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November 18, 2024

VIA E-FILING

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

RE: Deree Norman v. PECO Energy Company
Docket No. C-2024-3048777

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**

DEREE NORMAN	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2024-3048777
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by DEREENORMAN (“Complainant”) on October 24, 2024¹. On November 7, 2024, PECO was served by the Public Utility Commission with the Complainant’s Exceptions. On May 1, 2024, 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, although he does not have an outstanding balance. On May 20, 2024, PECO Energy filed an Answer with New Matter to the Complaint denying all conclusions of law and material allegations of the Complaint and averred that the Complainant received a termination notice for failure to provide access to exchange a legacy AMR meter, which PECO’s system no longer supports, to an AMI meter. PECO simultaneously filed Preliminary Objections averring the same. On October 4, 2024, the Honorable Administrative Law Judge Darlene Heep (ALJ Heep) issued a well-reasoned Initial Decision sustaining PECO’s Preliminary Objections dismissing the Complainant’s Complaint.

¹ The Complainant did not serve his Exceptions on PECO.

The Complainant filed Exceptions to the Initial Decision. In his writing, the Complainant seems to attempt to relitigate the facts of his Complaint before the Commission. He challenges the definition of a smart meter versus an advanced smart meter.

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. 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’s claim is barred by Pennsylvania law.**

In his Exceptions, it appears that the Complainant is challenging the definition of a smart meter versus an advanced smart meter. This issue is without merit. In this matter, PECO Energy avers that the company is required to install AMI meters for the company’s electric distribution customers subject to the requirements of Act 129. On August 16, 2022, the Pennsylvania Supreme Court issued its Opinion asserting that Section 2807(f) of the Public Utility Code mandates that EDCs furnish smart meters to **all** electric customers in their service areas and **does not** provide the ability for customers to “opt-out”. *Povacz v. Pa. Pub. Util. Comm’n*, Nos. 34-45, 280 A.3d 975 (Pa. 2022) (*Povacz Opinion*). (*emphasis added*) The court specifically stated:

Act 129 does mandate that EDCs furnish smart meters to **all** electric customers within an electric distribution service area and **does not provide electric**

customers the ability to opt out of having a smart meter installed. An electric customer with concerns about smart meters may seek an accommodation from the PUC or EDC, but to obtain one the customer must establish by a preponderance of the evidence that installation of a smart meter violates Section 1501.

See, Povacz Opinion at 7. (*emphasis added*)

The Court further held that the authority to select and install a certain type of electric meter rests solely with EDCs, in this case PECO, not the customer, “regardless of a customer’s preference.” *Id.* at 22, 26-27. The Complainant was advised that PECO Energy’s system no longer supports a non-AMI meter and that a new smart meter must be installed. In addition, the PUC’s regulations provide that [a] public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91- 56.100 (relating to notice procedures prior to termination) for any of the following actions by the customer ... failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading. Pennsylvania law is clear. A customer does not have the ability to opt out of the installation of an AMI meter. *See, Povacz. See also, Mary Paul v. Pennsylvania Public Utility Commission*, 460 C.D. 2019 (2023)(holding there is not an opt-out provision. Finding all other arguments, including those regarding burden of proof, were without merit); *Janice Denito Branagh, v. Pennsylvania Public Utility Commission* 1857 C.D. 2019 (2023))(holding there is not an opt-out provision).

Accordingly, ALJ Heep’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 Heep correctly determined that the Complainant had not met his burden of proof in this matter. 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,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**DEREE NORMAN
COMPLAINANT**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

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Docket No. C-2024-3048777

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 18, 2024



Khadijah Scott

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**DEREE NORMAN
COMPLAINANT**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

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Docket No. C-2024-3048777

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:

DEREE NORMAN
5367 THOMAS AVENUE
PHILADELPHIA, PA 19143
Via E-mail: dereenorman@yahoo.com

Dated: November 18, 2024



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