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January 18, 2024

VIA E-FILING

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

RE: Philp Carlton v. PECO Energy Company
Docket No. C-2023-3039584

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, appearing to read "Khadijah Scott".

Khadijah Scott, Esquire
Assistant General Counsel
PECO Energy Company

KS/alb
Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PHILIP CARLTON
COMPLAINANT**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

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Docket No. C-2023-3039584

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by PHILIP CARLTON (“Complainant”) on January 8, 2024. On April 5, 2023, PECO Energy was served with a formal complaint filed by the Complainant against PECO Energy. In the formal Complaint, the Complainant alleged that PECO Energy is threatening to shut off the utility services, that there are incorrect charges on his bill and that his original contract with PECO Energy did not have consideration as required under contract law. On April 26, 2023, PECO Energy filed an Answer to the Complaint denying all conclusions of law and material allegations of the Complaint and averred that the Complainant had a past due balance to which he had not made timely payments, the complainant had been billed on actual meter readings and the balance was correct. On July 27, 2023, a hearing was held before the Honorable Administrative Law Judge F. Joseph Brady (ALJ Brady).

On September 27, 2023, ALJ Brady issued a well-reasoned Initial Decision in this matter denying the Complainant’s Complaint. On November 16, 2023, the Complainant filed a Petition for Extension of Time in which he requested ten (10) additional days in which to file Exceptions. On November 17, 2023, the Public Utility Commission granted the Complainant’s request. Exceptions were to be filed on or before December 18, 2023 and Reply Exceptions to be filed on or before

December 28, 2023. The Complainant did not file Exceptions on or before December 18, 2023. On January 2, 2024, fifteen (15) days after the Complainant's Exceptions were due, the Public Utility Commission *sua sponte* issued a Secretarial Letter enclosing the November 3, 2023, Initial Decision, advising that Exceptions were to be filed within twenty (20) days of the Order.

On January 8, 2024, the Complainant filed Exceptions to the Initial Decision¹. In his writing, the Complainant seems to attempt to relitigate the facts of his Complaint before the Commission. He challenges the legal tender accepted by PECO and the contract for services that PECO has with its customers.

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 Brady.

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.

¹ On January 8, 2024, the Complainant's Exceptions were served on PECO by the Public Utility Commission.

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 identify any law, statute or regulation that PECO violated.

In his Exceptions, it appears that the Complainant is challenging PECO's contract with its customers. He also asserts that the contract itself is legal tender and payment in full on his account as a customer. This issue is without merit. PECO is a public utility company which outlines its

Base Rates, rules and regulations in its Electric Tariff, which is publicly available and approved by the Public Utility Commission. PECO's Tariff is its contract for service. The Complainant attaches a myriad of documents to his Exceptions to support his position that he is property that can be used as collateral to satisfy a debt. Notwithstanding the Complainant's position, PECO, as a company, only accepts cash, certified checks, money orders, and valid bank checks in payment of utility accounts. The company accepts Visa, MasterCard, Discover, Star, Pulse, NYCE, Accel, cash, money orders or personal checks to pay for utility bills. PECO will not apply as credit to any customer account non-negotiable documents, sight drafts, 1040 Forms, Acceptance for Value, UCC Certified Tender of Payments, Promissory Notes or other UCC documents. By way of further response, this issue has already been decided in James Coppedge v. PECO, Docket No. F-2014-2406180 (Order entered Jul. 29, 2014). The PUC determined that "even accepting as true the Complainant's contentions, nothing in either PECO's tariff or our Regulations requires PECO to accept all forms of payment." *Id.*

Accordingly, ALJ Brady 's Initial Decision is well-reasoned with ample support from the law. As detailed in the Initial Decision, the Complainant has failed to prove that the Public Utility Commission has violated any statute, regulation or law. Accordingly, the Complainant's Exceptions should be dismissed.

III. Conclusion

ALJ Brady correctly determined correctly determined that the Complainant had not met his burden of proof in this matter. Accordingly, ALJ Brady '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: January 18, 2024



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:

PHILIP CARLTON
409 E 12TH ST
CHESTER PA 19013
Via email: phileez267@gmail.com

Dated: January 18, 2024



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