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8 **PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
9  
10 **HARRISBURG PA 17120**  
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13 Rashid El MLK, Sr  
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15 V  
16 PECO Energy Company and  
17 Reliant Energy Northeast LLC t/a F-2020-3018838  
18 NRG Residential Solutions  
19  
20

21 **RECONSIDERATION AND CLAIRIFICATION**  
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23  
24 Petitioner, Rashid El Malik, Sr, petitions the PUC to reconsider their  
25 December 16, 2021, decision upholding the ALJ Conrad A. Johnson decision  
26 issued on December 1, 2020, in the above caption proceeding.

27  
28 Petitioner filed an exception to the December 1, 2020, ruling and the  
29 PUC denied petitioner exception, granted exceptions of PECO, and adopted the  
30 ALJ initial decision as modified. Petitioner requests this reconsideration based  
31 on the preponderance of evidence that support his assertion of NRG Slamming  
32 and PECO complicity in proving consumer contact information.

1 **DISCUSSION**

2 Since the PUC upheld the ALJ December 1, 2020, ruling that the petitioner  
3 did not meet his burden to show that a civil penalty should be assessed against  
4 NRG; Petitioner argues the record supports his assertions that he met his burden  
5 of proof, and the PUC erred in its ruling that Petitioner failed to meet the  
6 preponderance of the evidence ruling.  
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10 **LEGAL STANDARD**

11 To establish a sufficient case and satisfy the burden of proof, the  
12 Petitioner must show that either PECO or NRG separately or  
13 together are responsible or accountable for the problem described  
14 in the Complaint. *Patterson v The Bell Telephone Company of*  
15 *Pennsylvania*, 72 Pa. P.U.C. 196 (1990)  
16  
17

18 The showing must be by a preponderance of the evidence.  
19 *Samuel J Lansberry, Inc. v Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth 1990),  
20 *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992)  
21

22 Petitioner evidence must be more convincing, by even the  
23 smallest amount, than that presented by the Respondents' PECO or  
24 NRG. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854  
25 (1950).  
26

27  
28 Petitioner met his burden of showing NRG switched his electric  
29 and gas without his consent, and that PECO provided NRG with his  
30 private and personal information to facilitate the switched  
31  
32

1                   **ARGUMENT**

2                   In determining whether a civil penalty should be assessed  
3 against NRG Residential, the ALJ concluded that the evidence  
4 presented at the hearing "did not shed much light on the  
5 unauthorized supplier switches, both electric and natural gas,"  
6 that occurred on January 21, 2019. *Id.* at 12. While NRG  
7 Residential stipulated that the switches were unauthorized, the  
8 ALJ found the evidence wholly lacking as to who signed the  
9 enrollment forms or as to NRG Residential's further culpability  
10 regarding the unauthorized switches. *Id.* As such, the ALJ  
11 concluded that no pattern of unauthorized enrollments by NRG  
12 Residential was established at the hearing; and, therefore, no  
13 civil penalty was warranted *Id*  
14

15                   Here Petitioner disagrees with these finding and points to the record.  
16 The record supported the allegations of NRG unauthorized enrollments of  
17 not only the Petitioner but that the BCS had entered into a Settlement  
18 Agreement filed with the Commission on September 29, 2020, eight  
19 (8) months after Petitioner filed his complaint with the commissioner  
20 for Slamming by switching residential customers electric account  
21 without the customers authorization. (See footnote # 5 Pg. 7 of PUC  
22 Opinion and Order)  
23

24                   The Commission on March 25, 2021 approved the Settlement  
25 Agreement, which, inter alia, assessed the Company a civil penalty of  
26 \$175,000. (See *Pa. PUC, Bureau of Investigation and Enforcement v.*  
27 *Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business*  
28 *Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail*  
29 *Solutions, NRG Home and NRG Business*, Docket No. M-2020-3006647  
30 (Order entered March 25, 2021).  
31  
32

1 Although the record concluded, the ALJ concluded that no pattern  
2 of unauthorized by NRG Residential was established at the hearing, the  
3 record mention above clearly showed a pattern by NRG of switching  
4 customers account without their consent.

5 A review by BCS of the Petitioner informal complaints determined  
6 that an agent of NRG who used an eligible customer list at public retail  
7 locations set up the alleged unauthorized enrollments. <sup>1</sup>

8 The record showed BCS became concerned that NRG Home agents  
9 were improperly using the eligible customer list, which contains  
10 customer information, to switch customers to NRG Home without the  
11 customers' consent. BCS referred the matter to the Commission's  
12 Bureau of Investigation and Enforcement (I&E).  
13  
14

15 **Slamming**

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18 Slamming is an unauthorized change made to a customer's supply  
19 service. *HIKO Energy LLC v. Pa. PUC*, 163 A.3d 1079, 1090 (Pa.  
20 Cmwlth. 2017) "Slamming" is an unauthorized change made to a  
21 customer's supply service which the Pa. Pub. Util. Comm'n, Bureau of  
22 Investigation & Enforcement v. Pub. Power, LLC, No. M-2012-2257858  
23 (Dec. 19, 2013), slip op. at 8, 2013 WL 6835126 (Pa.P.U.C.) at \*5 which  
24 the Pa PUC has "zero tolerance." See Pa. Pub. Util. Comm'n, Bureau of  
25 Investigation & Enforcement v. Res Com Energy LLC, No. M-2013-  
26 2320112, 2014 WL 2876696 (Pa.P.U.C.)  
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32 <sup>1</sup> NRG could only receive the Petitioner private information from PECO

1 Despite its alleged, "zero tolerance" for slamming, Plaintiff argues, the  
2 PUC now attempts to discount NRG's violations. At issue is NRG personal  
3 responsibility of its employee that signed the unauthorized signature  
4

5 The PUC accepted NRG unsupported statements that the record  
6 lacked evidence showing who actually initiated the Petitioner  
7 switch. The PUC Informal Complaint Decision dated 12/27/2019  
8 BGS # 3689289 contradicts NRG unsupported statements and the  
9 PUC acceptance of NRG unsupported statement.  
10

11 The BCS report concluded NRG stated the sale representative who  
12 completed Petitioner unlawful enrolment had a similar complaint  
13 lodged against him, and that NRG has since interviewed and  
14 coached the employee with additional training. <sup>2</sup> Therefore, NRG  
15 and PUC knew who switch Petitioner electric and gas without  
16 authorization and NRG was liable; notwithstanding the  
17 commissioner had entered into an agreed settlement with NRG for  
18 similar behavior.  
19

20 NRG provided no material evidence to rebut Petitioner  
21 complaint that the company was continuing to practice Slamming  
22 If NRG had produce any rebuttal evidence Petitioner would had  
23 been required to provide additional evidence to rebut the  
24 Respondents' evidence. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa.  
25 Cmwlth. 1982), *aff'd*, 501 Pa. 433,461 A.2d 1234 (1983). <sup>3</sup>  
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27  
28 <sup>2</sup> NRG should have fired their representative for committing a felony for forging a signature  
29 instead of retraining.

30 <sup>3</sup> Upon the presentation by the Complainant of evidence sufficient initially to satisfy the burden  
31 of proof, the burden of going forward with the evidence (burden of persuasion) to rebut the  
32 evidence of the Complainant shifts to the Respondents.

1 Since NRG provided no evidence other than their  
2 representative who had a similar complaint filed against him had  
3 continued to use the consumer list provided by PECO to commit an  
4 unlawful act by forging Petitioner signature. PCU failed to protect  
5 Petitioner one of their consumers by allowing such behavior to  
6 continue.  
7

8 **CONCLUSION**

9 Petitioner request for reconsideration and granting his exceptions is  
10 supported by substantial evidence based on the written record. NRG  
11 failed their burden of persuasion to rebut Petitioner evidence. The PUC  
12 should grant Petitioner exceptions, levy additional penalties against  
13 NRG for forging Petitioner signature, and investigate PECO's complicity  
14 in providing NRG with their customer list. A new policy should emerge  
15 from the PUC investigation to prevent PECO from allowing EGS and  
16 NGS to receive customer's private information without their  
17 consent.  
18

19 **CLAIRIFICATION**

20 Petitioner request clarification of footnote 5 of the December 21, 2021, Opinion  
21 and Order  
22  
23 Petitioner seeks clarification as to why the PUC only cited the evidence in footnote  
24 five instead of using the material evidence to the facts of this case showing NRG  
25 pattern of continued **Slamming** especially the allegations similarities between the  
26 cases. Petitioner argues the facts are the same.  
27

28 Respectfully Submitted  
29

30  
31 December 27, 2021

32 Rashid El Malik, Sr, JD