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September 16, 2024

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

**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 September 9, 2024. 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 averred 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.

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. On August 18, 2023, PECO filed Reply Exceptions. On October 19, 2023, the Commission issued a ruling holding the Exceptions in abeyance, remanding this case for further hearing to determine whether PECO inspected the Complainant's former residence for foreign wiring. On May 1, 2024, a further hearing took place before ALJ Ashton. In the midst of the hearing, the Complainant said that the "hearing was adjourned" and disconnected the call. On August 19, 2024, ALJ Ashton issued a well-reasoned Initial Decision dismissing the Complainant's Complaint. On September 9, 2024, the Complainant filed the present Exceptions.

In her writing, the Complainant seems to attempt to relitigate the facts of her case before the Commission. She attempts to challenge the bias of the ALJ and states that she discontinued her participation in the hearing, because she was not receiving "due process." 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. *Burlison 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 cause to reopen the record.**

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).

In this matter, the Complainant chose not to further take part in the hearing, which was her choice. Thus, the Complainant is now simply seeking to circumvent the hearing and litigate the issues raised in the Complaint via Exceptions. Administrative agencies are required to provide due process to the parties appearing before them *Schneider v. Pa. PUC*, 79 A.2d 10 (*Pa. Cmwlth.* 1984), which due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. The Complainant was accorded proper notice of the hearing via both a Prehearing Order and Hearing Notice. The Complainant was afforded an opportunity to be heard and present her case before ALJ Ashton.

The Complainant was allowed to present any witnesses if she chose to do so, as well as, present any exhibits if she chose to do so. The Complainant's assertion that ALJ Ashton falsely stated that she did not receive her proposed exhibits is moot. "For an exhibit to be received into evidence, it will be marked for identification and moved into evidence." 52 Pa. Code § 1005.142(b). The Complainant disconnected the call prior to moving any

exhibits into evidence. Thus, the due process rights of the Complainant were not violated and not proven to have been violated at any point in time during the hearing.

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: September 16, 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:

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

Dated: September 16, 2024



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