

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held December 19, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair, Statement
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

Frank Toroney

C-2024-3045932

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Frank Toroney (Complainant or Mr. Toroney), filed on October 28, 2024, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Darlene Heep, issued on October 7, 2024, in the above-captioned proceeding. In the Initial Decision, the ALJ dismissed the Formal Complaint

(Complaint) filed by Mr. Toroney on January 17, 2024.^{1,2} PECO filed its Replies to Exceptions on November 7, 2024. For the reasons set forth herein, consistent with this Opinion and Order, we shall deny the Complainant’s Exceptions, adopt ALJ Heep’s Initial Decision, and dismiss the Complaint.

I. Background and Procedural History

The matter before the Commission is a billing dispute in which the Complainant denies financial responsibility for a second meter, connected to the Complainant’s water heater, which was previously installed by PECO at the request of his father, in order to track off-peak electricity usage in exchange for a billing discount.

By way of background, the Complainant’s father, prior to his passing in 2003, as the customer of record at the Service Address at that time,³ requested PECO install a second meter, an off-peak meter, specifically to measure electricity usage of the water heater at the Complainant’s Service Address. Installation of the off-peak meter provided the Complainant’s father with the opportunity to take advantage of the Off-Peak rate applicable to PECO’s discount program offered at that time. The elimination of PECO’s Off-Peak rate was approved by the Commission as part of PECO’s Default Service Program and Rate Mitigation Plan on June 2, 2009, at Docket No. P-2008-2062739. Accordingly, PECO’s Rate OP – Off Peak Service was phased out and

¹ On January 31, 2024, the Complaint was served on PECO. Therefore, PECO’s answer was due within 20 days, or by February 20, 2024.

² This Complaint is a timely appeal of the Commission’s Bureau of Consumer Services (BCS) decision, issued on December 13, 2023, at BCS Case No. 3932540, which dismissed the Complainant’s Informal Complaint filed against PECO. BCS concluded, *inter alia*, that all usage and billings were based on actual meter readings and are correct as rendered, according to PECO’s Commission-approved tariff. *See* Answer, Exh. 3 at 3; Complaint at 4.

³ PECO’s records reveal that the Complainant established electrical services at the Service Address on June 24, 2022. *See*, Answer at 2-3.

was no longer available after January 1, 2012. However, the meter used to measure Off-Peak Service usage at the Complainant’s Service Address remains, and the Complainant is currently being billed \$2.04 per month for that meter.⁴

This case originated as an Informal Complaint filed by the Complainant with BCS at BCS Case No. 3932540 on August 9, 2023. BCS issued its determination on the Complainant’s Informal Complaint on December 13, 2023, in which it dismissed the Complainant’s Informal Complaint filed against PECO.

The process for appealing informal BCS decisions is provided for in the Commission’s Regulations. Section 56.172(a) of our regulations specifies that “[a] request for review of the decision of the Bureau of Consumer Services (BCS) shall be *initiated* in writing within 20 days of issuance.” 52 Pa. Code § 56.172(a) (emphasis added). A Request for Review form is not a complaint form. It is the form that is served

⁴ Initially, the Commission approved a \$1.75 monthly customer charge for each off-peak meter as part of PECO’s 2010 Electric Rate Case Settlement. *See, Pa. PUC v. PECO Energy Company – Electric Division*, Docket No. R-2010-2161575 (Opinion and Order entered December 21, 2010) (*2010 PECO Base Rate Case*). With regard to the Off-Peak customer charge, PECO explained, in relevant part:

In order to equalize the variable distribution charges of rate OP and Rate R, any increase in Rate OP will be allocated first to the variable distribution charge. As a result of this change, the Rate OP customer charge is being reduced from \$4.65 to \$2.00 per month. A customer charge is still necessary for Rate OP because customers served under this rate schedule have a separate meter for this service.

2010 PECO Base Rate Case, PECO St. 9 at 11. As noted above, the Commission ultimately approved PECO’s right to charge a \$1.75 per month for each off-peak meter. The Commission approved the current \$2.04 monthly customer charge for each off-peak meter as part of PECO’s 2021 Electric Rate Case Settlement. *See, Pa. PUC v. PECO Energy Company – Electric Division*, Docket No. R-2021-3024601 (Order entered November 18, 2021); *see also*, Supplement No. 50 to Tariff Electric Pa. P.U.C. No. 7 (PECO Tariff), Sixteenth Revised Page No. 51, effective June 1, 2024.

with the BCS decision to the informal complainant with directions that it be returned to the Commission's Secretary within twenty days if the complainant chooses to pursue a formal review of the BCS decision. When the Secretary receives that Request for Review form, a Formal Complaint form is sent to the complainant. *See*, 52 Pa. Code § 56.172(b). The formal complaint form will be marked with the BCS case identification number and a due date, which will be thirty days from the mailing of the formal complaint form.⁵

In the present case, we recognize that the Complainant did not follow the procedure for a request for review of a BCS decision as provided for in our Regulations. More specifically, subsequent to the date the Complainant was expected to receive his BCS decision with his Request for Review form, he filed the instant Complaint. The Complainant did not follow the directions sent to him by the Secretary, which was to return the intent to appeal form within twenty days so that the Secretary's Bureau could send a formal complaint form specially marked with the docket number of the BCS decision in order to monitor the timing of the filings. That formal complaint form would have been due within thirty days from the date that the Secretary mailed it. Rather, the Complainant did not return the Request for Review form and instead he filed a generic formal complaint form available on the Commission's website. As a result, when the Commission received the Complaint, it was docketed without being matched to the

⁵ Section 56.172 (c) of our Regulations directs that “[w]ithin 30 days of the mailing of the formal complaint form, the party requesting review of the decision of the BCS shall file the completed complaint form with the Secretary.” Section 56.172 (d) provides, “[u]pon the filing of a formal complaint within the 30-day period and not thereafter except for good cause shown, there will be an automatic stay of the informal complaint decision.”

Complainant's BCS Informal Complaint case file, hindering the ability to track its origin.⁶

Regardless, we acknowledge that the Complainant has claimed to have never received the BCS decision. *See*, Complaint at 4. Additionally, consistent with our Regulations, we are empowered to disregard an error or defect of the procedure which does not affect the substantive rights of the parties. 52 Pa. Code § 1.2(a). Consistent with ensuring the provision of due process, and with the recognition that no parties' substantive rights will be affected, we will consider the Formal Complaint as a timely-filed request for review of Mr. Toroney's Informal Complaint.⁷

As previously indicated, the Complainant filed the instant Complaint with the Commission on January 17, 2024,⁸ wherein he alleged that PECO has been improperly charging him monthly for an off-peak meter associated with a previously offered discount program that no longer exists. Complaint at 2. In particular, Mr. Toroney explained his situation as follows: “[u]pon my father’s passing in 2003, I have been paying for that meter on a monthly basis. I feel that this cancellation of the off-peak discount, and then charging me a monthly fee, for the meter is equivalent to [b]ait and switch.” *Id.*

⁶ However, that does not hamper the Commission's ability to determine later whether the filing is timely or late, as the information is available once the complaint is docketed and assigned to an ALJ.

⁷ In this case, as previously noted, the BCS Informal Complaint decision was issued on December 13, 2023. The instant Complaint was filed on January 17, 2024. This is well within the fifty-day minimum period that would have been provided if the Complainant had returned the Request for Review form and filed a formal complaint consistent with Sections 56.172 (a) and (c) of our Regulations.

⁸ As previously noted, PECO was served with a copy of the Complaint on January 31, 2024.

As relief, Mr. Toroney requested that PECO: (1) stop charging him monthly for the meter, since it has discontinued the discount for the off-peak usage; (2) reimburse him for all the years that he was charged unfairly; and (3) reimburse him for the expense of an electrician for the purpose of rewiring the water heater if the meter in question is removed. Complaint at 3.

On February 20, 2024, in response to the Complaint, PECO filed an Answer and New Matter (Answer), as well as a Preliminary Objection, both properly endorsed with a Notice to Plead. In its Answer, PECO specifically denied all material allegations of the Complaint and averred that the Company did not object if the Complainant no longer wishes to have an off-peak meter. PECO also stated that the Company advised Mr. Toroney that he can have the meter removed at his expense and that until the meter is removed, pursuant to PECO's tariff, it has a right to bill a \$2.04 fee per month. Answer at 2 and 4. In the New Matter, PECO argued that the Complainant lacks standing to seek reimbursement for claims stemming back to 2003 because he was not a customer of record at the Service Address until June 2022.⁹ Answer at 5. Additionally, PECO alleged that the Complainant's claim is stale because, pursuant to 66 Pa.C.S. § 3314, any prosecution for liability must have been brought within three years from the date at which the liability arose. *Id.*

Also, on February 20, 2024, as noted *supra*, PECO filed its Preliminary Objection, seeking dismissal of the portion of the Complaint which addressed billing issues prior to 2022, because the Complainant lacks standing to raise those issues, and the statute of limitations on them has run pursuant to Pa.C.S. § 3314(a). Preliminary Objection at 4-7. PECO also specifically alleged that Complainant' "eleven (11) year old refund request is clearly beyond the four (4) year Statute of Limitation to which PECO

⁹ As previously indicated, the Complainant did not establish electrical services at the Service Address until June 24, 2022. *See*, Answer at 2-3.

Energy and the Court are bound.” Preliminary Objection at 6 (citing 66 Pa.C.S. §1312(a)). The Complainant did not file a response to either the New Matter or the Preliminary Objection.

On March 20, 2024, ALJ Eranda Vero was assigned as the Presiding Officer in this proceeding. On April 11, 2024, ALJ Vero issued an Interim Order, granting, in part, and denying, in part, PECO’s Preliminary Objection, stating:

Because the disputed charges are ongoing, the statute of limitations outlined in 66 Pa.C.S. § 3314 has not run on the claims raised in the present Complaint. However, pursuant to 66 Pa.C.S. § 1312(a), the Complainant is barred from obtaining a refund for the disputed charges beyond four years from the date of the filing of the Complaint. Consequently, PECO’s Preliminary Objection is denied, in part, with regard to its challenge to Mr. Toroney’s standing and its claim of the running of the statute of limitations. However, the Preliminary Objection is granted, in part, with regard to the limitation of the refund period. The matter shall be set for a hearing.

Interim Order at 5.

By Hearing Notice dated April 11, 2024, an Initial Telephonic Hearing was scheduled for June 4, 2024, assigning the matter to ALJ Heep. Due to a scheduling conflict, a Rescheduled Initial Call-In Telephonic Hearing Notice was issued on May 6, 2024, scheduling an Initial Telephonic Hearing for June 27, 2024. Thereafter, ALJ Heep issued the Parties a Prehearing Order dated May 14, 2024, informing them about the procedural rules for the hearing. I.D. at 3.

On June 27, 2024, ALJ Heep convened the telephonic evidentiary hearing, as scheduled. The Complainant appeared *pro se*, testified on his own behalf, and presented no other witnesses. One exhibit (Complainant Exhibit 1) was admitted into the

record on behalf of the Complainant. PECO was represented by counsel who presented the testimony of one witness, Ms. Ramona Milburn, a Regulatory Assessor at PECO. PECO presented four exhibits (PECO Exhibits 1-4), which were admitted into the record. During the hearing, PECO was directed to provide a copy of Commission Orders pertaining to the phase out of the off-peak program within two weeks. On June 27, 2024, PECO submitted four documents, which were marked as PECO Exhibits 5 through 8. Mr. Toroney was given until July 17, 2024 to file any response or objection. No response or objection was filed by Mr. Toroney.¹⁰

The record was closed on July 17, 2024. I.D. at 4. A transcript of the proceeding consisting of sixty-four (64) pages was also filed with the Commission.

On October 7, 2024, the Commission issued the Initial Decision of ALJ Heep, wherein she denied and dismissed the Complaint, finding that Mr. Toroney did not establish by a preponderance of the evidence that PECO violated the Public Utility Code (Code) or any Commission Regulations or Orders by billing the Complainant a monthly service charge for an off-peak meter or asserting that a customer is responsible for the service extension to appliances. I.D. at 1, 7-8.

As noted *supra*, the Complainant filed Exceptions on October 28, 2024. PECO filed Replies to Exceptions on November 7, 2024.

¹⁰ PECO Exhibits 5 through 8 were admitted into the record by the Initial Decision of ALJ Heep. I.D. at 4 and 9.

II. Discussion

A. Legal Standards

1. Burden of Proof

As explained *supra*, we shall exercise our discretion to consider the Complaint as a timely request for review of the BCS decision issued in the Informal Complaint proceeding at BCS Case No. 3932540. A timely appeal from an informal decision of the BCS is reviewed *de novo*. 52 Pa. Code §§ 56.173(a), 56.403(a). *De novo* means that the review is based on the evidentiary record created at the hearing and no part of the record in the informal complaint proceeding can be relied upon in the formal complaint proceeding. *Kelvin Thomas v. Philadelphia Gas Works*, Docket Nos. F-2017-2611788, C-2017-2621275 (Order entered August 31, 2018) (*Kelvin Thomas*) at 8. In a *de novo* appeal from a decision of the BCS, the burden of proof remains with the party who filed the original informal complaint.¹¹ *Id.* (citing, *inter alia*, 52 Pa. Code § 56.173(f)).

As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

¹¹ In a timely appeal from a BCS decision, the burden of proof remains with the Complainant except for legal or policy issues raised by the utility on appeal as “it would be absurd to impose the burden of proof concerning a legal and policy issue upon a customer who did not raise the issue and who probably has little knowledge of the issue itself.” *Kelvin Thomas* at 8-9 (citations omitted).

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa.C.S. § 332(a). The evidentiary burden of proof for actions before the Commission is the “preponderance of the evidence” standard. *Suber v. Pennsylvania Com’n on Crime and Delinquency*, 885 A. 2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (1992) (*Lansberry*); *see also, North American Coal Corporation. v. Air Pollution Commission*, 279 A.2d 356 (Pa. Cmwlth. 1971). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. *See Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 855 (Pa. 1950).

The burden of proof comprises two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Final Order entered August 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party’s claim or affirmative defense. *Id.* It may shift between the parties during a hearing. If a complainant introduces sufficient evidence to establish the legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant’s evidence. *See Id.* If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant’s burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant. The complainant then must provide some additional evidence favorable to the complainant’s claim. *Milkie v. Pa. PUC*,

768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*); *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983) (*Burleson*).

Having produced sufficient evidence to establish the legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie, Burleson*; *see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993). It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See, Moore*. In determining whether a complainant has met the burden of persuasion, the ultimate factfinder¹² may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See, Moore* (citing *Suber*).

Finally, adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S. Ct. 206, 217 (1983). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Railway Company v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corporation v. Unemployment Compensation Board of Review*, 166 A.2d 96 (Pa. Super. 1961);

¹² In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa.C.S. § 335(a)).

Murphy v. Commonwealth Department of Public Welfare, White Haven Center,
480 A.2d 382 (Pa. Cmwlth. 1984).

2. Adequate, Efficient, Safe and Reasonable Electric Service

The Code makes clear that a public utility has a duty to maintain adequate, efficient, safe, and reasonable service and facilities and to make changes, alterations, and substitutions that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Section 1501 of the Code provides, in pertinent part, as follows:

§ 1501. Character of service and facilities

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.

66 Pa.C.S. § 1501.

Section 102 of the Code, defines “service” as:

Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all

things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities

66 Pa.C.S. § 102. A utility's "service" is not merely confined to the distribution of utility service, but also includes "any and all acts" related to that function. *West Penn Power Co. v. Pa. PUC*, 578 A.2d 75 (Pa. Cmwlth. 1990). Accordingly, a utility's billing practices are included within the scope of reasonable service.

3. Commission-Approved Tariffs

It is well accepted that a tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. *PPL Electric Utilities Corporation v. Pa. PUC*, 912 A.2d 386 (Pa. Cmwlth. 2006). Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations, and practices so that the public may inspect its contents. 66 Pa.C.S. § 1302; 52 Pa. Code § 53.25; *Philadelphia Suburban Water Company v. Pa. PUC*, 808 A.2d 1044 (Pa. Cmwlth. 2002) (*Phila. Suburban Water*). Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pennsylvania Electric Company v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995). The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. *Phila. Suburban Water*.

Finally, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corporation 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).

B. ALJ's Initial Decision

In the Initial Decision, ALJ Heep made seven (7) Findings of Fact and reached six (6) Conclusions of Law. I.D. at 4, 8. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

ALJ Heep determined that Mr. Toroney presented two issues for which he sought commission relief. First, Mr. Toroney requested that the Commission direct PECO to pay the cost for the rewiring of his water heater if the off-peak meter is removed; a cost that the Complainant quantified as \$3,732, according to an estimate he received from a licensed electrician. I.D. at 6; Complainant Exh. 1; Tr. 26, 37.

Second, Mr. Toroney requested the Commission direct PECO to provide him with a refund of the off-peak meter service charges he has paid over the last four years, contending that he should not have to pay a \$2.04 monthly service charge for an off-peak meter connected to his water heater because PECO discontinued the discount program. I.D. at 6 (citing Tr. at 26, 37).

As to Mr. Toroney's first allegation, ALJ Heep noted that "[i]t is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. I.D. at 6-7 (citing *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978)). The ALJ determined that the Commission cannot award the type of compensation sought by the Complainant here. I.D. at 7 (citing *Morrow v. Bell Tel. Co. of Pa.*, 479 A.2d 548

(Pa. Super. 1984); *West Penn Power Co. v. Pa. PUC*, 521 A.2d 75 (Pa. Cmwlth. 1987); *Ostrov v. I.F.T., Inc.*, 586 A.2d 409 (Pa. Super. 1991)). The ALJ also concluded that “[a] request for monetary damages must be pursued before a Magisterial District Justice or a Court of Common Pleas.” *Id.*

ALJ Heep also cited to the relevant portion of testimony provided by PECO’s witness, Ms. Milburn, in which she stated that PECO would remove the off-peak meter at no cost to Mr. Toroney. I.D. at 7 (citing Tr. at 44). In evaluating the Complainant’s argument that PECO should be compelled to pay the cost of rewiring his water heater if the off-peak meter were to be removed, the ALJ referred to the relevant portion of PECO’s Tariff, as follows:

6.3 CUSTOMER’S SERVICE EXTENSION. The customer shall provide, own, inspect and maintain the service extension from the Company’s service-supply lines to the point of delivery and receiving equipment. PECO may install a Company-owned meter, transformer (which transformer may serve one or more customers), or other required equipment, of its choice, on customer-owned property or facilities; Such installation does not alter the responsibility of the customer to provide, own, inspect, and maintain the required customer service extension to which such Company-owned facilities may be attached.

I.D. at 7 (citing PECO Tariff, Rule 6.3). Therefore, the ALJ concluded that, since PECO had not violated the Code, Commission Regulations or Orders, or PECO’s Tariff by not paying the cost of rewiring the Complainant’s water heater, the Complainant cannot prevail here. I.D. at 7-8.

As for the \$2.04 per month that PECO charges Mr. Toroney for the off-peak meter, the ALJ found that charge is authorized by PECO’s Commission-approved Tariff, and therefore, PECO was entitled to the payments it received. The ALJ similarly dismissed this portion of the Complaint because

Mr. Toroney failed to prove, by a preponderance of evidence, that PECO violated any provision of the Code, Commission Regulations or Orders, or PECO's Tariff. I.D. at 7-8.

C. Exceptions and Replies

As a threshold consideration, the Complainant's Exceptions consist of two type-written pages in which he generally expresses his disagreement with ALJ Heep's findings and the decision to dismiss the Complaint; however, the format of the Exceptions does not strictly comply with Section 5.533(b) of the Commission's Regulations, 52 Pa. Code § 5.533(b). These Regulations require that Exceptions be numbered, identify the findings of fact and conclusions of law to which exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, because the Complainant is appearing *pro se*, we will accept the Exceptions as filed and consider them on their merits pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and inexpensive determination of this matter. We also conclude that no prejudice to PECO results from our consideration of the Exceptions of the Complainant on the merits.

The essential charge by the Complainant of ALJ error lies in his assertion that he is not challenging whether PECO "violated any [Public] [U]tility [C]ode, [C]ommission [R]egulation or [O]rders," but requests the Commission determine whether PECO violated his rights under the consumer protection laws and regulations that govern bait and switch tactics. Specifically, the Complainant believes that he should not have the burden of paying the monthly off-peak meter charge if he does not receive the benefit of the off-peak rate, and claims that PECO's discontinuance of said off-peak rate, while continuing to charge him for the off-peak meter, is akin to a "bait and switch" tactic. Exc. at 1-2.

In reply, PECO contends that since (1) the Complainant concedes that his Exceptions do not involve a violation of the Code or a Regulation or Order of the Commission, and (2) 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, ALJ Heep's decision to dismiss the Complaint against PECO should be upheld. R. Exc. at 3-4.

D. Disposition

The gravamen of Mr. Toroney's Exceptions is that PECO's actions violate the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTP/CPL). However, as indicated by PECO, it is well settled that the Commission does not have jurisdiction to enforce the UTP/CPL. *See*, R. Exc. at 3; *see also*, *Commonwealth of Pennsylvania, et al. v. Respond Power LLC*, C-2014-2427659 at 6, Order Granting in Part and Denying in Part Preliminary Objections (entered August 20, 2014), citing *Mid-Atlantic Power Supply Assoc. v. PECO Energy Co.*, Docket No. P-00981615, 1999 Pa PUC LEXIS 30 (entered May 19, 1999); *David P. Torakeo v. Pennsylvania American Water Co.*, Docket No. C-2013-2359123, Opinion and Order (entered April 3, 2014). Therefore, the Commission cannot find that an entity has violated the UTP/CPL.

While the Commission does not have jurisdiction over UTP/CPL claims, the Commission is not without authority to address unreasonable or deceptive practices by jurisdictional utilities. Importantly, the Commission does have Regulations that prohibit utilities from engaging in misleading or deceptive conduct or making false or misleading representations. Specifically, our Regulations require, *inter alia*, that public utilities employ fair and equitable billing practices in serving residential customers. 52 Pa. Code § 56.1(a). Our Regulations also confer an obligation for utilities to utilize good faith, honesty and fair dealing in performance and enforcement. *Id.* Additionally,

Section 1501 of the Code, 66 Pa.C.S. § 1501, requires that public utilities provide reasonable and adequate service to their customers.

Viewing both the Complaint and the Exceptions in a broad sense, Mr. Toroney generally raised allegations that PECO failed to provide reasonable and adequate electric service in accordance with 66 Pa.C.S. § 1501. *See* Complaint at 2-3 (alleging reliance upon a special offer as a basis to install a special meter and then a detriment when the discount was eliminated); Exc. at 1 (alleging Complainant's father was lured in to installing an off-peak meter with an attractive offer that was later replaced). Yet, even when viewing Mr. Toroney's Complaint in the light most favorable to him, and accepting as true every well-pleaded fact in his Complaint, as well as every reasonable inference from those facts, Mr. Toroney has failed to state a claim upon which relief can be granted.

Viewing the Complaint in this case in the light most favorable to the Complainant, the Complainant pays a monthly off-peak meter charge on his electric bill but is not receiving service at an off-peak rate. PECO is charging the Complainant \$2.04 per month for the meter. In order to be legally sufficient, a complaint must set forth "an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission." 52 Pa. Code § 5.22(a)(4). Here, we agree with the ALJ that the Complainant has not met his burden of proving that PECO has violated any statute, Regulation or Order which the Commission has jurisdiction to administer by placing the off-peak meter charge on the Complainant's bill. I.D. at 8.

Rather, while the Complainant alleges that PECO engaged in a bait and switch scheme by terminating Rate OP, which resulted in the off-peak discount that was offered when the off-peak meter was installed at the Service Address, PECO's

elimination of Rate OP was directly approved by a Commission Order. As indicated *supra*, the Commission approved elimination of PECO's Off-Peak rate and approved the \$2.04 customer charge for each off-peak meter. The off-peak meter charge is part of PECO's tariff, which has been approved by the Commission. Consequently, PECO has not engaged in any misleading, deceptive, or unlawful behavior in violation of the Code or Regulations or Orders of the Commission. PECO has been clear and unambiguous in the terms of service it offered to Mr. Toroney.

It appears that the Complainant believes he should not have the burden of paying the monthly off-peak meter charge if he does not receive the benefit of the Off-Peak rate. However, the Commission has previously ruled that elimination of PECO's Off-Peak rate was consistent with the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2810-2812 (Competition Act). *See Linda Piekara v. PECO Energy Company*, Docket No. C-2012-2323880 (Initial Decision issued April 27, 2012), *adopted without modification* (Final Order entered December 19, 2012); *see also, Jeffrey Rantz v. PECO Energy Company*, Docket No. C-2012-2293057 (Initial Decision issued October 25, 2012), *adopted without modification* (Final Order entered September 6, 2012).

While the Commission has ruled that the Competition Act requires elimination of PECO's Off-Peak rate, it has not ruled that the Competition Act requires elimination of PECO's off-peak meters. Since it appears that the Complainant's off-peak meter is still registering electricity usage, it would be inappropriate for PECO to remove the off-peak meter, since removing the meter would cause the Complainant to lose electric service to his water heater. Further, as indicated by the record, should it be requested by the Complainant, PECO would remove the off-peak meter at no cost to him; however, the wiring for whatever is connected to that meter, *i.e.*, the water heater, would have to be moved to the primary meter at the Complainant's expense. *See*, Tr. at 37, 44-45. As set forth in the Initial Decision, PECO's Tariff Rule 6.3, which has the force

and effect of law, establishes that customers own, and are responsible for, the inspection and maintenance of the service extension from PECO's service-supply lines to the point of delivery and receiving equipment, regardless of whether PECO has installed a meter or other equipment. *See*, I.D. at 7-8. We note that the Complainant has not disputed the applicability of PECO Tariff Rule 6.3. As the ALJ recognized, PECO's unwillingness to pay the cost of rewiring the Complainant's water heater does not constitute a violation of its Tariff, the Code, or Commission regulations or Orders. *See, Id.* On the contrary, PECO's Tariff explicitly provides for the customer owner (*i.e.* the Complainant) to incur such responsibility.

We acknowledge the Complainant's concern pertaining to the financial hardship that would result from the potential rewiring of his water heater, should he determine to request removal of the off-peak meter; however, such hardships do not equate in this instance to a violation of the Code, a Commission Order or Regulation, or a Commission-approved Company tariff. We also find that the Complainant's allegations fail to establish that PECO has provided unreasonable service in violation of Section 1501 of the Code. Finally, we also conclude that PECO has not engaged in bad faith, or dishonest or unfair practices in contravention of 52 Pa. Code § 56.1(a), because the record demonstrates that PECO is charging the Complainant a Commission-approved rate for the off-peak meter and it is serving the Complainant under the terms of its approved tariff.

Therefore, PECO has not violated the Code or Commission Regulations in these circumstances by billing the Complainant \$2.04 per month for the off-peak meter or by failing to agree to pay the cost of rewiring the Complainant's water heater as part of any removal of the Complainant's off-peak meter.

III. Conclusion

Consistent with the foregoing reasons, we shall deny the Complainant's Exceptions, adopt the Initial Decision of ALJ Heep, and dismiss the Complaint consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Frank Toroney on October 28, 2024, to the Initial Decision of Administrative Law Judge Darlene Heep, issued on October 7, 2024, at Docket No. C-2024-3045932, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Darlene Heep, issued on October 7, 2024, at Docket No. C-2024-3045932, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Frank Toroney on January 17, 2024, in this docket, is dismissed.

4. That the Secretary's Bureau shall mark this proceeding closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 19, 2024

ORDER ENTERED: December 19, 2024