

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

Public Meeting held May 18, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
Stephen M. DeFrank, Vice Chairman  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Wesley Collier

C-2022-3037194

v.

PECO Energy Company

**OPINION AND ORDER**

**BEFORE THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Motion to Reopen (Motion), filed by Wesley Collier (Complainant) on March 27, 2023, relative to the above-captioned proceeding. PECO Energy Company (PECO or the Company) filed a Reply opposing the Complainant's Motion on March 28, 2023. For the reasons set forth below, we will grant the Motion and refer this matter to the Office of Administrative Law Judge (OALJ) for further proceedings as deemed necessary.

## **History of the Proceeding**

On December 5, 2022, the Complainant filed a Formal Complaint (Complaint) alleging “deceit, dishonesty, duplicity, and defalcation” by PECO, and stating that PECO requested a deposit on his account which it failed to timely return. The Complainant requested that: (1) PECO be investigated for discrimination, bias, and disparate business practices against people of color and low-income levels; (2) PECO be compelled to comply with state laws against racial bias and discrimination; (3) PECO be ordered to institute transparency and consistency in its deposit request practice; (4) PECO be required to return his deposit immediately; and (5) the Commission provide any relief it deems necessary and proper, including compensation for his time and cost for preparing this Complaint action and his emotional distress created by PECO. Complaint at 2-4.

On December 21, 2022, PECO filed an Answer, which admitted, in part, and denied, in part, various material allegations of the Complaint. PECO averred that a deposit was assessed when the Complainant initiated service on August 29, 2021. PECO further contended that based upon its Commission-approved tariff, a deposit may be held until a customer establishes a timely payment history which occurs when a customer has paid in full and on time for twelve consecutive months. PECO argued that the Complainant is not entitled to a credit of the deposit because he has not yet had twelve months of consecutive payments received in full and on time. Answer at 2-4.

By Hearing Notice dated December 28, 2022, an initial telephonic hearing was scheduled for March 1, 2023, and the matter was assigned to Administrative Law Judge (ALJ) Darlene Heep.

On January 3, 2023, the Complainant filed a response to PECO's Answer. The Complainant reiterated that PECO has refused, resisted, and failed to return to him the amount of his deposit. Reply to Answer at 2-7.

On February 27, 2023, PECO filed a Certificate of Satisfaction (Certificate) stating that the issues raised in the Complaint were satisfied. The Certificate, which was served on the Complainant, also stated that the Complaint shall be withdrawn and the Commission's file will be closed unless the Complainant files an objection to the Certificate within ten days of its filing. Also, on February 27, 2023, the Complainant filed four exhibits for the hearing scheduled for March 1, 2023.

On March 2, 2023, a Hearing Cancellation Notice was issued cancelling the March 1, 2023, hearing. Based upon an entry in the Commission's case management system, InfoMAP, on March 19, 2023, the case was closed.

On March 22, 2023, upon receipt of a faxed document from the Complainant that same day, the Commission's Secretary issued a Secretarial Letter (*March 2023 Secretarial Letter*) stating that faxed and e-mailed filings are not acceptable, and that the Complainant's objection to the Certificate had to be filed through an e-filing account on the Commission's website or by mail, preferably overnight delivery to ensure meeting the ten-day deadline to object.<sup>1</sup> In addition, the *March 2023 Secretarial Letter* stated that the Complainant's faxed filing is past the deadline for submission. Inasmuch as the Complainant's faxed filing was late because it was received on March 22, 2023, and because it was filed via an unacceptable method, the *March 2023 Secretarial Letter* informed the Parties that the instant proceeding was closed.

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<sup>1</sup> Attached to the *March 2023 Secretarial Letter* was the Complainant's faxed document received by the Commission's Secretary's Bureau on March 22, 2023, objecting to the closing of the instant proceeding and rejecting and refusing the Certificate.

Furthermore, the *March 2023 Secretarial Letter* explained that the Complainant had two options: (1) the Complainant could re-file a formal complaint and begin the formal complaint process again; or (2) the Complainant could file a Motion to Reopen his current complaint case by 4:30 p.m. on March 27, 2023. The *March 2023 Secretarial Letter* directed that a Motion to Reopen must be in writing, must specifically explain why the case should be reopened, and must be submitted via e-filing at the Commission's website or by overnight delivery, which is preferable over first-class mail to meet the filing deadline. If the Complainant chose to file a Motion to Reopen, the *March 2023 Secretarial Letter* gave PECO until 4:30 p.m. on March 31, 2023, to file a responsive pleading. Finally, the *March 2023 Secretarial Letter* stressed that if the Complainant does not choose either of these options, the Complaint case is hereby closed and the Certificate stands.

As noted, *supra*, the Complainant filed the instant Motion on March 27, 2023. PECO filed a Reply opposing the Motion on March 28, 2023.

## **Discussion**

### **Legal Standards**

The proponent of a rule or order in a Commission proceeding bears the burden of proof, pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). In this proceeding, the Complainant is the party seeking affirmative relief from the Commission. Therefore, the Complainant is the party with the burden of proof. *See Application of 610 Hauling, LLC, t/a College Hunks Hauling Junk, for the right to begin to transport, as a common carrier, by motor vehicle, household goods in use, from points in the counties of Chester, Delaware, Montgomery, Philadelphia, and Bucks, to points in Pennsylvania*, Docket Nos. A-2012-2334103 and A-8915269 (Order entered

November 5, 2015), citing *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950) (*Se-Ling Hosiery*).

In addition, we note that any argument that we do not specifically delineate shall be deemed to have been duly considered and denied without 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, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

### **The Complainant's Motion and PECO's Reply**

The Motion restates the Complainant's concerns regarding the assessment of a deposit on his electric service account and PECO's failure to timely return it to him. Motion at 1-5. The Motion further avers that the Complainant "categorically rejected PECO's offer" to settle this matter by crediting his account with the amount of the deposit. *Id.* at 6. The Complainant states that although PECO agreed to return his deposit, the Company failed to address other issues enumerated in his Complaint which remain open. *Id.* at 5-6, 9-10. Further, the Complainant explains that he decided to object to the Certificate "with the goal of seeking significant and substantial fines against PECO for its wrongful conduct in returning my \$230 [d]eposit and [i]nterest and forcing me to experience anxiety, insomnia, depression as well as expend my time, my energy, and my resources to recover my money and remedy the wrongful circumstances PECO created in this matter." *Id.* at 9.

In addition, the Complainant states that due to technical problems with his computer and printer, he could not file his objection to the Certificate with the Commission's Secretary until he could print it. After printing his written objection, the Complainant explains that he faxed it to the Commission's Secretary. In addition, the

Complainant contends that, on March 8, 2023, he emailed his written objection to PECO's counsel. That same day, the Complainant states that he emailed a Commission staff member requesting that his written objection be transmitted to the Commission's Secretary, and, on March 9, 2023, he did the same with a different Commission staff member. The Complainant states that on March 22, 2023, he received an email from the Commission's Secretary stating that his written objection to the Certificate was procedurally unacceptable. As a result, the Motion requests that the Complaint case be reopened. *Id.* at 11-15.

In reply, PECO states that at the conclusion of a settlement call on February 27, 2023, the matter was settled, and as a result, the deposit has been returned to the Complainant. PECO argues that the Complainant failed to file an objection to the Certificate within the required ten days. Moreover, PECO avers that the Complainant's objection to the Certificate was untimely because it was faxed to the Commission thirteen days after the deadline to object, and that the faxed letter of objection did not meet the Commission's filing requirements described on its website. Finally, with respect to the Complainant's Motion, PECO contends that the Complainant failed to state any grounds, new facts, laws, or legal bases upon which to reopen the Complaint. PECO requests that the Motion should be denied and the Complaint should remain closed. Reply to Motion at 1-4.

## **Disposition**

We note at the outset that the Complainant's faxed document received by the Commission's Secretary on March 22, 2023, was not in strict compliance with the Commission's Rules of Administrative Practice and Procedure because it was submitted by an unacceptable filing method and past the deadline for submission. Although the document shows a date of March 8, 2023, the Commission's Secretary received the faxed document on March 22, 2023, thirteen days after the deadline of March 9, 2023. In

addition, 52 Pa. Code § 1.4 provides that submittals, pleadings, and other documents filed with the Commission should be submitted by mail, in person, or e-filing on the Commission's electronic filing system.<sup>2</sup>

We recognize, however, that the Complainant is appearing *pro se* in this proceeding. Traditionally, we have been hesitant to rule unfavorably against *pro se* litigants based on technical grounds. *See, e.g., Destafano v. Peoples Natural Gas Company*, 56 Pa. P.U.C. 489 (1982); *Halpern v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00923950 (October 19, 1992); *William Schlinder v. The Bell Telephone Company of Pennsylvania*, Docket No. F-00161252 (March 26, 1993). The Commission has recognized the mitigating effect *pro se* status confers upon litigants unlearned in the law when confronted with technical violations of its procedural rules. *See, Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (July 14, 1993). In our view, it is in the public interest that all litigants, particularly *pro se* litigants, be afforded a meaningful opportunity to be heard. *See, Jurich v. Aqua Pennsylvania, Inc.*, Docket No. F-2020-3020719 (Order entered October 27, 2022).

Upon review, we find that the Complainant's Motion sets forth grounds to reopen the proceeding, in accordance with 52 Pa. Code § 5.571(b). The Complainant avers that he attempted to object in writing to the Certificate within the required ten-day deadline. He states that due to technical problems with his computer and printer, he could not print out and file his objection on time.<sup>3</sup> The Complainant further claims that he emailed PECO's counsel on March 8, 2023, one day before the deadline to file an

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<sup>2</sup> The Commission's website also informs filers that since the Commission's Emergency Order at M-2020-3019362 expired on September 30, 2021, emailed and faxed submissions are no longer acceptable.

<sup>3</sup> We note, however, that the Complainant could have e-filed his written objection by using an e-filing account at the Commission's website.

objection on March 9, 2023, objecting to the Certificate. Additionally, that same day, the Complainant explains that he also emailed his written objection to a Commission staff member with a request to transmit it to the Commission’s Secretary because he could not print it at that time.<sup>4</sup> *See* Motion at 11-13. Moreover, as noted in the *March 2023 Secretarial Letter*, the faxed document objecting to the Certificate received by the Commission’s Secretary on March 22, 2023, showed a date of March 8, 2023.

More importantly, the Complainant complied with the directives set forth in the *March 2023 Secretarial Letter* with respect to the options presented therein to either re-file his formal complaint or file a Motion to Reopen his current complaint case by March 27, 2023. The Motion was successfully and timely e-filed by the Complainant on March 27, 2023. Furthermore, the Complainant contends in his Motion that although PECO returned his deposit money, there are still “relevant and material matters” in his Complaint that remain open. *See* Motion at 10.

Additionally, we note that the Certificate filed by PECO on February 27, 2023, appears to be deficient on its face. Section 5.24 of the Commission’s Regulations states, in relevant part:

(b) In lieu of the certified statement required by subsection (a), the respondent may provide a certified writing to the Commission that it has addressed the complaint and at least one of the following:

- (1) That the complainant has acknowledged satisfaction to the respondent.
- (2) That the complainant has acknowledged to the respondent that the complainant no longer wishes to pursue the complaint.

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<sup>4</sup> The Complainant contends that a reply to this request advised him to contact a different Commission staff member, which he did on March 9, 2023, with a similar request.

(c) In the case of certification of satisfaction under subsection (b), the respondent shall simultaneously serve a copy of the respondent's certified writing, including a statement informing the complainant of the complainant's right to object in writing within 10 days, upon the complainant. Unless the complainant objects, in writing, to the certification within 10 days of its filing, the complaint docket will be marked closed.

52 Pa. Code § 5.24 (b)-(c). PECO did not appear to assert in its Certificate either one of the two options as required by 52 Pa. Code § 5.24 (b)(1)-(2) as set forth above.

Therefore, the Certificate failed to satisfy the requirements of 52 Pa. Code § 5.24. Going forward, PECO should ensure that future Certificates filed in satisfaction of complaint cases comply with the Commission's Regulation at 52 Pa. Code § 5.24.

Despite the technical defects of the Complainant's faxed submission of March 22, 2023, and based on the facts and circumstances in this case, including that the Complainant is *pro se* and the Certificate does not appear to comply with the Commission's Regulations, and in order to secure the just, speedy and inexpensive resolution of this case, in accordance with 52 Pa. Code § 1.2, we find that reopening the proceeding is in the public interest. Therefore, we will grant the Motion, pursuant to 52 Pa. Code § 5.571(d).

Because the Complainant appears to be dissatisfied with and continues to object to the Certificate, we will refer this matter to the OALJ for such further proceedings as deemed necessary. We conclude that doing so should provide for the most expedient and administratively efficient resolution of this matter because the Parties will be returned procedurally to where they were in the proceeding prior to the Certificate

being filed.<sup>5</sup> Moreover, referring this matter to the OALJ for further proceedings will provide the Complainant an opportunity to be heard regarding his concerns, for PECO to defend itself with respect to those concerns, and for the presiding ALJ to address any preliminary matters, review jurisdictional issues, and provide for a hearing, and adjudication, as necessary.

### **Conclusion**

For the reasons discussed herein, we shall grant the Complainant's Motion to Reopen, consistent with this Opinion and Order. Accordingly, we will refer this matter to the Office of Administrative Law Judge for such further proceedings as deemed necessary; **THEREFORE,**

### **IT IS ORDERED:**


1. That the Motion to Reopen, filed by Wesley Collier, on March 27, 2023, at Docket No. C-2022-3037194, is granted, consistent with this Opinion and Order.

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<sup>5</sup> We find this to be a more acceptable result that should save the expenditure of additional time and resources of the Parties and the Commission rather than the need to address the re-filing of a formal complaint by the Complainant since he continues to appear dissatisfied with, and objects to, the resolution described in the Certificate.

2. That the Formal Complaint filed by Wesley Collier, on December 5, 2022, at Docket No. C-2022-3037194, be referred to the Commission's Office of Administrative Law Judge for such further proceedings as deemed necessary.

**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: May 18, 2023

ORDER ENTERED: May 18, 2023