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March 25, 2022

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

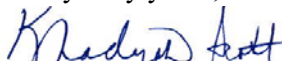
RE: Wanda Walker v. PECO Energy Company
PUC Docket No. C-2020-3023220

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the refiled *Reply Exceptions PECO Energy Company*. The previous filing contained an error within the document.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



Khadijah Scott, Esquire
Assistant General Counsel, Exelon BSC
Encl.

Cc: Honorable Darlene Heep, ALJ (via email)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WANDA WALKER	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-3023220
	:	
PECO ENERGY COMPANY	:	
	:	
Respondent	:	

**REPLY EXCEPTIONS OF
PECO ENERGY COMPANY**

Pursuant to 52 Pa Code §5.533, PECO Energy Company (“PECO”) hereby files its Reply Exceptions filed by Wanda Walker (“Complainant”) on March 16, 2022.

I. Introduction

On December 9, 2020, PECO Energy was served with a Complaint where the Complainant disputed the amount of the balance transfers that occurred on her various accounts. On December 23, 2020, PECO Energy filed an Answer to the Complaint denying all material allegations of the Complaint and averred that the Complainant’s charges were correct.

On March 9, 2021, July 14, 2021, and September 29, 2021, a telephonic hearing took place before the Honorable Administrative Law Judge Dalene Heep (“ALJ Heep”). At the hearing, the Complainant testified on her behalf. Senior regulatory assessor, Deba Ather, testified on PECO’s behalf. Exhibits were entered into the record by both parties. On February 28, 2022, ALJ Heep issued an Initial Decision (“Walker I.D.”). The *Walker* I.D. held that PECO improperly transferred \$1,777.34 to the Complainant’s residential Glenside Account; PECO is to review the charges transferred to the Complainant from 6801 17th Street, 3 MID 7, Philadelphia,

Pennsylvania totaling \$2,391.03; PECO properly allocated payments for check #1123 totaling \$3044.36.

On March 16, 2022, the Complainant filed Exceptions to ALJ Heep's Initial Decision challenging what it alleges is a failure of PECO to supply an accounting of the Complainant's payments, as well as a failure of ALJ Heep to assess a fine against PECO. PECO Energy files the instant Reply Exceptions and hereby respectfully requests that the Commission deny the Complainant's Exceptions.

II. Scope of Review

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility, PECO Energy, is responsible or accountable for the problem described in the Complaint through a violation of the Code or a regulation or order of the Commission. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. denied, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record, which is defined as evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980). Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the

burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the complainant, shifts to the respondent. If the evidence presented by the respondent is of co-equal value or “weight,” the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v Pa. PUC*, 443 A.2d 1371 (Pa. Cmwlth. 1982), *aff’d*, 433 A.2d 1234 (Pa. 1983). While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

It should be noted that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *See also*, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

III. Legal Argument

a. The Complainant has been provided an accounting of her payments

The Complainant in this proceeding, Wanda Walker, is a landlord property owner who has had approximately fifty (50) accounts in her name at various points in time with PECO. The Complainant currently has eleven (11) active accounts with PECO. The Complainant’s Exceptions make a blanket assertion that PECO failed to show an “accounting of payments and distribution of funds.” The Complainant has failed to specify what accounting it alleges PECO failed to produce. Notwithstanding the lack of specificity, PECO avers that it has provided an accounting record with regard to the Complainant’s utility payments.

PECO provided two-year account activity statements for every active account held in the Complainant’s name at the time of hearing. Each account activity statement reflected in detail

the breakdown of every payment received by the Complainant. Specifically, two-year account activity statements were provided for the addresses of:

1. 5015 Wayne Avenue, Office, Philadelphia, PA
2. 5015 Wayne Avenue, 1st Floor, Philadelphia, PA
3. 5015 Wayne Avenue, 2nd Floor, Philadelphia, PA
4. 5015 Wayne Avenue, 3rd Floor, Philadelphia, PA
5. 5023 Wayne Avenue, Public Lighting, Philadelphia, PA
6. 5023 Wayne Avenue, 1st RR, Philadelphia, PA
7. 6801 N. 17th Street, Public Lighting, Philadelphia, PA
8. 5023 Wayne Avenue, Front 1st, Philadelphia, PA
9. 5023 Wayne Avenue, 2nd Floor, Philadelphia, PA
10. 8304 Pickering Street, 1st Floor, Philadelphia, PA
11. 452 Twickenham Rd., Glenside, PA

See, PECO Exhibit 5; TR. 9/29/21 at 179-192.

Moreover, as the *Walker* I.D. properly held:

The Complainant provided more than 200 pages of copies of checks written to PECO and texts from PECO confirming payments made. (Complainant Exhibit A and C, Exhibit C-3). PECO reviewed the payments and **provided a report regarding payments that were credited to the account.** (PECO Exhibit 8). The PECO accounting shows that the payments were credited to accounts of the Complainant.

Walker I.D. at 15. (*emphasis added*)

PECO also provided monthly billing statements for the Complainant's accounts during the months of July and August 2018, as well as, an itemized transfer balance history on each of the complainants accounts. *See*, PECO Exhibits 11, 13 and 15. This issue is without merit.

b. The Initial Decision Properly Held that a Fine was Not Warranted

In this matter, the Complainant does not allege that the ALJ Heep made an error of law or abused her discretion in any manner. The Exceptions blanketly state that “penalties were not imposed against PECO for their misallocation of Complainants payments and refusal to provide an accounting.” It is PECO’s position that a misallocation of payments did not occur, and that ample accounting was provided for each of the Complainant’s accounts.

PECO’s regulatory assessor, Deba Ather, testified that each account balance associated with the Complainant’s account accrued during the time frame that the account was in the name of the Complainant, not a tenant.

Q. Okay. Now, Ms. Walker's dispute is regarding some billing that she believes belongs to tenants. Let me ask you, if a tenant did put service in their name and they accumulated a balance and then that account finals, does that tenant balance go back to the landlord when that tenant discontinues service?

A. It does not.

Q. Okay. Does that balance that the tenant accrues follow the tenant or does it stay at the property?

A. The balance would follow the tenant whose name that the balance was under.

Q. Okay. If a balance is accrued at one of Ms. Walker's properties but the service was not in her name at the time that balance was accrued, would that balance belong to Ms. Walker?

A. The balance would belong to the person whose name it was accrued under.

Q. Okay. Now, the balances that PECO has charged Ms. Walker, was service in her name at the time those balances accrued?

A. Yes, they were in her name.

TR. 9/29/21 at 178-179.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa. C.S. §332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Company is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990) (Patterson). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 3. However, mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Helen Leung v. Philadelphia Gas Works*, 2021 PA. PUC LEXIS 519 (2021).

The Complainant did not produce any evidence to suggest that a tenant resided at the property during the time that the balance accrued. The *Walker* I.D. held that “the Complainant credibly testified that the tenants whose bills she received had service in their own names as part of a requirement of the Philadelphia Rapid Housing Program, a program for homeless women and families and people needing shelter. (Tr. 39-42).” However, the Complainant merely testified that she worked with a housing program that provided a stipend to tenants to use for their utility bill. The Complainant testified that the tenants were responsible for placing service in their name. There was no testimony from any party that it was a “requirement” of the program. She further testified that the stipend was not paid directly to PECO. Therefore, this testimony does not in any way support the proposition that a tenant had service in its name during the time that service was in the Complainant’s name and she was billed for improper usage.

- A. One is Rapid Housing, the Rapid Housing Program. And I can look at an e-mail because I -- as a matter of fact, I have the old one. I can tell you because I, I help so many different programs.

Q. Do the programs pay their rent to you?

A. Yes, and they pay, some of them pay -- this particular program pays their -- I'm looking at it right now, Apartment 7. This is the City of Philadelphia Homeless Service Rapid Rehousing 1 Program. I was right.

Q. Okay. So the arrangement was the program would pay their rent and provide these various services to them, they would pay the rent to you as the landlord and these individuals were responsible for getting the electric turned on in their name. Is that an accurate statement?

A. Yes, and they give them a stipend to pay those utility bills.

Q. Okay. And all the -- the stipend, that 11 wasn't paid to you, that was paid directly to PECO?

A. That was paid to the tenant.

TR. 7/14/22 at 40-41.

The Complainant neither produced any evidence of the rental program nor a rental lease for any tenant during any time frame that she alleges the billing accrued improperly under her name. Pursuant to 52 Pa. Code. § 56.16. Transfer of accounts.

(a) A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered.

(b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer.

In this case, the Complainant requested that service be placed in her name at multiple properties, including service at 6801 N. 17th Street, 2, Mid 4, Philadelphia, PA. The bills and balances were accumulated during the time frame that the accounts were in the Complainant's name. *See*, Exhibits 6 and 15. Pursuant to 52 Pa. Code. §56.16(a), the Complainant had an obligation to contact the company to discontinue service; and therefore, she is responsible for the

charges incurred until the service was discontinued, and final billed. Pursuant to 52 Pa. Code. §56.16(b), the accounts were in the name of the Complainant, therefore the balances were properly transferred to an active account of the Complainant.

In *Leung v. Philadelphia Gas Works*, the Commission held the property owner responsible for the transferred balances which she alleged belonged to her tenants. The Commission further held that utilities are required to list accounts for individually metered rental units in the name of the owner, absent a request for service by the tenant or other authorized representative. Pursuant to 66 Pa. Code 1529.1:

1529.1. Duty of owners of rental property. (a) Notice to public utility.--It is the duty of every owner of a residential building or mobile home park which contains one or more dwelling units, not individually metered, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes. (b) History of account.--Upon receipt of the notice provided in this section, if the mobile home park or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto. In the case of individually metered dwelling units, unless notified to the contrary by the tenant or an authorized representative, an affected public utility shall list the account for the premises in question in the name of the owner, and the owner shall be responsible for the payment for utility services to the premises. (c) Failure to give notice.-- Any owner of a residential building or mobile home park failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

Thus, as the property owner without a tenant of record holding an account with PECO, the account and its balance was property attributable to the Complainant. Specifically, the Complainant failed to produce any evidence that she did not place service in her name or that service was in the name of any tenant during the accumulation of charges at 6801 N. 17th Street, 2 Mid 4, Philadelphia, PA during the time that the charges of \$1,777.34 accumulated. To the

contrary, the Complainant testified that she often placed service in her name at her apartment units after a tenant vacated in order to make repairs. *Walker* I.D. at 7.

Accordingly, the Walker I.D. properly held that a penalty was not warranted under 52 Pa. Code §69.1201.

In view of the factors to be considered, a civil penalty is not warranted here. There was no fraud or misrepresentation, or evidence of intentional misconduct, as contemplated by factors 1, 2 and 3. The violation appears to be one of accounting error rather than a problem with general company procedures, as raised in factor 4. The record does not reflect that PECO has a compliance history of such violations, the factor 6 consideration for imposition of penalties. Therefore, no penalty will be imposed. *See Rahman v. Verizon Pa.*, Docket Number C-2016-2564338 (Opinion and Order entered June 14, 2018).

Walker I.D. at 18.

PECO submits that this issue is without merit and respectfully requests that the Commission overturn the holding in the Initial Decision that PECO improperly transferred the balance of \$1,777.34 to the Complainant's Glenside account.

III. Conclusion

For the reasons stated above, PECO respectfully requests that the Commission issue an Order in this proceeding that:

1. The Complaint is denied in its entirety as to PECO.
2. The docket is closed.

Respectfully submitted,



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Dated: March 25, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WANDA WALKER

Complainant

v.

PECO ENERGY COMPANY

Respondent

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Docket No. C-2020-3023220

VERIFICATION

I, Khadijah Scott, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.



Date: March 25, 2022

Khadijah Scott

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WANDA WALKER

Complainant

v.

PECO ENERGY COMPANY

Respondent

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Docket No. C-2020-3023220

CERTIFICATE OF SERVICE

I, KHADIJAH SCOTT, hereby certify that I have this day served a copy of PECO Energy Company's Reply Exceptions in the above matter upon all interested parties by e-mailing a copy to:

GEORGE GOSSETT, ESQUIRE
GEORGE GOSSETT JR. ATTORNEY AT LAW
4840 OLD YORK RD
PHILADELPHIA PA 19141
COUNSEL FOR COMPLAINANT, WANDA WALKER
Via Email: gossettlaw@msn.com

Dated: March 25, 2022



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