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August 18, 2023

VIA E-FILING

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

RE: Vane Flowers v. PECO Energy Company
Docket No. F-2023-3037961

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is 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

Cc: Honorable Arlene Ashton, ALJ

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**VANEE FLOWERS
COMPLAINANT**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

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Docket No. F-2023-3037961

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by VANEE FLOWERS (“Complainant”) on August 4, 2023¹. On January 31, 2022, PECO was served with a formal complaint filed by the Complainant against PECO Energy. In the formal Complaint, the Complainant alleged that there are incorrect charges on her bill because she did not have access to the breaker box in her former apartment located at 927 Coates St., 2nd Fl., Sharon Hill, PA 19079. The Complainant further avers that there was an illegal connection at the property and that her outstanding balance of \$542.91 should be placed into the name of the landlord. ,

On February 17, 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, the Complainant no longer resided at the property and PECO cannot transfer the Complainant’s outstanding balance of \$542.19 to the property owner, without confirmation of foreign wiring existing in the property at the time of the Complainant’s residency.

¹ On August 9, 2023, PECO was served with the Complainant’s Exceptions via electronic mail by the Complainant.

On April 12, 2023, a telephonic hearing was conducted before Administrative Law Judge Arlene Ashton (“ALJ Ashton”). On July 14, 2023, ALJ Ashton issued a well-reasoned Initial Decision in this matter dismissing the Complainant’s Complaint without prejudice.

On August 4, 2023, the Complainant filed Exceptions to ALJ Ashton ’s Initial Decision. In her writing, the Complainant seems to attempt to relitigate the facts of her case before the Commission. She attempts to challenge the testimony and evidence presented, the Judge’s evidentiary rulings at the hearing and ultimately, the outcome of the hearing. ALJ Ashton provided the Complainant ample opportunity to present evidence, cross examine PECO’s witness 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 Ashton.

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 that PECO violated a regulation, code, law or statute.**

In the case at bar, ALJ Ashton provided the Complainant ample opportunity to present evidence, cross examine PECO's witness and present any objections to evidence during the hearing. The Complainant does not assert any specific allegations that the ALJ made an error of law or abused her discretion in any manner, instead she simply makes bald assertions that she was "biased." However, mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Helen Leung v. Philadelphia Gas Works*, 2021 PA. PUC LEXIS 519 (2021).

At the time of hearing, it was established that on September 22, 2022, the Complainant contacted PECO Energy advising that she was experiencing flickering lights and that she did not have access to the breaker box. The customer was advised to contact her landlord to obtain access, so that an inspection could take place. In October 2022, PECO Energy unsuccessfully attempted to contact the Complainant. On November 30, 2022, the Complainant's account finalized.

Notwithstanding the Complainant's assertions that foreign wiring existed at the property, consistent with 66 Pa. C.S. § 1529.1, if foreign wiring is found at a property owner's premises, PECO Energy is required to transfer the service and the balance into the property owner's name until the condition is corrected. However, in this case, an inspection could not be completed to identify if foreign wiring existed, inasmuch as the Complainant did not have access to the breaker box and moved from the residence prior to an investigation being completed at the property. PECO Energy cannot transfer the Complainant's outstanding balance of \$542.19 to the property owner, without confirmation of foreign wiring existing in the property at the time of the Complainant's residency.

Accordingly, ALJ Ashton 's Initial Decision is well-reasoned with ample support from the record. As detailed in the Initial Decision, the Complainant has failed to meet her burden of proof. The Complainant has also failed to prove that PECO violated any regulation, statute or order. Accordingly, the Complainant's Exceptions should be dismissed.

III. Conclusion

ALJ Ashton correctly determined that the Complainant had not met her burden of proof in this matter. Accordingly, ALJ Ashton '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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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: August 18, 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:

VANEE FLOWERS
1101 HOOK RD
SHARON HILL PA 19079
Via email: vaneedflowers@yahoo.com

Dated: August 18, 2023



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