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May 31, 2022

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

**RE: Mary Morrow v. PECO Energy Company**  
**PUC Docket No. F-2022-3030427**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are *Reply Exception of PECO Energy Company*.

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 Christopher Pell, ALJ

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MARY MORROW  
COMPLAINANT**

**v.**

**PECO ENERGY COMPANY,  
RESPONDENT**

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**Docket No. F-2022-3030427**

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**REPLY EXCEPTIONS OF PECO ENERGY COMPANY**

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by MARY MORROW (“Complainant”) on May 20, 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’s allegations were illegible to completely discern. It is believed that the Complaint stated that her bills were too high and that she believed that there was theft of service at her property. On February 3, 2022, 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 were conducted at the property. The Complainant was advised that her usage was low, that she was receiving actual readings on her meter and that there was no indication of theft.

On March 15, 2022, a telephonic hearing was conducted before Administrative Law Judge Christopher Pell (“ALJ Pell”). At the time of the hearing, the Complainant failed to appear. On April 22, 2022, ALJ Pell issued a well-reasoned Initial Decision in this matter dismissing the Complainant’s Complaint with prejudice.

On May 20, 2022, the Complainant filed Exceptions to ALJ Pell's Initial Decision. In her writing, the Complainant seems to explain that she had a doctor's appointment on April 25, 2022 and would have a subsequent doctor's appointment on April 29, 2022. At no point in time, does the Complainant discuss her failure to appear or her reasons for her failure to appear for the March 15, 2022, Formal Complaint hearing. By scheduling a hearing on March 15, 2022, ALJ Pell 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 Pell.

#### **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 her March 15, 2022, hearing. On February 8, 2022, ALJ Pell, provided both parties a Hearing Notice: PECO Energy via the Public Utility Commission's' *E-File* Subscription Service and the Complainant via United States Postal Mail. The Hearing notice provided the date of the hearing, the dial-in information for the hearing and instructions for the Complainant if she wished to seek a Continuance. It specifically stated:

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. 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 you are requesting a continuance; and (3) State whether the other party(s) agrees to the request (or if you do not know).

*See*, Hearing Order dated February 8, 2022. (*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 his discretion in any manner. The Complainant does not allege that ALJ Pell utilized an incorrect mailing address to notify her 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 references a series of medical appointments which occurred in late April 2022, more than a month after the hearing was held.

The Complainant did not contact PECO nor ALJ Pell on March 15, 2022, stating that she wished to pursue a hearing, nor did she 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, March 15, 2022. It is undisputed that the Complainant does not even reference a reason for missing the March 15, 2022, court date. Accordingly, ALJ Pell'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. Accordingly, the Complainant's Exceptions should be dismissed.

**III. Conclusion**

ALJ Pell correctly determined that the Complainant had not met her burden of proof in this matter. Accordingly, ALJ Pell'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  
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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: May 31, 2022

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Khadijah Scott

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**Docket No. F-2022-3030427**

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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 postage prepaid mail to:

MARY MORROW  
2901 PASSMORE ST.  
PHILADELPHIA PA 19149

Dated: May 31, 2022



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