



Direct Dial: 267-533-1830
khadijah.scott@exeloncorp.com

June 17, 2024

VIA E-FILING

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

RE: Nikisha Leach v. PECO Energy Company
Docket No. C-2023-3042690

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**

NIKISHA LEACH	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2023-3042690
	:	
PECO ENERGY COMPANY	:	
Respondent	:	
	:	

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Nikisha Leach (“Complainant”) on June 10, 2024¹. On September 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 the Respondent was threatening to shut off her utility service and she requested a payment agreement. On September 20, 2023, PECO Energy filed an Answer to the Complaint denying all material allegations of the Complaint and averred that the Complainant receive a Ten-Day Termination Notice in compliance with 66 Pa. C.S. §1406 and that the Complainant was not entitled to a Commission issued payment agreement pursuant to 66 Pa. C.S. §1405(d).

On February 7, 2024, a telephonic hearing was conducted before Administrative Law Judge Marta Guhl (“ALJ Guhl”). At the time of the hearing, the Complainant failed to appear. On May 23, 2024, ALJ Guhl issued a well-reasoned Initial Decision in this matter dismissing the Complainant’s Complaint without prejudice.

¹ PECO was served with the Complainant’s Exceptions by the Commission on June 10, 2024.

On June 10, 2024, the Complainant filed Exceptions to ALJ Guhl's Initial Decision. In her writing, the Complainant states that she is in financial hardship. She further states that she did not receive a reminder about the scheduled hearing.

By scheduling a hearing on February 7, 2024, ALJ Guhl 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 Guhl.

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 the February 7, 2024, hearing. On November 15, 2023, ALJ Guhl, provided both parties a Hearing Notice via the Public Utility Commission’s *E-File* Subscription Service. On November 21, 2024, ALJ Guhl, 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 number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name, press the # key, and then the telephone system will connect you to the hearing. If you have any witnesses you want to have present during the hearing who are participating from a separate phone, you must provide them with the telephone number and PIN Number.

See, Hearing Notice, dated November 15, 2023 and Pre-Hearing Order, dated November 21, 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 must attend the hearing and present evidence on the issues raised in the pleadings. **You may lose the case if you do not take part in this hearing** and present evidence on the issues 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 November 15, 2023 and Pre-Hearing Order, dated November 21, 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 Guhl utilized an incorrect electronic mail address to notify her 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 her case as to why she is eligible for a payment agreement before the Commission. She only states that she did not receive a reminder about the hearing. On January 24, 2024, PECO Energy forwarded its proposed hearing exhibits to the Complainant, specifically stating that the hearing was scheduled for February 7, 2024 at 10:00 a.m. *See, Email to Complainant, dated January 24, 2024, attached hereto as Exhibit “1.”* Even assuming *arguendo* the Complainant’s statement to be true, she was reminded of the hearing, two weeks prior to the hearing date.

Accordingly, ALJ Guhl'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.

III. Conclusion

ALJ Guhl correctly determined that the Complainant had not met her burden of proof in this matter. Accordingly, ALJ Guhl'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
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
Direct Dial: (267) 533-1830
Fax: 215.568.3389
Khadijah.scott@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NIKISHA LEACH

Complainant

v.

PECO ENERGY COMPANY

Respondent

:
:
:
:
:
:
:
:
:

DOCKET NO. C-2023-3042690

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: June 17, 2024

Khadijah Scott

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NIKISHA LEACH	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2023-3042690
	:	
PECO ENERGY COMPANY	:	
Respondent	:	
	:	

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:

NIKISHA LEACH
6644 W CHEW AVE.
PHILADELPHIA PA 19119
Via Email: nikishaleach41@gmail.com

Dated: June 17, 2024



Khadijah Scott
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
Direct Dial: (267) 533-1830
Fax: 215.568.3389
Khadijah.scott@exeloncorp.com

EXHIBIT 1

Botak, Amy:(PECO)

From: Botak, Amy:(PECO)
Sent: Wednesday, January 24, 2024 12:25 PM
To: Delvillar, Shalea; Nikisha Leach
Cc: Scott, Khadijah:(PECO); Costello, Anthony J:(PECO)
Subject: Nikisha Leach v. PECO Energy Company (C-2023-3042690)
Attachments: C3042690_EXHIBITS_2_7_24.pdf

Good afternoon,

Attached are Exhibits that PECO intends to present for the telephonic hearing scheduled on February 7th at 10:00 a.m. with Judge Guhl in the above matter.

Thank you.

Amy Botak
(she/her/hers)
Legal Assistant - PECO Regulatory
PECO Legal Department
2301 Market Street, S23-1, Philadelphia, PA 19103
Office: 267 533 0857 | **Fax:** 215 568 3389
amy.botak@exeloncorp.com

