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July 19, 2023

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

**RE: Colby Simpkins v. PECO Energy Company
PUC Docket No. C-2022-3036798**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the *Reply Exceptions of PECO Energy Company*. The previous version contained an error.

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**

**COLBY SIMPKINS
COMPLAINANT**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

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Docket No. C-2022-3036798

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by COLBY SIMPKINS (“Complainant”) on July 13, 2023¹. On November 15, 2022, PECO Energy was served with a formal complaint filed by the Complainant against PECO Energy. In the formal Complaint, the Complainant alleged that the Respondent was threatening to shut off his utility service and that there are incorrect charges on his bill because the bills were too high. On December 5, 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 offered to conduct meter test at the property.

On March 23, 2023, a telephonic hearing was conducted before Administrative Law Judge Eranda Vero (“ALJ Vero”). At the time of the hearing, the Complainant failed to appear. On June 8, 2023, ALJ Vero issued a well-reasoned Initial Decision in this matter dismissing the Complainant’s Complaint without prejudice.

On July 13, 2023, the Complainant filed untimely Exceptions to ALJ Vero ’s Initial Decision. In his writing, the Complainant seems to restate that he believes that his bill is too high.

¹ PECO was served with the Complainant’s Exceptions by the Commission on July 13, 2023.

However, the Complainant fails to explain why he failed to appear at his telephonic hearing or why he filed Exceptions fifteen (15) days beyond the twenty (20) day timeframe in which he had to file them.

By scheduling a hearing on March 23, 2023, ALJ Vero 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 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 has failed to show good cause to warrant a further hearing

In the case at bar, the Complainant failed to appear for his March 23, 2023, hearing. On January 24, 2023, ALJ Vero, provided both parties a Hearing Notice via the Public Utility Commission’s *E-File* Subscription Service. On February 22, 2023, ALJ Vero, provided both parties a Pre-Hearing Order via the Public Utility Commission’s *E-File* Subscription Service. Both the Hearing Notice and Pre-Hearing Order provided the date of the hearing and the dial-in information with instructions for the hearing. It specifically stated:

To participate in the hearing, • **You must dial the toll-free Conference number** below • **You must enter the PIN number** below when instructed • You must speak your name when prompted, and press # • Then, **the telephone system will connect you to the hearing** Toll-free Bridge Number ...

See, Hearing Notice, dated January 24, 2023 and Pre-Hearing Order, dated February 22, 2023. (emphasis added)

The Hearing Notice and Pre-Hearing Order further advised of what would occur if the Complainant failed to appear at the hearing. It specifically stated:

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.

See, Hearing Order January 24, 2023 and Pre-Hearing Order, dated February 22, 2023. (emphasis added)

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 electronic mail address to notify him of the Hearing date. The Complainant has failed to state any good cause of action that would warrant why the record should be opened and a further hearing granted. Within the Exceptions, the Complainant merely attempts to litigate the facts of his case before the Commission.

Accordingly, ALJ Vero’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.

b. The Complainant's Exceptions are Untimely

Moreover, the Complainant is not entitled to a further hearing, as his Exceptions are untimely. Pursuant to, 52 Pa. Code §5.533. Procedure to except to initial, tentative and recommended decisions.

(a) In a proceeding, exceptions may be filed by a party and served **within 20 days after the initial, tentative or recommended decision is issued** unless some other exception period is provided. Exceptions may not be filed with respect to an interlocutory decision.

52 Pa. Code §5.533 (*emphasis added*)

In this matter, ALJ Vero rendered a well-reasoned decision on June 8, 2023. On June 8, 2013, a secretarial letter was also issued advising the Complainant as follows:

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Your signed Exceptions to the decision, if any, must be: 1) **filed** with the Secretary of the Commission, **and** 2) **within twenty (20)** days of the date of this letter.

See, Secretarial Letter dated June 8, 2023.

An initial decision was rendered on June 8, 2023. The Complainant had twenty (20) days, *i.e.*, until June 28, 2023 in which to file Exceptions. The Complainant's Exceptions were not filed until July 13, 2023, fifteen (15) days after its due date. The Complainant fails to state good cause as to why the Exceptions were untimely filed. He simply states within his Exceptions "I know it's late". Clearly, the Complainant was aware of the twenty (20) day timeframe in which he had to file Exceptions and has failed to show why his failure to abide by the Pennsylvania Code should be disregarded. *See*, 52 Pa. Code §5.533. Accordingly, the Complainant's Exceptions are untimely and should be dismissed.

III. 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,



Khadijah Scott
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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: July 19, 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-mailing a copy to:

COLBY SIMPKINS
3858 BLAINE ST
PHILADELPHIA PA 19140
Via email: colbysimpkins212@gmail.com

Dated: July 19, 2023



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