pa.C.S. § 1406(a) - (c)

That PECO did not send the Complainant notice before the May 18, 2016 shut off of both the first and second floor apartments is not in dispute. On April 4, 2016, PECO issued a shut-off notice to its customer of record for the second-floor apartment. PECO Exhibit 3. Tr. at 137; PECO Late-filed Exhibit 4. The Notice remained effective for 60 days. 66 Pa.C.S § 1406 (b)(1). The service was shut off on May 18, 2016, within the 60-day period. PECO did not issue

a shut off notice for the first-floor apartment because at the time of the shut off, PECO had no customer of record for the first-floor apartment. Tr. 67.

There is no requirement in the Public Utility Code, regulations or Commission Order that PECO notify the owner or landlord prior to shut off under these circumstances.⁷ Therefore, that PECO did not issue a ten-day shut off notice to the Complainant is not a violation of the Public Utility Code, the regulations or a Commission Order. The Complainant cannot prevail on this claim.

Accordingly, the Complaint is granted, in part, with respect to PECO's application here of Electric Tariff Section 9.2 and its policy requiring an underwriter's certificate when a service address was not energized for six months or more. The remaining claims are denied.

Penalty

Penalties may be imposed where violations of the Code and Commission Regulations or a Commission Order are found. *See* 52 Pa. Code § 69.1201; *See also Rosi v. Bell-Atlantic Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). Under the factual circumstances presented in this case, PECO is found to have violated Section 1501 in its application of Electric Tariff Section 9.2 and its policy requiring an underwriter's certificate when a service address was not energized for six months or more.

The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

⁷ Given that electricity is needed for safety equipment, such as fire alarms and smoke and carbon monoxide detectors, PECO should consider whether a shut off notice should be sent to the owner/landlord when there is a shut off at a service address for which it has no customer of record or when service is shut off to require an underwriter's certificate. *See* P-9, Tr. at 9.

These factors are: (i) Whether the conduct at issue was of a serious nature; (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the conduct at issue was deemed intentional or negligent; (iv) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) The number of customers affected and the duration of the violation; (vi) The compliance history of the regulated entity that committed the violation; (vii) Whether the regulated entity cooperated with the Commission's investigation; (viii) The amount of the civil penalty or fine necessary to deter future violations; (ix) Past Commission decisions in similar situations; and (x) Other relevant factors. 52 Pa. Code § 69.1201(c).

The first factor considers whether the conduct at issue was of a serious nature, and, if so, whether the conduct may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). "When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty" *Id.* The violation here was not willful fraud or misrepresentation and therefore a lower penalty is warranted.

The second factor considers whether the resulting consequences of the conduct in question were of a serious nature. 52 Pa. Code § 69.1201(c)(2). There is no credible dispute that the service address apartments were occupied at the time of the shut off. The violation here was of a serious nature in so far as the tenants were without service for 3-5 days. Also, because of lack of electricity, the tenants were without the protection equipment required by the City of Philadelphia, which include a fire alarm and smoke and carbon monoxide detectors. Tr. 9. This supports a higher penalty.

4/21 A.G. 7-17-17
The third factor considers whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). This case involves a negligent application of a PECO policy pursuant to a tariff provision and therefore is not intentional for purposes of this section. As the company providing the electric service, PECO should have been aware that the service address was not without energy for a six-month or more period. The facts suggest that PECO's

demand here for underwriter's certificates to reenergize the apartments was made in error, which supports a lower penalty.

The fourth factor to be considered is whether PECO made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). This factor is not applicable here.

The fifth factor considers the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). Here, two apartments at one service address were affected for up to eight days.

The sixth factor considers the compliance history of the company. 52 Pa. Code § 69.1201(c)(6). The provision provides that "An isolated incident from an otherwise compliant company may result in a lower penalty." *Id.* PECO generally has a favorable Compliance history which warrants a lower penalty.

The seventh factor to be considered is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). This factor is not applicable here.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). A penalty here should encourage PECO to revisit its policy of requiring an underwriter's certificate based on customer enrollment dates rather than whether a service address is not energized and for how long. PECO may also consider enacting a policy of notifying an owner/landlord prior to disconnecting service under Tariff Section 9.2.

The ninth factor examines past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). No similar situations were found.

Finally, the tenth factor considers any other relevant factor. 52 Pa. Code § 69.1201 (c)(10). There are no other relevant factors to consider.

A penalty of \$100 per day for each day that an apartment at the service address was without electric service is reasonable here. According to the evidence presented by the Complainant, PECO service was shut off for five days on the second floor and three days on the first floor. Tr. at 120, Exhibits P-14, P-15. PECO presented testimony that the service was shut off on the second floor until about May 25, 2018. Tr. 88. PECO will be ordered to pay a penalty of \$100 per day for eight days, or a total of \$800.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties of this proceeding.
66 Pa.C.S. § 701.

2. The party filing the Complaint bears the burden of proving by a preponderance of the evidence that he is entitled to relief from the Commission.
66 Pa.C.S. § 332(a).

3. A Commission decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion; A “trace of evidence or a suspicion of the existence of a fact” is insufficient. *HIKO Energy, LLC v. Pa. Pub. Util. Comm'n.*, 163 A.3d 1079, 1094 (Pa. Cmwlth. 2017) (quoting *Lyft, Inc. v. Pa. Pub. Util. Comm'n.*, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016)), *aff'd*, 209 A.3d 246 (Pa. 2019).

4. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities and such service and facilities shall be in conformity with the regulations and orders of the commission. 66 Pa.C.S. § 1501.

5. PECO reserves the right to refuse the introduction of service unless a written certificate of approval, satisfactory to the Company, has been received from a competent inspection agency authorized to perform this service in the specific locality in which service is to be provided. PECO Energy Tariff, Section 9.2 Inspection.

6. PECO Electric Tariff Section 9.2 is presumed reasonable. 66 Pa. C.S. § 316, *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); and *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

7. The Complainant has established by a preponderance of the evidence that, under the current circumstances, PECO's application of PECO Electric Tariff Section 9.2 requiring an underwriter's certificate when the service address was not without energy for six months or more is unreasonable in violation of 66 Pa.C.S. § 1501.

8. The Commission has previously ruled that PECO Electric Tariff Section 9.2 is reasonable and therefore the claim challenging PECO Electric Tariff Section 9.2 on its face is dismissed based on the doctrine of *res judicata*. *Hatchigian v. PECO Energy Co.*, Docket Number C-2015-2477321 (Order entered December 8, 2016); *Mendoza v Peoples Nat. Gas Co. LLC*, Docket Number F-2019-3015189 (Order entered July 15, 2021); *Day v. Volkswagonwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983).

9. The Complainant has not met his burden of establishing that PECO Energy Company violated the Public Utility Code, regulations or a Commission Order by not issuing a shut off notice to him regarding the shut off at the service address in May 2016.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant Exhibits P-11, P-12, P-14, P-15 and P-16; Complainant Late-filed Exhibits 1-5 and PECO Late filed Exhibits 4 and 5 are admitted into the record.

2. That the Complaint of David Hatchigian against PECO Energy Company at Docket No. C-2021-3021199 is granted in part and denied in part.

3. That the claim that PECO Energy Company's application here of Electric Tariff Section 9.2 and its policy requiring an underwriter's certificate when a service address was not energized for six months or more was unreasonable in violation of 66 Pa.C.S. § 1501 is granted.

4. That all other claims are denied and dismissed.

5. That the Respondent, PECO Energy Company, shall pay a total civil penalty of eight hundred dollars (\$800.00) as provided for in Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within twenty (20) days from entry of the Final Commission Order to:

Secretary
Public Utility Commission
400 North Street
Harrisburg, PA 17120

6. That upon payment of the penalty, the Secretary shall mark this docket closed.

Date: August 16, 2021

/s/
Darlene Heep
Administrative Law Judge



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN REPLY PLEASE
REFER TO OUR FILE

August 16, 2021

C-2020-3021199

David Hatchigian

v.

PECO Energy Company

TO ALL PARTIES:

Enclosed is a copy of the Initial Decision of the Office of Administrative Law Judge.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Your signed Exceptions to the decision, if any, must be: 1) filed with the Secretary of the Commission, and 2) within twenty (20) days of the date of this letter.

In accordance with the requirements of the Commission's Emergency Order at Docket Number M-2020-3019262 under the pandemic emergency, and since the Commission has no access to mail delivery, Exceptions must be efiled with the Secretary of the Commission by opening an efile account through the Commission's website and accepting eservice at <http://www.puc.state.pa.us/efiling/default.aspx>. If your filing contains confidential material, you may email your exceptions to rchavetta@pa.gov.

In addition to filing with the Secretary of the Commission, a courtesy copy of your Exceptions must be emailed to the Commission's Office of Special Assistants (OSA) at ra-OSA@pa.gov. Your filing should not be larger than 10mb.

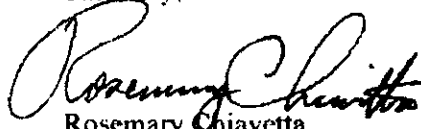
Replies to Exceptions, if any, must be efiled with the Secretary of the Commission and **served** on each party of record and the Commission's Office of Special Assistants in the manner described above. **They are due within ten (10) days of the date when Exceptions are due.**

It is your responsibility to serve all the parties with your Exceptions and Replies to Exceptions. Failure to do so may render your filing unacceptable. A certificate of service (see format in 52 Pa. Code §1.58) shall be attached to the filed Exceptions or Replies to Exceptions.

Exceptions and Replies to Exceptions shall follow 52 Pa. Code §§5.533 and 5.535 particularly the 40-page limit for Exceptions and the 25-page limit for Replies to Exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Initial Decision shall include the page number(s) of the cited section of the decision.

If no Exceptions are received, the decision of the Administrative Law Judge could become final without further Commission action. You will receive written notification if this occurs. However, even if no exceptions are received, the Commission may review and change the decision pursuant to Section 332(h) of the Public Utility Code, 66 Pa. C.S. § 332(h) and 52 Pa. Code Section 5.536.

Sincerely,

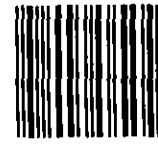

Rosemary Chiavetta
Secretary

Decision attached

Mr. David Hatchigian
2414 W Township Line Rd
Havertown, PA 19083-5236



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*Rosemary Cheaveth, Secretary
Pennsylvania Public Utility Commission
Commonwealth Steel, Second Floor
400 North Street,
Harrisburg, Pa 17120*