



Direct Dial: 215.841.6841  
khadijah.scott@exeloncorp.com

February 1, 2023

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

**RE: Thaddeus Picklo v. PECO Energy Company  
PUC Docket No. C-2022-3032205**

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,

A handwritten signature in blue ink that reads "Khadijah Scott".

Khadijah Scott, Esquire  
Assistant General Counsel  
PECO Energy Company

KS/alb  
Enclosure

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**THADDEUS PICKLO  
COMPLAINANT**

**v.**

**PECO ENERGY COMPANY,  
RESPONDENT**

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**Docket No. C-2022-3032205**

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**REPLY EXCEPTIONS OF PECO ENERGY COMPANY**

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by THADDEUS PICKLO (“Complainant”) on January 23, 2023. On April 28, 2022, PECO Energy was served with a formal complaint filed by the Complainant against PECO Energy. In the formal Complaint, the Complainant stated that PECO Energy was threatening to shut off his utility services and that he was requesting a payment agreement. On May 9, 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 the Complainant was not entitled to any additional payment agreements pursuant to 66 Pa. C.S. §1405(d) and his lack of good faith payments to the account.

On September 1, 2022, a telephonic hearing was conducted before Administrative Law Judge Eranda Vero (“ALJ Vero”). The Complainant testified on his own behalf and presented exhibits in support of his Complaint.

On December 21, 2022, ALJ Vero issued a well-reasoned Initial Decision in this matter denying the Complainant’s Complaint. ALJ Vero found that the Complainant failed to meet his

burden of proof that he was entitled to a second Commission-issued payment arrangement pursuant to 66 Pa. C.S. §§§ 332(a), 1405(d), 1405(e).

On January 23, 2023, the Complainant filed Exceptions to ALJ Vero'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 September 1, 2022, ALJ Vero provided the Complainant ample opportunity to present evidence, cross examine PECO's witnesses and present any objections to evidence during 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 Vero.

**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 is not entitled to an additional payment agreement**

The Complainant has had six prior payment agreements in April 2010, November 2013, September 2014, September 2016, May 2021 and August 2021 respectively, in which he defaulted on the terms. On July 7, 2021, the Bureau of Consumer Services (BCS) issued the Complainant a payment agreement beginning in August 2021, upon which he defaulted one month later on September 27, 2021. See, BCS Decision, #003793609. Prior to the BCS payment agreement, the Complainant was issued a sixty (60) month payment agreement with a \$119.34 monthly payment in addition to his monthly billing. The Complainant defaulted one month later. Id. The Complainant's total balance due on his account at the time of hearing was \$12,136.01. The Complainant has had multiple payment agreements, yet he continues to demonstrate a poor payment history. Pursuant to 66 Pa. C.S. §1405(d).

Number of payment agreements.—Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

In this matter, the Complainant has filed ten prior Informal Complainants against PECO Energy requesting payment agreements. The Complainant does not now assert that he is entitled to a payment agreement based on any law, statute or regulation. Instead, he asserts that he was unaware of the prior payment agreements entered into by his wife. Whether the Complainant was or was not aware of his wife's actions is of no moment. Neither the Commission nor PECO Energy involves itself into the personal matters of the parties. The Complainant has failed to set forth that

PECO Energy violated any regulation, statute, law or order in which to grant him an additional payment agreement.

Accordingly, PECO Energy avers that the Complainant is not entitled to any additional payment agreements pursuant to 66 Pa. C.S. §1405(d) and his lack of good faith payments to the account.

### III. **The Complainant had Timely Notice of the Formal Complaint Hearing**

In the case at bar, the Complainant was properly notified of the September 1, 2022 hearing before ALJ Vero. On July 7, 2022, ALJ Vero, 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 July 7, 2022. (*emphasis added*)

The Complainant alleges that his first notification of the hearing occurred on August 23, 2022, when he received exhibits from the Respondent, PECO Energy. Even assuming *arguendo* that to be true, he had ample time to request a continuance from the court. It is undisputed that the Complainant was familiar with the continuance request process, inasmuch as he requested a continuance from the hearing previously scheduled for June 23, 2022 before ALJ Vero. It is undisputed that the Complainant receives *E-Service* from the court, as he received the prior court correspondence in this matter.

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 Vero 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 that he did not have enough time to prepare for the 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)

A request for a continuance was not filed five (5) days prior to the hearing date, September 1, 2022. Accordingly, ALJ Vero's Initial Decision is well-reasoned with ample support from the record. 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.

**IV. Conclusion**

ALJ Vero correctly determined that the Complainant had not met his burden of proof in this matter. Accordingly, ALJ Vero'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: February 1, 2023

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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:

THADDEUS PICKLO  
400 HOWELL RD  
EXTON PA 19341  
*Via Email: tjpnittanylion@yahoo.com*

Dated: February 1, 2023



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Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
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