

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held April 14, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

David Hatchigian

C-2020-3021199

v.

PECO Energy Company

OPINION AND ORDER

BEFORE THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of PECO Energy Company (PECO or Company) filed on September 3, 2021, to the Initial Decision of Administrative Law Judge (ALJ) Darlene Heep, issued August 16, 2021, in the above-captioned proceeding. Replies to Exceptions were received from David Hatchigian (Mr. Hatchigian or Complainant) on October 8, 2021.¹

¹ Mr. Hatchigian filed a Petition for Extension of Time in which to file his Replies to Exceptions on September 10, 2021, docketed September 23, 2021. By Secretarial Letter of September 13, 2021, the request for an extension of time to file Replies to Exceptions on or before October 8, 2021, was granted.

The Initial Decision granted, in part, the Formal Complaint (Complaint) of Mr. Hatchigian, which Complaint, *inter alia*, challenges the reasonableness of PECO's application of its tariff. Pursuant to the tariff provision that is the subject of this Complaint, PECO may require an underwriter's certificate before reintroducing electric utility service to a Service Address that has not been energized for six months or longer. Presiding ALJ Heep found that the Complainant established by a preponderance of the evidence, that PECO unreasonably applied the applicable section of the Company's tariff so as to equate the absence of a customer of record with the absence of electricity (energization) to the Service Address. Additionally, the ALJ concluded that it was unreasonable to require an underwriter's certificate to restore service where PECO shut off service to the Service Address for nonpayment. The Complainant's other challenges to PECO's conduct pursuant to its tariff were dismissed.

On consideration of the Initial Decision, PECO's Exceptions, and the Replies to Exceptions, we are constrained to disagree with the ALJ's recommendation in the Initial Decision and shall reverse it, in part. We find that PECO reasonably applied the subject tariff provision under the facts of this Complaint. Of note are the specific facts associated with the Service Address due in substantial part to inaccurate notification to PECO regarding customers of record at the Service Address and evidence of unauthorized contact or tampering with utility owned equipment at the Service Address. In all other respects, we will adopt the Initial Decision.

Background

On July 16, 2020,² Mr. Hatchigian filed the instant Complaint with the Commission at the above-captioned Docket, No. C-2020-3021199, naming PECO as the Respondent. The Complainant indicated that the Complaint was an appeal of a Commission Bureau of Consumer Services (BCS) informal complaint. Attached to the Complaint as Complainant Exhibit “P-17” was a March 14, 2014, correspondence from PECO to the Complainant that referenced a BCS informal complaint investigation at BCS No. 03323044.³

On review of the Complaint at Paragraph 5, Mr. Hatchigian did not identify the specific relief requested from the Commission. The Complaint indicated that the utility (PECO) had threatened to cut off his service. *Id.*; *also* I.D. at 2.

However, the Service Address property that is the subject of this dispute is a two-unit, duplex residential dwelling owned by Mr. Hatchigian that he rents. *See* Finding of Fact Nos. 1; 3, *infra*. The Complaint is based on Mr. Hatchigian’s challenge to PECO’s conduct whereby PECO terminated service to the rental units. After terminating service, as a condition for the reintroduction of service to the Complainant’s tenants at the units, PECO requested that an underwriter’s certificate be produced *i.e.*, evidence of inspection by a certified entity.

² The cover letter accompanying the Complaint of Mr. Hatchigian is dated, March 16, 2020, but was received by the Commission on July 16, 2020. The Commission issued a Secretarial Letter on June 24, 2020, requesting additional information from Mr. Hatchigian to perfect the filing of his Complaint.

³ The letter appears to refer to a date of a BCS decision issued “3/14/15” – a date subsequent to the PECO letter. Consequently, the relevance of this BCS decision is marginal.

The specific controversy between PECO and the Complainant surrounds events occurring on or about May 18, 2016, when tenant(s) of Mr. Hatchigian at the Service Address had service to their respective rental units (first floor and second floor) terminated for nonpayment and/or failure to take measures to become a PECO customer of record.

When the tenants attempted to comply with PECO's demands in order to have service returned to their rental units, they were told that an underwriter's certificate would be necessary as a condition of service restoration. The requirement for an underwriter's certificate stemmed from PECO's policy of requiring one when a Service Address property has been unconnected for six months or more. The PECO policy was, according to PECO, authorized pursuant to PECO's implementation of the provisions of its tariff, Tariff Section 9.2. *See* Finding of Fact Nos. 4-5, *infra*. The Complainant, as owner of the Service Address, had the responsibility (contractually and financially) to secure an underwriter's certificate prior to PECO's restoration of service to the rental units.

Mr. Hatchigian took the necessary steps, procured the underwriter's certificate, and thereafter initiated proceedings in both the courts and the Commission against PECO. Mr. Hatchigian strenuously objects to the policy of PECO under which the Company will require that an underwriter's certificate be produced before providing service to a dwelling that has not been energized for a period of six months or more. Documents attached to the Complaint and review of the transcript of the telephonic hearings held in this matter on January 6, 2021, and May 5, 2021 (Transcript "Tr.") provide details of the dispute that Mr. Hatchigian has raised with PECO.⁴

⁴ Mr. Hatchigian's opposition to the PECO policy of requiring an underwriter's inspection dates back to 2014. Tr. 42-43.

As noted, the Complainant has prosecuted his objection to PECO Tariff Section 9.2 and the Company's policy in furtherance thereof, in both the courts and the Commission. *See* I.D. at 2, n. 1. Mr. Hatchigian's Complaint, in partial response to the request for relief, attached and expressly referenced a Non-Precedential Decision of the Pennsylvania Superior Court in the matter of *David Hatchigian v. PECO/Exelon and Municipal Inspection Corporation*, No. 142 EDA 2018 (August 6, 2019); 2019 WL 3628744, *Petition for Allowance of Appeal Denied* March 9, 2020, at No. 442 EAL 2019 (*Superior Court Appeal*).

In the *Superior Court Appeal* proceedings, Mr. Hatchigian prosecutes a class action lawsuit against PECO, *et al*, based on claims arising from PECO's conduct pursuant to its tariff. The *Superior Court Appeal* vacated an order of the Court of Common Pleas, Philadelphia County, which dismissed the action with prejudice. The appellate court vacated the order of the lower court and remanded the matter to the lower court directing that the court enter an Order transferring the action to the Commission. *See* PECO Exceptions (Exc.), *infra*, at 1. However, the *Superior Court Appeal*, in pertinent part, adopted the reasoning of the lower court and cited such reasoning with approval, in support of its decision to remand the action to the Commission.

The *Superior Court Appeal*, under the doctrine of primary jurisdiction, remanded for Commission determination, such issues that are within the expertise of the Commission. *See Elkin v. Bell Telephone Company of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980).⁵ The issues remanded for Commission determination may be referenced as

⁵ "Primary jurisdiction 'applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body.' In contrast, when the legislature provides an agency with 'exclusive primary jurisdiction,' it preempts the courts' original jurisdiction over the subject matter." *MCI v. Teleconcepts*, 71 F. 3d 1086 *citing* *Greate Bay Hotel & Casino v. Tose*, 34 F.3d 1227, 1230 n. 5 (3d Cir. 1994) (citations omitted).

follows: “[H]atchigian’s [sic] additional causes of action all hinge on whether PECO either misinterpreted its tariff, applied the tariff to Hatchigian unreasonably, or that the tariff itself is insufficient to provide due process to PECO’s customers.” *Superior Court Appeal*, No. 142 EDA 2018 (August 6, 2019), slip op. at 12.

The relevant attachments to the Complaint (Complainant designated Exhibits P-1 through P-25) were identified in the Initial Decision and included in the record, re-identified. *See* Tr. at 20.

The Complaint of Mr. Hatchigian at the above-captioned docket is also, inexorably related to, and is an extension of, a formal complaint filed with the Commission at Docket No. C-2015-2477321. *See Hatchigian v. PECO*, Docket No. C-2015-2477321 (Order entered December 8, 2016) (*2015 Complaint Order*).⁶

On review of the facts of the instant Complaint and the proceedings of the *2015 Complaint Order*, the factual circumstances of the two were found sufficiently distinguishable by ALJ Heep to support a recommendation to grant partial relief to Mr. Hatchigian. However, the ALJ appropriately noted that certain of Mr. Hatchigian’s claims in the case now before the Commission were barred by claim preclusion and issue preclusion principles in light of the *2015 Complaint Order*. *See* I.D. at 13-14.

A. 2015 Complaint

On April 17, 2015, PECO was served with a formal complaint of Mr. Hatchigian at Docket No. C-2015-2477321 (*2015 Complaint*). The *2015 Complaint* raised the following issues (summarized):

⁶ A detailed summary of litigation involving the Complainant and PECO regarding this dispute is also set forth in PECO’s Exceptions, pages 1-2; *also* Tr. 131-133.

On April 10, 2015, David Hatchigian filed a Formal Complaint (Complaint) against PECO with the Commission alleging that he incurred expenses of \$75.00 for an underwriter's certificate, lost \$300.00 of rent and lost time due to PECO's requirement that an electrical underwriter inspect the electrical wiring of the service address prior to reconnecting service.² As relief, the Complainant requested that the Commission order the Respondent to award him \$500.00 compensation for the lost rent, the loss of time, and the cost of an underwriter's certificate. Complaint at 1.

² The Complainant owns a duplex with two apartments at the service address and was attempting to rent the second floor apartment that had been vacant for over seven months. Findings of Fact Nos. 1, 3, 7 and 8.

* * *

Positions of the Parties

The Complainant argued that it was not reasonable for PECO to require him to obtain and pay for an underwriter's certificate unless a safety concern had been identified. Tr. at 11-13. The Complainant also testified that his prospective tenant could not move into the apartment on time because the Company would not provide electric service before the underwriter's certificate was submitted. Tr. at 13. The Complainant claimed that the other apartment in the duplex had electricity and that the electric service for the second floor apartment had only been off a short time. Tr. at 10. The Complainant further asserted that PECO failed to cite a law or tariff that required him to submit the underwriter's certificate. Tr. at 15, 64; Complainant Exhs. 7 and 8; PECO Exh. 8.

PECO stated that the Company had requested an underwriter's certificate from the Complainant because the service at his vacant apartment within the duplex had been off longer than six months. Tr. at 33; PECO Exhs. 1 and 4. PECO asserted that its request for an underwriter certificate was based on a Company policy and its Tariff. Tr. at 30, 31; PECO Exhs. 4 and 5. PECO claimed that its policy requires

an underwriter's 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. Also, PECO explained that the Respondent's tariff permits it to request an underwriter's certificate. . . .

2015 Complaint Order at 6-7.

In an Initial Decision issued January 21, 2016, presiding ALJ Cynthia Williams Fordham dismissed the complaint finding, *inter alia*, that Mr. Hatchigian did not meet his burden of proof concerning a violation of the Public Utility Code (Code), 66 Pa. C.S. §§ 101, *et seq.*, or Commission Regulation.

In pertinent part, ALJ Fordham reasoned that utility tariffs are service rules and regulations adopted by public utilities relating to rates and, as such, are not mere contracts but have the force of law and are binding on the consumer and the utility. *See 2015 Complaint Order* at 7, citing *Stiteler v. Bell Telephone Co.*, 379 A.2d 339 (Pa. Cmwlth. 1977); *Brockway Glass Company v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981) (*Brockway Glass*); *Pennsylvania Electric Company v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995).

The reasoning of presiding ALJ Fordham additionally noted that tariff provisions that have been approved by the Commission, as the PECO tariff provision Section 9.2, at issue in the complaint, are *prima facie* reasonable. *See 2015 Complaint Order* at 8, citing January 21, 2016, Initial Decision at 11, citing *Lynch v. Pa. PUC*, 594 A.2d 816 (Pa. Cmwlth. 1991), *app. denied*, 529 Pa. 670, 605 A.2d 335 (1992); and 66 Pa. C.S. § 1501 – Code provision requiring public utilities to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities and make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service

and facilities as shall be necessary or proper for the safety of its patrons, employees, and the public.”

Mr. Hatchigian filed Exceptions to the January 21, 2016, Initial Decision wherein the following arguments were addressed:

Exceptions and Replies

In his Exceptions, the Complainant asserts that the “or” terminology within Section 9.2 of PECO’s Tariff, which designates the three-part criteria for underwriter certification, creates a double meaning that warrants consideration of extrinsic evidence. The Complainant states that while the record shows that electric service was discontinued at his apartment for more than six months, there was no evidence presented that the apartment could not be certified safe without an underwriter. To the contrary, the Complainant maintains that the record indicates safe service was determined without the need for an underwriter’s certificate. Also, the Complainant avers that whereas tariff provisions that have been approved by the Commission are prima facie reasonable, the Commission could not have intended to give PECO unlimited discretion to punish owners and tenants in the manner mandated by looking to the tariff’s plain language alone. The Complainant opines that notwithstanding the “or” language in the Commission-approved Section 9.2, utilities do not have unlimited discretion to formulate tariffs just as long as they are driven by public policy. Exc. at 1-2.

The Complainant avers that based on the evidence, there was no hazardous condition at the property in question. Exc. at 2 (citing Tr. at 41). Furthermore, the Complainant notes that the inspection confirmed there was no realistic likelihood of structural decay or deteriorated wiring so as to risk an unsafe condition developing during that time. As such, the Complainant opines that in this case, the Commission can refrain from revisiting the undisputed facts or its factual determination with respect to the policy’s “hazardous condition” criteria. The Complainant further opines that the decision to enforce the tariff with no exception despite the

absence of any unsafe condition was reached by overriding the facts and through a mistake of law. According to the Complainant, the lack of exemption or waiver provision in the tariff is unreasonable. Exc. at 2-3.

The Complainant asserts that he testified that comparable service to an adjoining apartment with the identical wiring was safe after a period of discontinuity. The Complainant opines that if he had been permitted to do so at the hearing, it would have been a simple matter to establish with reasonable certainty the maintenance measures taken to render the service in a safe condition for the preceding six month period. Exc. at 3 (citing Tr. at 13). The Complainant avers that the ALJ's decision disregards that the owner is required to pay the identical premium for certification even after it is clear that there is no unsafe condition at his property. Without the possibility of exemption, the Complainant maintains that as applied, the tariff mandates that the property owner contact a third party electrical inspection agency, pay a separate fee to confirm there is no violation of the electrical code, and verify the absence of a hazard for the Company's employees. According to the Complainant, the plain language relied upon by the Company overrides the simple fact that having a test meter in place will indicate full functioning of the wiring and that an inspector's finding of "no hazardous condition" renders the discontinuity parameter entirely redundant. Exc. at 3-4.

In conclusion, the Complainant requests that the ALJ's decision should be reversed and the record remitted with directions to reconsider whether a reasonable exception is implied by the tariff. Exc. at 8.

2015 Complaint Order at 9-10.

On consideration of the positions of the Parties, we adopted the Initial Decision and dismissed the complaint of Mr. Hatchigian. In the *2015 Complaint Order* we reasoned, in pertinent part, as follows:

Based upon our review of the evidence of record, as well as the Exceptions and the Replies thereto, we shall deny the Complainant's Exceptions. We find that the ALJ properly dismissed the Complaint as he has failed to sustain his burden of proof that PECO acted unreasonably when requiring him to obtain an underwriter's certification before reconnecting electric service to an apartment that had been unoccupied for over six months. We find that the evidence presented by PECO determined that its request was reasonable, permitted by its Commission approved tariff and is based upon currently existing Company policy. Specifically, Section 9.2 of PECO's Commission approved tariff allows the Company to refuse to connect service unless an underwriter's certificate is submitted by an authorized inspection agency.

Furthermore, we find that PECO's policy that requires the submission of said underwriter's certificate when the electric service has been off for six months or more when there is no electric meter at the property, or when there is a hazardous condition, is reasonable and appropriate to ensure the safety of the Company's customers, their property and the Company's employees. It is important to note that the safety of the electric distribution system in Pennsylvania is of paramount importance to this Commission and we do not condone compromising PECO's responsibility to provide safe electric service based upon the facts of this Complaint proceeding.

2015 Complaint Order at 12.

B. Complaint

In the Complaint presently before the Commission, Mr. Hatchigian challenges the reasonableness of PECO's application of its tariff provision, Section 9.2, under facts which have their genesis in a May 18, 2016, incident involving tenants at the Service Address. The Service Address is the same residential dwelling, a two-unit duplex, considered in the *2015 Complaint*. See *2015 Complaint* Initial Decision Finding of Fact No.1; Finding of Fact No. 1.

In the May 18, 2016, incident, the tenant of record for the second-floor unit, Ms. Suenee Walker, had service terminated for non-payment. Tr. 134. The tenant (Ms. Walker) applied for service at the Service Address and was advised that an underwriter's certificate would be needed. *See* Tr. at 14; 21; 32; 35-36; 82. However, as noted, *infra*, the termination of service to the second-floor unit on May 18, 2016, was based on non-payment. PECO notes, *infra*, that the termination of service to the second-floor tenant is not relevant to the instant Complaint, as an underwriter's certificate was received on behalf of the second-floor tenant prior to initiating the service to Ms. Walker and based on the account which became past due and the subject of a service termination.

Simultaneous with the termination of service to Mr. Hatchigian's second floor tenant on May 18, 2016, service was also terminated to the first-floor tenant. At the time service was terminated to the first-floor tenant's rental unit, the occupant was not a customer of record in PECO's records. And, for reasons more fully explained during the course of the proceedings, the first-floor tenant assumed occupancy at the Service Address premises prior to taking the measures to become a PECO account holder of record.

C. ALJ's Initial Decision

The Parties vigorously contested the admissibility of various documentary exhibits. Rulings on the admissibility of exhibits was addressed in the Initial Decision, pages 5-8. The rulings are adopted, with the specific exception of PECO Late-filed Exhibit 5. *See* I.D. at 16, n. 6. Contrary to the position of ALJ Heep, we will afford PECO Late-filed Exhibit 5 probative value in our consideration and disposition of the Exceptions and resolution of this Complaint. A definitive list of the exhibits accepted for inclusion of the record in this matter is listed at pages 7-8 of the Initial Decision.

ALJ Heep reached twenty-two (22) Findings of Fact and drew nine (9) Conclusions of Law. I.D. at 8-11, 21-22. We, hereby, adopt said Findings of Fact unless said findings are expressly rejected, or rejected or modified by necessary implication from our discussion in this Opinion and Order. We additionally adopt the Conclusions of Law of the presiding ALJ, as modified by our discussion to reverse the Initial Decision, however, we expressly reject Conclusion of Law No. 7.

The pertinent Findings of Fact are reprinted below:

* * *

3. The service address is a duplex with two apartments, a first-floor and a second-floor apartment. Tr. at 8.
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 Jacyln 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 P5, 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.

I.D. at 8-11.

After addressing the applicable criteria regarding burden of proof, burden of going forward with the evidence, and the burden of persuasion,⁷ the ALJ determined that the Complaint raised the following issues:

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

⁷ See I.D. at 11-13.

Complainant did not receive notice of the May 18, 2016 shut off.

I.D. at 13.

1. Reasonableness of PECO Tariff Section 9.2

ALJ Heep recommended that the Complainant's challenge to the reasonableness of PECO Tariff Section 9.2 be denied. The ALJ duly noted the *prima facie* reasonableness of utility tariffs as discussed and found in the *2015 Complaint Order*. I.D. at 13. Therefore, and based on the Commission determinations in the *2015 Complaint Order*, she dismissed the claim as barred under the doctrine of *res judicata*:

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. Volkswagonwerk 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*.

I.D. at 14.

2. PECO Application of Tariff Section 9.2 and Underwriter's Certificate Policy

On consideration of the facts of the Complaint, ALJ Heep concluded that Mr. Hatchigian met his burden of proof to establish a *prima facie* case that PECO misapplied its policy of requiring an underwriter's certificate as a condition of service in this proceeding. I.D. at 14-15. The determinative facts and reasoning were addressed in the Initial Decision as follows: PECO shut off electric service at the Service Address on May 18, 2016. I.D. at 15, citing 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, however, both units at the Service Address were occupied and had PECO provided electric utility service. *Id.*, citing 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." *Id.*, citing Complainant Exhibit P-1. Mr. Hatchigian subsequently obtained an underwriter's certificate to satisfy PECO's policy to have both apartments at the Service Address energized. *Id.*, citing PECO Exhibit 4; Tr. at 150. *See* I.D. at 14-15.

ALJ Heep reasoned, in pertinent part, that the evidence presented by the Complainant outweighed that presented by PECO regarding its application of Section 9.2 of its tariff under the facts of this dispute. ALJ Heep concluded that the evidence established that electric service to the Service Address had not been absent for a period of six months or more. *See* Finding of Fact No. 20. Rather, both units at the Service Address received electric utility service and were energized, but subsequent tenants at the units failed to become customers of record according to PECO's account records for periods in excess of six months. *See* Finding of Fact Nos. 13; 14; 15.

PECO's response to the *prima facie* case of Mr. Hatchigian, upon the analysis of ALJ Heep, did not meet its burden of going forward with evidence sufficient to overcome the persuasive value of the Complainant's evidence. A summary of PECO's position was as follows: "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." I.D. at 15.

Based on the foregoing, and in light of the ALJ's conclusion that the Complainant's burden of production was not adequately met by the Company, she determined that it was unreasonable for PECO to equate absence of a customer of record with absence of electricity at a service address. ALJ Heep further concluded that it was unreasonable to require an underwriter's certificate to restore service where PECO shut off service May 18, 2016, for nonpayment. The actions of PECO concerning its underwriter policy were found in violation of 66 Pa. C.S. § 1501. I.D. at 16.

3. Notice of Shut-off

PECO did not send the Complainant notice before the May 18, 2016, shut off of service to both the first and second floor apartments at the Service Address. On April 4, 2016, PECO issued a shut-off notice to PECO's customer of record for the second-floor apartment of the Service Address. 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). However, service was shut off on May 18, 2016, within the 60-day period. I.D. at 17.

ALJ Heep recommended that the Complainant's objection to lack of receiving a ten-day notice be denied. She found that there is no requirement in the Code, Commission Regulations or a Commission Order, that PECO notify the owner or landlord prior to shut off under the circumstances of this Complaint. I.D. at 18.

4. Civil Penalty

On reaching the conclusion that PECO unreasonably applied its tariff under the facts of this Complaint, ALJ Heep recommended the imposition of a civil penalty. *See* 66 Pa. Code § 3301. Upon applying the factors of the Commission Regulations at 52 Pa. Code § 69.1201, a civil penalty of \$800 was recommended. I.D. at 18-21. The penalty was determined at the amount of \$100 per day for each day an apartment at the Service Address was without electric service. I.D. at 21.

Discussion

A. Legal Standards

The legal standards involving burden of proof, burden of production, and burden of persuasion have been adequately explained by the presiding ALJ and will be adopted. *See* I.D. at 11-13. We would stress that the Commission’s decision must be supported by substantial evidence. “[S]ubstantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *Coalition for Affordable Utility Services and Energy Efficiency in Pa., et al. v. Pa. PUC, et al.*, 120 A.3d 1087 (Pa. Cmwlth. 2016); *appeal denied*, 635 Pa. 766, 136 A.3d 983 (2016), citing *Phila. Gas Works v. Pa. PUC*, 898 A.2d 671, 675 n. 9 (Pa. Cmwlth. 2006).

B. PECO Exceptions

In its Exceptions, PECO emphasizes that its conduct was reasonable pursuant to the authority of Tariff Section 9.2. PECO explains its actions regarding the tenants at the Service Address, which address contains two rental units, first floor and second floor. PECO also clarifies the relevant time periods that are involved. The relevant time periods are significant as PECO explains that the tenants of the Service

Address did not timely and accurately notify the Company to become account holders of record, on assuming occupancy at the Service Address. This fact, in addition to the termination of service to one of the rental units for non-payment by an account holder of record, has caused confusion regarding the proper sequence of events in support of the Complainant's burden of proof.

PECO does not dispute that it shut off the electric service to the second-floor unit of the Service Address on May 18, 2016. PECO does dispute, however, that this shut off is evidence that is material or relevant to the issue of whether it applied Tariff Section 9.2 in an unreasonable manner. Exc. at 4.

PECO, in reliance on its Late-filed Exhibit 4, provides background and context to the second-floor unit at the Service Address. Exc. at 3-4. As noted, PECO clarifies that there are two separate units at issue at the Service Address and explains that the service termination which occurred in May 2016, to the second-floor apartment was addressed to PECO's then customer of record, Ms. Walker, for non-payment. Prior to initiating service to Ms. Walker at the second-floor unit, PECO's records reflected that there was no customer of record in PECO's system for this address for over a six-month period. Exc. at 3; Late-filed Exhibit 4. PECO requested an underwriter's certificate on behalf of the second-floor unit that was rented to Ms. Walker in February 2015, based on the fact that the service had been deenergized for more than six (6) months. This is confirmed by PECO's records that reflected that service had been disconnected, that zero (0) usage registered on the meter, that the meter was listed as "inactive" and that there was no customer of record. Exc. at 3-4.

Turning to its actions regarding the first-floor unit, PECO states that an underwriter's certificate for the first-floor unit was requested because the service had been deenergized from a period, August 8, 2014, to February 26, 2015, a period of time not material to the May 2016 circumstance. Exc. at 4; (emphasis ours).

Based on the foregoing, PECO argues that, pursuant to Tariff Section 9.2, - “Introduction of Service,” an underwriter’s certificate was properly requested for the second floor in March 2015. PECO cites its PECO Exhibit 2, to note that the underwriter’s certificate is dated March 1, 2015. PECO concludes this prong of its argument by making the point that a service termination which occurred to the second-floor unit of the Service Address in May 2016, (over one (1) year after the underwriter’s certificate was requested), is irrelevant as to whether service was deenergized in February 2015, a year prior, *i.e.*, the time that the underwriter’s certificate was initially required. Exc. at 4.

PECO objects to the conclusion in the Initial Decision at pages 14-16, wherein the service termination which occurred to the second floor of the Service Address on May 18, 2016, is used as evidence by the Complainant that service was also active on the first floor in May 18, 2016, when an underwriter’s certificate was obtained. Exc. at 4-5.

PECO’s records reflect that service to the first floor was disconnected in February 2015, in accordance with the request of the prior account holder of record for the first floor. Exc. at 5. After the disconnection of service, PECO’s records reflect that the meter registered zero (0) usage. In November 2015, an individual applied for service at the first-floor apartment of the Service Address and was advised that an underwriter’s certificate was required because service had been disconnected for more than six (6) months. *Id.*

PECO adds that, on November 20, 2015, an underwriter’s certificate was received on behalf of the first-floor unit but, concedes that the underwriter’s certificate needed to be resubmitted as it did not have the required modifiers to delineate a second (2nd) versus first (1st) floor inspection. Exc. at 5. PECO’s records also reflect that on

November 30, 2015, an inspection at the Service Address indicated that the meter (first floor) was off. Exc. at 5; PECO Late-filed Exhibit 4.

Further regarding the first floor of the Service Address, PECO's records reflected zero (0) usage on the first-floor meter. On May 18, 2016, PECO states that it received a call from a Ms. Joanne Randazzo, who advised that she was the owner of the property. Ms. Joanne Randazzo inquired as to why the service was turned off at the property and PECO explained that service was terminated for the second floor apartment for non-payment and that PECO had not received a corrected underwriter's certificate for the first floor and that it only had a pending account for the first floor. Exc. at 5.

PECO continues that Ms. Randazzo was informed that if the first floor did have power that was disconnected as a result of the second-floor shutoff, that there may be a foreign wiring issue at the property. Exc. at 5; PECO Late-filed Exhibit 4.

PECO, at this point in its Exceptions, sets forth facts which indicate that there was unauthorized contact and tampering with the utility owned equipment at the Service Address:

On May 19, 2016, an underwriter's certificate was received for the first (1st) floor. On May 20, 2016, a physical inspection of the meter revealed that it had been damaged. A new meter was installed and a locking barrel was placed on the meter to prevent tampering. On May 20, 2016, a 6 cut-in was completed and service to the 1st floor was connected. May 20, 2016 is the first time that PECO records reflect service at the property during the time frame of March 2015 to May 2016. *See, Late Filed Exhibit 4.*

Exc. at 5-6; (emphasis added).

PECO further argues in Exceptions:

. . . PECO was not provided any information to suggest that . . . moved into the property on the first (1st) floor at the time that service was requested in November 2015. PECO's records reflected an inactive meter with zero usage. On November 30, 2015, the meter was confirmed to be off. See, Late Filed Exhibit 4. . . . Even assuming arguendo, that the service was on during the time frame of November 2015 to May 2016, as the Complainant alleges, someone at the property connected the service illegally or a foreign wiring issue existed. Both circumstances would require an underwriter's certificate to ensure safety at the property because the service was deenergized for more than six months after the March 2015 disconnection, without an inspection.

Exc. at 7.

Finally, PECO stresses the policy objective of the tariff, namely safety:

The requirement to obtain an underwriter's certificate for safety is in PECO's Electric Services Requirement manual (Blue Book) which is a standard upheld by the National Electric Code and the Pennsylvania Uniform Construction Code. The national standard sets a basis for safety for PECO's requirements, tariff and company policy. The underwriter's certificate requirement is in place to protect such individuals as the Complainant's tenant who could have moved into the property, and once service was energized without an underwriter's inspection, a fire or life threatening hazard could arise. The tariff provision and policy is in place to ensure safety and protection of PECO's customers.

Exc. at 6.

C. Complainant's Replies to Exceptions

In his Replies to Exceptions, Mr. Hatchigian focuses upon his position that PECO did not provide the tenants of the Service Address, first and second floor, a ten-day notice. The Complainant cites 66 Pa. C.S. § 1406(a) in support of this position and makes the argument that PECO violated this section of the Code. R. Exc. at 2-5.

In his Reply Exceptions at pages 5-7, Mr. Hatchigian directly replies to the Exceptions of PECO. The Complainant argues that the decision of the ALJ should be adopted. The Complainant relies upon prior periods of time (prior to May 18, 2016, service terminations) in which his prior tenants at the Service Address procured underwriter's certificates. Based on the production of underwriter's certificates of prior tenants at the Service Address, it is the Complainant's opinion that an electrical hazard theoretically posed by a six-month disconnection was no longer a factor. R. Exc. at 5. Mr. Hatchigian's essential challenge to the reasonableness of Tariff Section 9.2. is summarized, as follows:

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.

R. Exc. at 6.

The remainder of Mr. Hatchigian's Replies to Exceptions, make legal arguments concerning: (1) the Complainant's facial challenge to Tariff Section 9.2 is Not

Res Judicata; and (2) the Complainant’s facial challenge to Tariff Section 9.2 as unreasonable on its face should be upheld. *See* R. Exc. 7-12.

In support of his position that his facial challenge is not claim precluded or issue precluded, the Complainant, in pertinent part, argues that in light of the Commission’s findings in the instant Complaint, his facial challenge does not seek a repeal of the tariff, but seeks an amendment of PECO’s underwriter certification requirement. The Complainant argues that the tariff should be amended to “exempt” single family units with no visible construction or fire damages from the tariff or PECO’s underwriter certification policy under the tariff. R. Exc. at 8.

In support of his position in support of his facial challenge to Tariff Section 9.2 as unreasonable on its face, the Complainant, in reliance on cases from the jurisdictions of the states of Kansas, New Mexico, and Missouri, argues that the subject tariff provision is constitutionally infirm because it, *inter alia*, interferes with pre-existing lease agreements with paying tenants and “compels” lessors to violate rules and regulations that govern the ongoing maintenance of their rental properties. R. Exc. at 11.

Additionally, the Complainant appears to raise a claim that the tariff unconstitutionally limits his claims for damages other than those provided by the tariff. R. Exc. at 11-12.⁸

D. Disposition

We advise the Parties that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without

⁸ The Complainant does not cite, nor reference, *State Farm Fire & Cas. Co. v. PECO*, 54 A.3d 921 (Pa. Sup. Ct. 2012); *State Farm Fire & Cas. Co. v. PECO*, E.D. Pa. Civil Action No. 19-3288 (February 13, 2020); 2020 WL 757857.

further discussion. 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, Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

1. PECO Application of Tariff Section 9.2 and Underwriter’s Certificate Policy

PECO takes the position that it did not unreasonably apply its Tariff Section 9.2 under the facts of this Complaint. The tariff provision, admittedly, is intended to address safety. *See* PECO Exc. at 6. As noted in the *2015 Complaint Order*: “[i]t is important to note that the safety of the electric distribution system in Pennsylvania is of paramount importance to this Commission and we do not condone compromising PECO’s responsibility to provide safe electric service . . .” *Id.* at 12.

The tariff authorizes the utility to exercise its discretion⁹ (reasonably) to require an underwriter’s certificate or, more accurately, procure “[a] written certificate of approval, satisfactory to the Company . . . from a competent inspection agency authorized to perform this service . . .,” when a Service Address has not been energized for a period of six months or more. The ALJ found that PECO equated a lack of an account holder of record, with lack of energization to the subject premises. Equating the lack of an account holder of record with the lack of energization to the subject premises was determined to be unreasonable. In this regard, the ALJ is correct. In support of this conclusion, we cite Finding of Fact Nos. 8; 12-13:

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

* * *

⁹ PECO Exc. at 2.

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.

I.D. at 10.

However, the facts of this Complaint are that PECO was persuaded that the lack of a customer(s) of record at the Service Address, in conjunction with the energization of the premises under circumstances where there were occupants who were receiving service without payment, and without becoming customers of record, led the utility to invoke the subject tariff provision. Also, PECO has clarified the overlap of the relevant time periods involving the two units at the Service Address and the overlap of specificity concerning the Company's actions in connection with the two rental units. *See* PECO Exceptions.

Based on the foregoing, and contrary to the conclusion reached in the Initial Decision, PECO did not merely rely upon a lack of a customer of record for both units to invoke its rights under the disputed clause. The record indicates a lack of a PECO customer of record in addition to other conditions recorded at the Service Address¹⁰ and supported by PECO's business records, to invoke the clause.

¹⁰ Use of the term "Service Address" has not contributed to the clarification of facts in this Complaint. We shall attempt to be more specific and use a more definitive reference when needed, *i.e.* Service Address – unit #1 (first floor) and Service Address – unit #2 (second floor), as necessary. Finding of Fact No. 3.

At the time of the May 18, 2016, service termination(s), neither unit at the Service Address had a PECO customer of record. This is so, notwithstanding both units were receiving electricity, *i.e.*, energized at the time of the shut off:

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.

I.D. at 10.

The two rental units at the Service Address did, in fact, undergo periods in excess of six months wherein PECO did not have an account holder of record associated with either of the units:

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.

I.D. at 11.

The Hatchigian Complaint, therefore, presents a question of the proper interpretation of Tariff Section 9.2.¹¹ The language of the tariff is not so much disputed as the reasonableness of the utility’s actions taken in reliance upon the tariff.¹² Public utility tariffs must be applied consistent with their language. *Pennsylvania Electric Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995). Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Id.* Generally, it is only where an ambiguity is found, can one go outside of the plain language, or “four corners” of the document to ascertain a correct meaning or interpretation. Under tariff interpretation principles, where the language of a document is clear, the decision to go outside of the plain meaning of the language is improper. *See Painter v. Pa. PUC*, 116 A.3d 749, 753 (Pa. Cmwlth. 2015) citing *PPL Electric Utilities Corp. v. Pa. PUC*, 912 A.2d 386, 403 (Pa. Cmwlth. 2006).

In light of the history of litigation concerning Tariff Section 9.2, and the positions of the Parties, there is consensus that implementation of the tariff provision by PECO implies an ambiguity which requires interpretation. *See* Finding of Fact No. 5: “One method by which PECO implements Tariff Section 9.2 is through a policy of

¹¹ *See* 66 Pa. C.S. § 1505(a):

“(a) **General rule.**--Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the service or facilities of any public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this part, the commission shall determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient, service or facilities to be observed, furnished, enforced, or employed . . .”

¹² The facial attack on Tariff Section 9.2 was rejected by the ALJ and no Exceptions were filed by Mr. Hatchigian to the Initial Decision. However, the Complainant, in his Replies to Exceptions, raises arguments in support of his facial attack on the tariff which arguments are more appropriate for Exceptions. *See* discussion, *infra*.

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.”

The applicable section of PECO's tariff states the following:

9. INTRODUCTION OF SERVICE

9.2 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.

The use of the word “Introduction” in the above section, under a plain language analysis, connotes prefatory action. Whether this action means electric service or energization prefatory to the premises or prefatory to an account holder of record at a Service Address is a question that leads us to find ambiguity sufficient to review and interpret the tariff based on its policy objectives, usage and customs.

A tariff includes schedules of rates but also includes the rules, regulations and practices of a public utility. *See Dauphin County Industrial Development Authority v. PPL Electric Utilities Corp.*, Docket No. C-2014-2450483 (Initial Decision issued April 10, 2015 (ALJ Salapa)) ((Order entered August 20, 2015, adopting Initial Decision), citing *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)). Tariff provisions govern the terms and conditions under which a public utility will extend service to potential customers. *Id.*, citing *Kossmann v. Pa. PUC*, 694 A.2d 1147 (Pa. Cmwlth. 1997). *See also, Reynolds Disposal Co. v. Pa. PUC*, 468 A.2d 1179 (Pa. Cmwlth. 1983), citing *Behrend v. Bell Telephone Co.*, 363 A.2d 1152 (Pa. Sup. Ct. 1976), *vacated and remanded on other grounds*, 473 Pa. 320, 374 A.2d 536 (1977), for the proposition that in evaluating the tariffs filed with it, the

Commission may determine their reasonableness, fairness, and consistency with established policy.

Based on Findings of Fact Nos. 8 and 12-15, the underlying basis and policy objective for PECO's requirement for an underwriter's certificate and the reasonableness of the utility's actions pursuant thereto, is vitiated only if the PECO policy requirement for an underwriter's certificate is viewed in isolation.¹³

As noted, the factual predicate for PECO's policy implementing the Tariff Section 9.2 is the lack of energization at a Service Address for a period of six months or more. The presiding ALJ, essentially, found that termination of service to the rental units for non-payment for service rendered established constructive notice or actual notice of energization to the Service Address at the time an underwriter's certificate was requested by the utility. This fact, in isolation, was found inconsistent with the Company's expressed policy for the production of an underwriter's certificate. I.D. at 16.

Notwithstanding whether the utility is presumed to have actual or presumptive notice of the energization of a Service Address, we interpret the policy objective of the tariff to address safety. Therefore, we find that the intent and scope of Tariff Section 9.2 encompasses a situation where the utility has a reasonable basis to conclude that energization to a dwelling cannot, for any reason, be done so safely. The scope of the tariff provision, therefore, includes circumstances where the utility proffers the existence of documented facts on which it has formed a reasonable basis to invoke the

¹³ See *McCloskey v. Pa. PUC*, 219 A.3d 1216, 1223 (Pa. Cmwlth. 2019), *Affirmed on other grounds*, *McCloskey v. Pa. PUC*, 255 A.3d 416 (2021) and citations, – for the proposition regarding statutory interpretation, holding that a statute is ambiguous when there are at least two reasonable interpretations of the text. In construing and giving effect to the text, ‘we should not interpret statutory words in isolation, but must read them with reference to the context in which they appear.’ *Id.* We note that a tariff is not a statute but adopt the reasoning for a finding of an ambiguity.

clause. This would include conditions, as we so find in this Complaint, where a service address is currently energized, but continuation of safe energization, in the exercise of the utility's reasoned discretion, is dubious.

We conclude that PECO has come forward with evidence sufficient to meet its burden of going forward with the evidence and has countered the Complainant's presentation of a *prima facie* case.

Finally, we must acknowledge the presentation of evidence by PECO of unauthorized contact or tampering with utility owned equipment at the Service Address. A part of Mr. Hatchigian's case in support of his Complaint, more directed to the harm he has suffered as a result of the utility's request for the production of an underwriter's certificate, has been allegations that, due to PECO's termination of service he was, consequently, in violation of several building codes of the City of Philadelphia. Mr. Hatchigian has specifically cited certain Philadelphia City Code requirements and proffered documentary exhibits associating the termination of electric utility service to the tenants of the Service Address as probative of such building code violations he stood in violation of as property owner. *See* Complaint (Commission) attachment P-20:

“Unauthorized use of utility service: Unreasonable interference or diversion of service, including meter tampering (any act which affects the proper registration of service through a meter), by-passing (unmetered service that flows through a device connected between a service line and customer-owned facilities), and unauthorized service restoral.” (emphasis added); *also*

The Complainant's attachment to the Complaint, 4th Amended Complaint in the *Superior Court Appeal* proceeding, ¶ 57 (emphasis added)¹⁴ also provides, in pertinent part:

“57) To customer Hatchigian's amazement, PECO next demanded that he personally re-contact MIC to arrange for and schedule for a re-inspection of all of the electric wiring at the Brentwood apartment. (Without electrical service to his tenants' residences Hatchigian was also placed in violation of certain Philadelphia Codes and local fire insurance provisions. See ex. P-9, P-10. Owner-landlord Hatchigian duly complied with all of PECO's instructions (see ex. P-5,6) motivated to do so in part because, among other requirements Philadelphia landlords must. according to rules promulgated by the City of Philadelphia Department of Licenses and Inspections, to have and maintain 120-volt smoke and carbon monoxide detection at the property.) . . .”; *also*

The Complainant Late-filed Exhibit 2, City of Philadelphia notice to Licensed Electrical Contractors dated February, 1998, providing in pertinent part:

“By way of background, the Philadelphia Fire Prevention Code that became effective on January 1, 1995 required that all apartment owners install a fire alarm system in the common areas of their buildings, and single-station smoke detectors in the dwelling units, within two years (by December 31, 1996). A recent variance of general application issued by the Fire Commissioner extended that deadline until December 31, 1998. (emphasis ours).”; *also*

Complainant Late-filed P3:

“Partners for Good Housing Requirements for one and two-family dwellings are required to install smoke alarms

¹⁴ The facts in Complainant's Fourth Amended Class Action Complaint were incorporated by reference. See Complainant's Replies to Exceptions (R. Exc.) at 2.

powered by the building's primary power or a non-removable (sealed) 10-year battery. P-7 . . ." (emphasis added); *and* "Owners of one- and two-family dwellings (including owner-occupied one-family dwellings) are required to install smoke alarms powered by the building's primary power or a non-removable (sealed) 10-year battery. Smoke alarms should be installed as follows: . . ."

An admitted correlation between the termination of service to the rental units at the Service Address and the Complainant's allegations that this occurrence resulted in violation (or putative violation) of the applicable codes of the City of Philadelphia that require owners of multi-unit dwellings to, *inter alia*, maintain a source of power for common areas, *i.e.*, fire protection, is an admission against the interest of the Complainant. The electric service referenced by Mr. Hatchigian in this instance is the responsibility of the owner of the multi-unit dwelling. To the extent service is, by Mr. Hatchigian's statements, linked to a tenants' usage, is a fact that raises a foreign wiring/foreign load issue at the Service Address.¹⁵

We do not, on this record, make a definitive finding of the existence of foreign wiring/foreign load at the Service Address. We cite the interrelationship between electric service to the rental units and to the code-imposed requirement of a building owner to maintain a source of power for, *inter alia*, fire protection, as probative of a common wiring concern. This is cumulative of facts that corroborate PECO's evidence in response to the *prima facie* case of the Complainant and is supportive of the Company's reasonable conduct pursuant to Tariff Section 9.2.

¹⁵ See 66 Pa. C.S. § 1529.1. "Duty of owners of rental property" and orders discussing "foreign load." *E.g.*, *1-A Realty v. Pa. PUC*, 63 A.3d 480 (Pa. Cmwlth. 2013); *Robert Binelli v. Metropolitan Edison Co.*, Docket No. C-2017-2597097 (Order entered July 12, 2018), n. 2, and citations.

Based on the foregoing, we conclude that PECO did not act unreasonably. We find that PECO's actions were within the scope of authority derived from Tariff Section 9.2.

Conclusion

For the above-cited reasons and consistent with our discussion, we modify the Initial Decision. The Initial Decision is reversed in its finding that Mr. Hatchigian has met his burden of proof to establish that the utility has unreasonably applied its tariff, Tariff Section 9.2, under the facts of this Complaint and justifies the imposition of a civil penalty for a violation of the Code. The Initial Decision is affirmed in its dismissal of Mr. Hatchigian's claims of a facial challenge to the unreasonableness of the tariff and insufficient notice prior to termination of electric utility service; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of PECO Energy Company filed on September 9, 2021, to the Initial Decision of Administrative Law Judge Darlene Heep issued August 16, 2021, at Docket No. C-2020-3021199 are granted, consistent with the discussion in this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Darlene Heep issued August 16, 2021, at Docket No. Docket No. C-2020-3021199 is reversed, in part, and adopted, in part, consistent with the discussion in this Opinion and Order.
3. That the Initial Decision of Administrative Law Judge Darlene Heep issued August 16, 2021, is reversed in so far as recommending that the Formal Complaint of Mr. David Hatchigian at Docket No. C-2020-3021199 be granted in part, and the Formal Complaint is, hereby, dismissed.

4. That the Initial Decision of Administrative Law Judge Darlene Heep issued August 16, 2021, is adopted in so far as recommending that the Formal Complaint of Mr. David Hatchigian at Docket No. C-2020-3021199 be dismissed.

5. That the Secretary shall marked this proceeding closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 14, 2022

ORDER ENTERED: April 14, 2022