

Direct Dial: 215.841.6841
khadijah.scott@exeloncorp.com

June 9, 2022

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

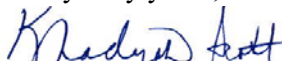
**RE: Colin Brown v. PECO Energy Company
PUC Docket No. C-2021-3027779**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the *Reply Exceptions 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.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**COLIN BROWN
COMPLAINANT**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

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Docket No. C-2021-3027779

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by COLIN BROWN (“Complainant”) on May 31, 2022. On August 11, 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 account number had been changed multiple times. He alleged that in 2014 he learned that his gas meter had been dead for over ten (10 years) and he asserted that he had received estimated billing since 2014 that caused his monthly billing to increase. On August 19, 2021, PECO Energy filed an Answer to the Complaint denying all material allegations of the Complaint and averred that the Complainant’s claim was beyond the three-year statute of limitations enumerated in 66 Pa.C.S. §3314. PECO Energy also asserted that the Complainant did not receive multiple account numbers, his charges were based on actual readings and that the high billing was based on usage and infrequency of payments.

On February 1, 2022, a telephonic hearing was conducted¹ before Administrative Law Judge Marta Guhl (“ALJ Guhl”). At the time of the hearing, the Complainant was accompanied by his wife, Vanessa Brown. Both parties stated that they needed time to consult with an attorney

¹ The hearing was previously continued twice at the Complainant’s request.

and if they could not be allowed time to do so, they would not participate in the hearing. The hearing proceeded without the Complainant's participation.

On May 11, 2022, ALJ Guhl issued a well-reasoned Initial Decision in this matter dismissing the Complainant's. ALJ Guhl found that the Complainant refused to participate in the hearing and refused to present any evidence, therefore, failing to meet his burden of proving entitlement to the relief sought from the Commission. See, Initial Decision, dated May 11, 2022. On May 31, 2022, the Complainant filed Exceptions to ALJ Guhl'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 1, 2022, ALJ Guhl 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 refused to participate in the hearing. 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 Guhl.

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 refused to participate in the hearing held on February 1, 2022, hearing. On September 10, 2021, ALJ Guhl, 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 be represented by counsel. It specifically stated:

REPRESENTATION. If you are an individual, you may represent yourself or **you may have an attorney represent you**. All others, including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented an 4 attorney licensed to practice law in Pennsylvania, or admitted pro hac vice. 1 And, unless you are an attorney, you may not represent someone else.

See, Hearing Notice dated September 10, 2021. (*emphasis added*)

The Hearing Notice 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 chose not to take part in this hearing nor present evidence. In addition, ALJ Guhl, provided both parties via the Public Utility Commission's' *E-File* Subscription Service a Pre-Hearing Order on September 13, 2021, a Hearing Notice on November 15, 2021 and a Rescheduled Hearing Notice on December 15, 2022, all citing the exact same language as the September 10, 2021, Hearing Notice. It is undisputed that the Complainant received the courts Prehearing Order and Hearing Notices advising that he could be represented by counsel if he chose to do so. It is further undisputed that one hundred and forty-four days (144)

elapsed between the first issued Hearing Notice, issued on September 10, 2021, in this matter and the hearing date of February 1, 2022. Thus, the Complainant had more than ample time to acquire counsel as representation.

In his Exceptions, 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 excuses as to why he should have been granted a third continuance on the date of the hearing. It is important to note that the Complainant did not follow proper protocol to even request a continuance of the scheduled hearing. The third request for a Continuance was requested at the time that the hearing was scheduled to begin. In each and every Prehearing Order issued by ALJ Guhl, it spelled out the protocol for requesting a continuance.

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, case 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 Notice dated September 10, 2021; Pre-Hearing Order dated September 13, 2021, Hearing Notice dated November 15, 2021 and Rescheduled Hearing Notice dated December 15, 2022. (*emphasis added*)

In this matter, a request for a continuance was not filed five (5) days prior to the hearing date, February 1, 2022. The Complainant chose not to participate in the hearing, which was his choice. Thus, the Complainant is now simply seeking to circumvent the hearing and litigate the issues raised in the Complaint via Exceptions. Accordingly, ALJ Guhl’s Initial Decision is well-reasoned with ample support from the record. Accordingly, the Complainant’s Exceptions should be dismissed.

III. Conclusion

ALJ Guhl correctly determined that the Complainant had not met his burden of proof in this matter. Accordingly, ALJ Guhl'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,



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: June 9, 2022

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:

COLIN BROWN
47 WINDSOR AVE
UPPER DARBY PA 19082
Email: digdeepg777@gmail.com

Dated: June 9, 2022



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