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November 7, 2024

VIA E-FILING

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

RE: Frank Toroney v. PECO Energy Company
Docket No. C-2024-3045932

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**

**FRANK TORONEY
COMPLAINANT**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

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Docket No. C-2024-3045932

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by FRANK TORONEY (“Complainant”). On January 31, 2024, PECO Energy was served with a formal complaint filed by the Complainant against PECO Energy. In the formal Complaint, the Complainant alleged that his father accepted an offer to have an off-peak meter installed at his property in exchange for a billing discount and in 2003, his father passed away, thereby no longer receiving the discount. The Complainant requested that the billing for the off-peak meter be refunded and that he be reimbursed for the expense of an electrician to remove the meter from the property. On February 20, 2024, PECO Energy filed an Answer to the Complaint denying all conclusions of law and material allegations of the Complaint and averred that the Public Utility Commission lacked jurisdiction to issue the Complainant a refund on a twenty-one (21) year old claim as it is outside of the statute of limitations and that the Complainant lacked standing upon which to bring a claim as he was not PECO’s customer of record. On February 20, 2024, PECO Energy filed simultaneous preliminary objections averring the same.

On April 11, 2024, Administrative Law Judge Eranda Vero issued a ruling on PECO’s preliminary objections, sustaining the averment regarding the statute of limitations and overruling the averment regarding standing. On June 27, 2024, a hearing was held in this matter. On October

7, 2024, Administrative Law Judge, Darlene Heep, (ALJ Heep) issued a well-reasoned Initial Decision dismissing the Complainant’s Complaint.

On October 28, 2024, the Complainant filed Exceptions to ALJ Heep’s Initial Decision. In his writing, the Complainant asserts that he is not challenging whether PECO “violated any public utility code, Commission, regulation orders,” but requests the Public Utility Commission to determine whether PECO violated his rights under the consumer protection laws and regulations that govern bait and switch tactics.

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 Heep .

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’s Complaint is Without Merit and Outside of the Commission’s Jurisdiction.

The Public Utility Commission has authority to determine a public utility’s violation of the Code or a regulation or order of the Commission. Accordingly, the Commission does not have jurisdiction over the Complainant’s request for a determination of consumer protection laws or bait and switch practices, as they are outside of the Commission’s jurisdiction. The

Complainant concedes that his Exceptions do not involve a violation of the Code or a regulation or order of the Commission. Thus, this Complaint and its Exceptions are without merit.

Accordingly, the Complainant's Exceptions should be dismissed.

III. Conclusion

ALJ Heep correctly determined that PECO did not violate any rule, regulation or Code. Accordingly, ALJ Heep'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
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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: November 7, 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:

FRANK TORONEY
176 SPRINGTON RD
GLENMOORE PA 19343
Via email: franktoroney@gmail.com

Dated: November 7, 2024



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