

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ANDREW DODSON  
COMPLAINANT**

**v.**

**PECO ENERGY COMPANY,  
RESPONDENT**

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**Docket No. C-2021-3029814**

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**REPLY EXCEPTIONS OF PECO ENERGY COMPANY**

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by ANDREW DODSON (“Complainant”) on April 6, 2022. On December 6, 2021, PECO Energy was served with a formal complaint filed by the Complainant against PECO Energy. In the formal Complaint, the Complainant stated that his bills were extremely high and that he is now receiving two bills for the same address. He requested a reconciliation of the billing and an affordable payment agreement. On December 20, 2021, PECO Energy filed an Answer to the Complaint denying all material allegations of the Complaint and averred that the Complainant’s charges were correct and that the meter was confirmed to be accurate after a field visit and meter test was conducted at the property.

On February 17, 2022, a telephonic hearing was conducted before Administrative Law Judge Gail Chiodo (“ALJ Chiodo”). At the time of the hearing, the Complainant failed to appear. Subsequently, on February 25, 2022, the Complainant left counsel for PECO Energy a voicemail explaining that he was not able to attend the hearing because (1) his son had Covid-19; (2) he was in a car accident and (3) he had a new phone with a new operating system and “just missed it.” On March 1, 2022, the Complainant contacted ALJ Chiodo via electronic mail, stating that he was

aware that he had five (5) days in which to request a continuance, but he was not able to attend the hearing because (1) he had Covid in late June through August; (2) his son did not have Covid and (3) he was in no shape to present a defensible case.

On March 18, 2022, ALJ Chiodo issued a well-reasoned Initial Decision in this matter denying the Complainant's request to reopen the record and schedule a further hearing in this matter. The Complainant's case was dismissed. ALJ Chiodo found that the Complainant failed to meet his burden of proof that there was good cause in which to grant his request for a further hearing.

On April 6, 2022, the Complainant filed Exceptions to ALJ Chiodo's Initial Decision. In his writing, the Complainant seems to attempt to litigate the facts of his case before the Commission. By scheduling a hearing on February 17, 2022, ALJ Chiodo provided the Complainant ample opportunity to present evidence, cross examine PECO's witnesses and present any objections to evidence during the hearing, but the Complainant failed to appear. PECO Energy files the instant Reply Exceptions and hereby respectfully requests that the Commission deny the Complainant's Exceptions and issue an Order adopting the Initial Decision of ALJ Chiodo.

#### **I. Scope of Review**

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility, PECO Energy, is responsible or accountable for the problem described in the Complaint through a violation of the Code or a regulation or order of the Commission. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence.

*Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. denied, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

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

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

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

## II. Legal Argument

### a. **The Complainant has failed to show good cause to warrant a further hearing**

In the case at bar, the Complainant failed to appear for his February 17, 2022, hearing. On December 21, 2021, ALJ Chiodo, provided both parties via the Public Utility Commission's' *E-File* Subscription Service a Hearing Notice. The Hearing notice provided the date of the hearing, the dial-in information for the hearing and instructions for the Complainant if he wished to seek a Continuance. It specifically stated:

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. All continuances will be granted **only for good cause**. To request a continuance, you must submit a **written request** (a "motion") at least **five (5) days** before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

*See*, Hearing Order dated December 21, 2021. (*emphasis added*)

The hearing Order also advised of what would occur if the Complainant failed to appear:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed "with prejudice" which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

*Id.*

In this matter, the Complainant does not allege that the ALJ made an error of law or abused her discretion in any manner. The Complainant does not allege that ALJ Chiodo utilized an incorrect e-mail address to notify him of the Hearing date. In fact, the Complainant does not state any show of good cause as to why the record should be opened and a further hearing granted. The Complainant merely states a plethora of inconsistencies, which he attributes to what he identifies as "Covid fog." Days after the scheduled hearing, for which he failed to appear, the Complainant

argued that he was aware of the hearing, but that he was in a car accident on the date of the hearing. The Complainant also argued that the operating system on his telephone caused him to miss the hearing. The Complainant also argued that he was aware of the hearing, but that his son had Covid-19. The Complainant also argued that he was aware of the hearing, but that his son had the flu, not Covid-19. The Complainant also argued that he was aware of the hearing, but that he had Covid-19. The Complainant later argued that he was aware of the hearing, but he was in a Covid fog from when he previously experienced Covid-19 in June through August, which caused him confusion on February 17, 2022. The Complainant further states that when his telephone alerted him to the hearing on February 17, 2022, it was 10:30 a.m., which “was too late.”

The Complainant did not contact PECO nor ALJ Chiodo on February 17, 2022, stating that he wished to pursue a hearing, nor did he follow proper protocol to request a continuance of the scheduled hearing. Pursuant to 52 Pa. Code § 1.15:

§ 1.15. Extensions of time and continuances

(b) Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Commission or the presiding officer, shall be by motion in writing, timely filed with the Commission, stating the facts on which the application rests, except that during the course of a proceeding, the requests may be made by oral motion in the hearing before the Commission or the presiding officer. Only for good cause shown will requests for continuance be considered. The requests for a continuance should be filed at least 5 days prior to the hearing date.

52 Pa. Code § 1.15(b)

It is undisputed that a request for a continuance was not filed five (5) days prior to the hearing date, February 17, 2022. Accordingly, ALJ Chiodo’s Initial Decision is well-reasoned with ample support from the record. As detailed in the Initial Decision, the Complainant does not set forth that PECO Energy violated any regulation, statute or order.

Moreover, the Complainant is simply seeking to circumvent the hearing and litigate the issues raised in the Complaint via Exceptions. Accordingly, the Complainant's Exceptions should be dismissed.

**III. Conclusion**

ALJ Chiodo correctly determined that the Complainant had not met his burden of proof in this matter. Accordingly, ALJ Chiodo's decision to dismiss the Complainant's case against PECO Energy should be upheld.

For the reasons set forth above, PECO respectfully requests that the Commission deny the Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,



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Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
Direct Dial: 215.841.6841  
Fax: 215.568.3389  
Khadijah.scott@exeloncorp.com

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**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: April 8, 2022

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Khadijah Scott

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**CERTIFICATE OF SERVICE**

I, Khadijah Scott, hereby certify that I have this day served a copy of PECO Energy Company's Reply Exceptions in the above matter upon all interested parties by *E-mail* to:

ANDREW DODSON  
3 REIFFS MILL RD., HSE  
AMBLER, PA 19002  
*Via Email: andrew.dodson169@gmail.com*

Dated: April 8, 2022



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Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
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Fax: 215.568.3389  
Khadijah.scott@exeloncorp.com