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February 15, 2024

VIA E-FILING

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

RE: Andree Lombard v. PECO Energy Company
Docket No. C-2023-3041719

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ANDREE LOMBARD
COMPLAINANT**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

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Docket No. C-2023-3041719

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by ANDREE LOMBARD (“Complainant”) on February 6, 2024¹. On July 13, 2023, PECO Energy was served with a formal complaint filed by the Complainant against PECO Energy. In the formal Complaint, the Complainant stated that PECO Energy was charging her inconsistently on its budget billing program. On August 1, 2023, PECO Energy filed an Answer to the Complaint denying all material allegations of the Complaint and averred that the Complainant’s charges were correct.

On October 3, 2023, a telephonic hearing was conducted before Administrative Law Judge Arlene Ashton (“ALJ Ashton”). At the time of the hearing, the Complainant’s husband, Giovanni Lombard, testified on her behalf. On January 22, 2024, ALJ Ashton issued a well-reasoned Initial Decision in this matter dismissing the Complainant’s Complaint.

On February 6, 2024, the Complainant filed Exceptions to ALJ Ashton’s Initial Decision. In her writing, the Complainant seems to restate that she believes that budget billing incorrectly increased her billing, causing a disruption to her payment agreement.

¹ PECO was served with Notice of the Complainant’s Exceptions by the Commission on February 7, 2024.

By scheduling a hearing on October 3, 2023, ALJ Ashton provided the Complainant ample opportunity to present evidence, cross examine PECO's witnesses and present any objections to evidence during the hearing, which the Complainant's husband did at the time of 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. Cmwlt. 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. Cmwlt. 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. Cmwlt. 1993); *See also*, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlt. 1984).

II. Legal Argument

a. **The Complainant has failed to identify any law, statute or regulation that PECO Energy violated.**

In the case at bar, the Complainant challenges the calculation of her budget bill. In compliance with 52 Pa. Code 56.12, PECO Energy offers budget billing as a voluntary payment option to its customers. Pursuant to 52 Pa. Code 56.12 - Meter reading; estimated billing; customer readings, budget billing is defined as follows:

(8) *Budget billing.* A gas, electric and steam heating public utility shall provide its residential customers, on a year-round rolling enrollment basis, with an optional billing procedure which averages estimated public utility service costs over a 10-month, 11-month or 12-month period to eliminate, to the extent possible, seasonal fluctuations in public utility bills. The public utility shall review accounts at least three times during the optional billing period. At the conclusion of the budget billing year, a resulting reconciliation amount exceeding \$100 but less than \$300

shall be, at the request of the customer, amortized over a 6-month period. Reconciliation amounts exceeding \$300 shall be amortized over at least a 12-month period at the request of the customer. Shorter amortization periods are permissible at the request of the customer.

52 Pa. Code 56.12(8).

Pursuant to 17.6 of PECO Energy's tariff:

17.6 BUDGET BILLING.

(a) At the option of a customer receiving residential service under Rates R, R-H, RS-2, OP, POL and GS, an estimated total bill for all service to be received by the customer over a twelve-month period may be budgeted over the period and an average bill rendered monthly for payment each month. Any difference between the budgeted amounts so paid and the actual charges for a twelve-month budget period will at the customer's option, either be amortized over the next twelve months or incorporated into the 12th month bill. Absent an indication of preference from the customer, the debit or credit will be amortized. Budget billing may be discontinued upon the customer's request at which time any difference between budget billing amounts and actual charges becomes due and payable. If a monthly budget bill is not paid, a late fee will be added to the unpaid balance of actual charges on the next billing date in accordance with Rule 17.3 and 17.5. Any such late fee will be calculated based on the lesser of budget billing arrears and actual charged arrears. The Company may also arrange budget billing for creditworthy commercial and industrial customers.

See Section 17.6 of PECO Energy's Tariff.

Consistent with 52 Pa. Code 56.12(8) and Section 17.6, the budget bill payment amount is an average of the usage over the previous 12 months. The monthly payment amount is adjusted quarterly to ensure that the billed amount is consistent with actual usage so that settlement at the end of 12 months does not adversely impact the customer. Budget billing does not add charges to a customer's billing. The Complainant was advised of the deferred budget billing balance on each monthly billing statement. The Complainant's usage at issue was seasonal. PECO avers that the Complainant was billed correctly and in compliance with Section 17.6 of the company's tariff.

In this matter, the Complainant does not allege that the ALJ made an error of law or abused her discretion in any manner. Within the Exceptions, the Complainant merely attempts to relitigate the facts of her case before the Commission. Accordingly, ALJ Ashton's Initial Decision is well-

reasoned with ample support from the record. As detailed in the Initial Decision, the Complainant does not set forth support that PECO Energy 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: February 15, 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:

ANDREE LOMBARD
404 ALDAN AVE
ALDAN PA 19018
Via Email: gio7707@msn.com

Dated: February 15, 2024



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