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April 20, 2023

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

**RE: Megan and Matthew Forgie v. PECO Energy Company
PUC Docket No. C-2022-3034051**

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, appearing to read "Khadijah Scott".

Khadijah Scott, Esquire
Assistant General Counsel
PECO Energy Company

KS/alb
Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MEGAN AND MATTHEW FORGIE
COMPLAINANTS**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

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Docket No. C-2022-3034051

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions served by Megan and Matthew Forgie (“Complainants”) on April 10, 2023. On July 26, 2022, PECO Energy was served with a formal complaint filed by the Complainant against PECO Energy. In the formal Complaint, the Complainants requested a payment agreement. On August 12, 2022, PECO Energy filed an Answer to the Complaint denying all material allegations of the Complaint and averred that the Complainants’ charges were correct and the Complainants were not entitled to any additional payment agreements pursuant to 66 Pa. C.S. §1405(d) and their lack of good faith payments to the account.

On December 6, 2022, a telephonic hearing was conducted before Administrative Law Judge Mary D. Long (“ALJ Long”). The Complainant, Matthew Forgie, testified on his own behalf and presented exhibits in support of his Complaint.

On March 31, 2023, ALJ Long issued a well-reasoned Initial Decision in this matter denying the Complainant’s Complaint. ALJ Long found that the Complainants failed to meet their burden of proof that they were entitled to a second Commission-issued payment arrangement pursuant to 66 Pa. C.S. §§§ 332(a), 1405(d), 1405(e).

On April 10, 2023, the Complainants served Exceptions on PECO Energy Company to ALJ Long's Initial Decision. In their writing, the Complainants seem to attempt to reiterate the facts of their case before the Commission, stating that their income has increased, which makes them now entitled to a payment agreement. By scheduling a hearing on December 6, 2022, ALJ Long provided the Complainants 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 Complainants' Exceptions and issue an Order adopting the Initial Decision of ALJ Long.

I. Scope of Review

As the proponent of a rule or order, the Complainants in this proceeding bear 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 Complainants 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 Complainants' 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 Complainants are not entitled to an additional payment agreement**

The Complainants have had nine (9) prior payment agreements in November 2013, January and August 2014, September 2015, April 2016, November 2020, April 2021, October 2021 and November 2021 respectively, in which they defaulted on the terms. On November 24, 2021, the Bureau of Consumer Services (BCS) issued the Complainants a level 4 payment agreement beginning in December 2021, upon which they defaulted one month later on January 3, 2022. See, BCS Decision, #003808885. The Complainants' total balance due on their account at the time of hearing was \$18,925.42. The Complainants have had multiple payment agreements, yet they continue 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 Complainants have filed five (5) Informal Complaints. This is the Complainants' second (2nd) Formal Complaint filed against PECO Energy in an effort to prevent termination of service. PUC Commissioner Pamela A. Witmer warned PECO about this very issue in the Daniel Vermeychuk v. PECO matter at Docket No. C-2013-2388323 (November 5, 2015). Commissioner Witmer stated that “the Complainant was not only ignoring his obligation to pay his bills but was actively employing various strategies to avoid paying in a timely manner.” Commissioner Witmer pointed out:

...It is critically important to the customers, who are ultimately left footing the bills for such abuses, that our utilities act vigilantly to prevent them, continue to take steps to identify them, and mitigate their

effects as quickly as possible. I remind PECO and all of our regulated utilities of this responsibility.

This is clearly what is happening in the present case with the filing of informal and formal complaints and entering into agreements, in an effort to halt collections efforts. The Complainants are strategically filing informal and formal complaints, including the present formal complaint, in an effort to avoid paying their electric bill. While PECO is able to identify this abuse, the company is unable to mitigate this issue while the Complainants use the PUC complaint process to prevent paying their bill.

The Complainants do not now assert that they are entitled to a payment agreement based on any law, statute or regulation. Instead, they assert that their income has increased compared to their prior level 4 income when the prior PUC payment agreement was issued. This is contrary to the “change in income” requirement as written under 66 Pa. C.S. §1405(d). The Complainants have failed to set forth that PECO Energy violated any regulation, statute, law or order in which to grant them an additional payment agreement.

Accordingly, PECO Energy avers that the Complainants are not entitled to any additional payment agreements pursuant to 66 Pa. C.S. §1405(d) and their lack of good faith payments to the account. Accordingly, the Complainants’ Exceptions should be dismissed.

III. Conclusion

ALJ Long correctly determined that the Complainants had not met their burden of proof in this matter. Accordingly, ALJ Long’s decision to dismiss the Complainants’ 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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VERIFICATION

I, Khadijah Scott, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.



Date: April 20, 2023

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:

MEGAN FORGIE and MATTHEW FORGIE
1626 VALLEY GREENE RD
PAOLI PA 19301
Via Email: mbforgie@yahoo.com

Dated: April 20, 2023



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