

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

Public Meeting held January 23, 2025

Commissioners Present:

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

Vanee Flowers

F-2023-3037961

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 Vanee Flowers (Ms. Flowers or Complainant) filed on September 9, 2024, to the Initial Decision on Remand (I.D.R.) of Administrative Law Judge (ALJ) Arlene Ashton, which was issued on August 19, 2024,

in the above-captioned proceeding.¹ PECO Energy Company (PECO or the Company) filed Replies to Exceptions on September 16, 2024. For the reasons discussed below, we shall deny Ms. Flowers’ Exceptions and adopt ALJ Ashton’s Initial Decision on Remand, as modified, consistent with the discussion in this Opinion and Order.

I. History of Proceeding

On January 25, 2023, Ms. Flowers filed a Formal Complaint (Complaint) against PECO with the Commission in which she alleged that there were incorrect charges on her bill.² Additionally, Ms. Flowers alleged an “illegal electricity hookup” at her apartment and that she had experienced an “overload of electricity, constant power outages, flickering lights, and overheating of appliances.”³ Ms. Flowers also alleged that she did not have access to the breaker box for her apartment as such an apparatus is located in another apartment unit. Complaint at 2. Attached to the Complaint were what appears to be failed housing quality standards inspections regarding the Complainant’s rental property and an email from the Complainant to the Delaware County Housing Authority, *inter alia*, wherein the Complainant again alleges an illegal electrical hookup

¹ The Complainant’s Exceptions following remand are, effectively, the second set of Exceptions filed in this proceeding (Second Exc.). On October 19, 2023, the Commission issued an Opinion and Order holding the disposition of the Complainant’s then-filed first set of Exceptions (Exc.) in abeyance and remanding the issue of the foreign load claim raised by the Complainant to the Office of Administrative Law Judge (OALJ) for hearing and disposition. *See Vane Flowers v. PECO Energy Company*, Docket No. F-2023-3037961 (Opinion and Order issued October 19, 2024). (*October 2023 Order*).

² This is a timely appeal from the Commission’s Bureau of Consumer Services (BCS) determination at BCS No. 3866604 issued on December 21, 2022. Appeal of a BCS informal complaint decision is a *de novo* review conducted by either an ALJ or a special agent. 52 Pa. Code § 56.173(a).

³ Ms. Flowers checked boxes on her Complaint indicating the type of utility service that is the subject of the Complaint to be: electric, gas, steam heat, and storm water. Hand-written notes were also on the complaint form. Complaint at 2.

and “an overload of electricity causing a high Peco bill.” *Id.* at 21. For relief, Ms. Flowers requested that PECO be instructed to reimburse her for all electric service provided to the apartment that she rented at the Service Address⁴ and that all balances for utility service to her at the Service Address be charged to the owner of the rental property.⁵ *Id.* at 3.

On February 17, 2023, PECO filed an Answer to Ms. Flowers’ Complaint denying the material allegations of the Complaint.⁶

On February 21, 2023, a Hearing Notice was issued scheduling an Initial Hearing to be held telephonically on April 12, 2023 and assigning the matter to ALJ Ashton.

ALJ Ashton issued a Prehearing Order on March 9, 2023. The Prehearing Order, *inter alia*, directed the Parties to comply with various procedural requirements and explained the burden of proof. The Prehearing Order stated the Complainant bears the burden of proof to establish that PECO violated its tariff, the Public Utility Code (Code), or a Commission Order or Regulation and that she is entitled to the relief requested in the Complaint. Prehearing Order at 4; I.D. at 2.

The hearing was held as scheduled on April 12, 2023. Ms. Flowers participated *pro se* and testified. Four (4) exhibits were offered by Ms. Flowers that were entered into the record. I.D. at 2; Tr. at 28-38. PECO appeared, represented by Khadijah

⁴ Ms. Flowers no longer resides at the Service Address. Tr. at 14.

⁵ The owner of the Service Address is identified as Del Val Realty & Property Management, LLC, 49 E. Lancaster Ave, Suite 300, Malvern, PA 19355. Complaint at 3.

⁶ In its Answer, PECO indicated that Ms. Flowers had electric and gas heating service at the Service Address. Answer at 1.

Scott, Esquire, and presented the testimony of Ms. Anna Mae Migliaccio, a PECO regulatory assessor. PECO offered four (4) exhibits and they were entered into the record. I.D. at 2.; Tr. at 80-90.

The record closed on April 26, 2023.

On July 14, 2023, ALJ Ashton issued an Initial Decision dismissing the Complaint. On August 3, 2023, the Complainant filed Exceptions to the ALJ's Initial Decision. *See* Exc. PECO filed Replies to Exceptions on August 18, 2023. *See* R. Exc.

On October 19, 2023, the Commission issued the *October 2023 Order* holding the proceeding in abeyance and remanding the proceeding to the OALJ to address, specifically, the foreign load claim raised by Ms. Flowers.

On March 8, 2024, an Initial Hearing on Remand Notice (Remand Notice) was issued scheduling a telephonic Initial Hearing on Remand (Remand Hearing) on May 1, 2024. The telephonic Remand Hearing convened as scheduled on May 1, 2024. The Complainant appeared *pro se* and Khadijah Scott, Esquire appeared on behalf of PECO. I.D.R. at 3.

Shortly after the telephonic Remand Hearing began, the ALJ allowed the Parties to enter into settlement discussions, off the record, with the ALJ acting as Settlement Judge. Tr. at 107-09. The Parties were unable to reach an agreement, and the Remand Hearing resumed. *Id.* at 110. ALJ Ashton thereafter explained the order for the presentation of testimony, directing PECO to provide its testimony first, to which Ms. Flowers objected. Therefore, ALJ Ashton allowed Ms. Flowers to proceed with her testimony first. *Id.* at 111-16. Instead of testimony, Ms. Flowers proffered proposed exhibits for entry into the record. *Id.* at 116. Before the ALJ made a ruling on the

admission of Ms. Flowers' exhibits, Ms. Flowers stated that she was "adjourning the hearing" and disconnected from the telephonic hearing. *Id.* at 119.

ALJ Ashton recessed the hearing to allow Ms. Flowers to return to the Remand Hearing, however, the Complainant did not reconnect to the Remand Hearing. Tr. at 119-20. PECO's counsel then moved to dismiss the Complaint, with prejudice, for failure to prosecute the Complaint. *Id.* at 121-22.

The record closed on May 22, 2024. I.D.R. at 3.

On August 19, 2024, the Commission issued ALJ Ashton's Initial Decision on Remand, wherein she dismissed Ms. Flowers' Complaint, with prejudice, for failure to prosecute.

As previously noted, the Complainant filed the second set of Exceptions on September 9, 2024. PECO filed the second set of Reply Exceptions on September 16, 2024.

I. Discussion

A. Legal Standards

We advise the Parties that any issue or argument that we do not specifically address herein has been duly considered and will be 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, Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

1. General Burden of Proof for Complaint Proceeding

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa.C.S. § 332(a). The evidence necessary to meet that burden must be substantial. 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. 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).

To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *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. 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*, 529 Pa. 654, 602 A.2d 863 (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*, 364 Pa. 45, 70 A.2d 854 (1950).

The burden of proof is comprised of two (2) distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 2000 Pa. Super. 178, 754 A.2d 1283 (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 (Initial Decision issued May 11, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a

party's claim or affirmative defense. *See, Id.* It may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See, Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish 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 Moore*.

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, who must provide some additional evidence favorable to the complainant's claim. *See Milkie*, 768 A.2d at 1220; *see also, Burlison v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

Having produced sufficient evidence to establish 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*, 768 A.2d at 1220; *see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993); *see also, Burlison*, 443 A.2d at 1375. 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 fact-finder⁷ 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 v. Pennsylvania Com'n on Crime and Delinquency*, 885 A. 2d 678, 682 (Pa. Cmwlth. 2005).

2. Failure to Prosecute

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (*Schneider*) (citing *Fusaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978)). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider*, 479 A.2d at 15 (Pa. Cmwlth. 1984) (citing *Township of Middleton v. The Institute District of the County of Delaware*, 293 A.2d 885 (Pa. Cmwlth. 1972), *aff'd* 450 Pa. 282, 299 A.2d 599 (Pa. Cmwlth. 1973)). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980).

The public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources in addressing a complaint. *See Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995)(*Jefferson*); *see also, e.g., Charles Nichols III v. Bell-Atlantic-Pennsylvania*, Docket No. C-00956667 (Opinion and Order entered August 4, 1995).

⁷ 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)).

3. Failure to Maintain Order in Proceedings

Under Section 5.245 of Commission Regulations, provided that a party's right to due process is protected, upon the Commission's finding that the actions of the party obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission may take appropriate action, including dismissal of the Complaint. 52 Pa. Code § 5.245; *see also, Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

B. ALJ's Initial Decision on Remand

In the Initial Decision on Remand, ALJ Ashton made twenty-three (23) Findings of Fact and reached four (4) Conclusions of Law. I.D.R. at 4-6; 8-9. 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 the Opinion and Order.

ALJ Ashton explained that the Commission is required to provide due process. I.D.R. at 6 (citing *Schneider*). Additionally, the ALJ stated that the Commission is required to fix the time and place of a hearing in a complaint proceeding and serve notice thereof upon the parties in interest. I.D.R. at 6 (citing 66 Pa.C.S. § 703 (a)-(b)).

The ALJ described the manner in which the Remand Notice was issued to the Complainant, noting that it included the telephone number to call and the passcode to join the conference line in order to participate in the hearing. ALJ Ashton stated that the Remand Notice mirrored the February 21, 2023 Initial Hearing Notice which scheduled the April 12, 2023 hearing. Furthermore, ALJ Ashton pointed to the Prehearing Order issued March 9, 2023, which was served on the Complainant and contained hearing

information and rules governing the proceeding and included how to request a continuance, if necessary, and the consequences of failing to appear. I.D.R. at 7.

ALJ Ashton explained that the Complainant appeared for the May 1, 2024 Remand Hearing and participated for nearly one (1) hour when she then refused to further participate and disconnected from the hearing. I.D.R. at 7.

The ALJ stated that as the party bringing the Complaint, Ms. Flowers bears the burden of proving, by a preponderance of the evidence, that she is entitled to relief. I.D.R. at 7 (citing 66 Pa.C.S. § 332(a)). As the Complainant failed to meet her burden, ALJ Ashton dismissed her Complaint, with prejudice. I.D.R. at 7 (citing *Jefferson; El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245).

ALJ Ashton explained that PECO specifically made a motion to dismiss the Complaint, with prejudice, due to the Complainant's intentional action to discontinue her participation in the hearing. I.D.R. at 7. In addition, the ALJ stated that she has not received any communication from the Complainant regarding her abrupt departure from the hearing, concluding that Ms. Flowers' absence was not unavoidable. *Id.* at 8.

Consequently, ALJ Ashton dismissed Ms. Flowers' Complaint, with prejudice. I.D.R. at 8 (citing *Elliott v. Pa. Elec. Co.*, No. F-2018-3003502 (Opinion and Order entered February 6, 2020)).

A. Second Exceptions

As mentioned above, Ms. Flowers filed Exceptions to the Initial Decision on Remand on September 9, 2024. Attached to the Exceptions are documents labeled as Exhibits A-E.⁸

In her second set of Exceptions, Ms. Flowers claims that she was not given a fair hearing and her due process rights were violated by ALJ Ashton. Ms. Flowers argues that the ALJ did not allow Ms. Flowers to speak or testify and instead preferred that the Company give its testimony. Additionally, Ms. Flowers takes issue with the ALJ's failure to admit her Exhibits into the record. Ms. Flowers explains that as she believed the ALJ would not conduct the hearing fairly, she decided to disconnect from the hearing. Second Exc. at 2-3.

Ms. Flowers further asserts that the off-the-record Settlement Conference conducted by ALJ Ashton was just a way to glean information from the Complainant and was not conducted to bring a resolution to the matter. Ms. Flowers maintains that she is entitled to a full reimbursement of her electric bills from January 31, 2020 through

⁸ Exhibit A-1 is a copy of Ms. Flowers second set of Exceptions; Exhibit A-2 is a copy of Ms. Flowers first set of Exceptions filed August 3, 2023 along with Ms. Flowers Answer to PECO's Answer to the Formal Complaint; Exhibit B is a cover sheet indicating "THE RECORDED RECORD AND ALL DOCUMENTS FILED TO THE RECORD IN THIS COMPLAINT BEFORE THIS HONORABLE PUBLIC UTILITY COMMISSION, THE COMMISSION"; Exhibit C is a copy of the *October 2023 Order*; Exhibit D-1 is a letter from Ms. Flowers to ALJ Ashton and PECO's counsel along with purported excerpts of a civil action filed in Delaware County, Pennsylvania, an approval letter from Del Val Realty, a document labeled as Delaware County Court of Common Pleas, PA – Tax Office, an indiscernible document labeled page 14 of 16, and photos; Exhibit D-2 is a listing of exhibits and a copy of the *October 2023 Order*, and a copy of a Statement of Policy, and copies of electronic mail between Ms. Flowers and PECO; Exhibit E is a copy of the Commission's electronic service notification that an Initial Decision was served in the instant proceeding.

November 30, 2022 for the Service Address in question. According to the Complainant, the reason for her billing issue is a foreign load. Second Exc. at 3.

The Complainant then attempts to address the Initial Decision on Remand by responding to each paragraph and Finding of Fact. The Complainant reiterates the same issues raised throughout her Exceptions. Second Exc. at 4-7. Ultimately, Ms. Flowers requests that the Commission grant her Exceptions. *Id.* at 8.

B. Second Reply Exceptions

In its Reply Exceptions, PECO states that the ALJ provided Ms. Flowers with ample opportunity to present evidence and cross examine PECO's witness during the hearing. PECO argues that Ms. Flowers' Exceptions do not assert any specific allegations that the ALJ made an error of law or abused her discretion in any manner and instead make bald assertions that ALJ Ashton was "biased." PECO points out that Ms. Flowers chose not to further take part in the hearing but is now seeking to circumvent the hearing and litigate the issues raised in the Complaint via Exceptions. PECO explains that the Commission provided the Complainant with proper due process because she was given notice of the hearing via both a Prehearing Order and Hearing Notice. PECO Second R. Exc. at 4. PECO argues that Ms. Flowers' had the opportunity to present witnesses and any exhibits if she chose to do so, but instead disconnected the call prior to moving any exhibits into evidence. *Id.* at 4-5. Ultimately, PECO requests that the Commission adopt the Initial Decision on Remand and deny the Complainant's Exceptions. *Id.* at 5.

II. Disposition

A. Remand Proceeding re: Foreign Load/Failure to Prosecute

At the outset, we note that the ALJ's disposition appears to dismiss the Complaint in its entirety, with prejudice. However, in our *October 2023 Order*, we remanded this matter to the OALJ for the sole purpose of having the OALJ hold a hearing and an appropriate resolution on the issue of foreign load. *October 2023 Order* at 13. Therefore, the ALJ's disposition on remand applies only to the Complainant's foreign load claim. While it is within our discretion to dismiss the entire Complaint based upon the Complainant's actions at the Remand Hearing,⁹ we acknowledge that we held certain issues within the Complainant's first set of Exceptions in abeyance. As the issues held in abeyance were not remanded, those issues remain before us and we will address them, in turn. Therefore, we shall modify the ALJ's Initial Decision on Remand to the extent that we shall now consider those issues, consistent with the discussion below.

During the Remand Hearing, ALJ Ashton explained the purpose of the hearing and directed PECO to present its evidence first. Tr. at 113-16. Ms. Flowers objected and requested to present her evidence prior to PECO. ALJ Ashton granted the Complainant's request. *Id.* at 116. Ms. Flowers began her testimony by attempting to enter exhibits into the record when ALJ Ashton interjected to provide instructions on how to orderly proceed. *Id.* at 117. Ms. Flowers again began testifying when PECO's counsel objected to a statement made by Ms. Flowers. *Id.* at 118. Soon thereafter, Ms. Flowers disconnected from the hearing without submitting any evidence claiming unfair treatment. *Id.* at 119. The hearing concluded with PECO's Motion to Dismiss Ms. Flowers' Complaint, with prejudice, for failure to prosecute. *Id.* at 121-22.

⁹ 52 Pa. Code § 5.245; *see also*, *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

Upon review of the record in this proceeding, we shall adopt the ALJ's Initial Decision on Remand, dismissing the portion of the Complaint pertaining to foreign load, with prejudice, based upon the Complainant's actions in failing to fully participate in the Remand Hearing. The record in this proceeding reflects that the Complainant was afforded the opportunity to actively participate in the Remand Hearing, but failed to do so, while offering no valid basis for such failure.

We find the ALJ's action in dismissing the portion of the Complaint pertaining to foreign load, with prejudice, to be justified based upon the relevant procedural history of this case, which established the Complainant's unjustified refusal to participate in the Remand Hearing. In this case, Ms. Flowers appeared at the Remand Hearing but refused to follow the instructions of ALJ Ashton, even after ALJ Ashton permitted Ms. Flowers to present her case first.

Under Section 5.245 of the Commission's Regulations, if the presiding officer finds, after notice and opportunity for hearing, that the actions of a party, in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint, if the action is that of complainant. 52 Pa. Code § 5.245(c). As the Commission stated in *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002), "[i]t is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing." See, *Schneider v. Pa. PUC*, 479 A.2d 10 (Pa. Cmwlth. 1984); *Plummer v. Columbia Gas of Pa., Inc.*, Docket No. Z-00847836 (Opinion and Order entered September 27, 2001). By failing to participate in the Remand Hearing and offer evidence to support the Complaint, the Complainant has failed to meet the burden of proof that is placed on her under the Code to satisfy the request for relief, as it pertains to her claims that were the subject of the Remand Hearing, *i.e.*, her claims based on allegations of foreign load.

Section 5.245(a)(2) further provides that “[a]fter being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.” 52 Pa. Code § 5.245(a)(2). Ms. Flowers failed to be represented at the hearing when she chose to disconnect prior to the conclusion of the hearing and therefore, pursuant to 52 Pa. Code § 5.245(a)(2), will not be permitted to reopen this matter before the Commission.

Lastly, we find that the Complainant’s Exceptions assert neither a legal or factual error in the ALJ’s Initial Decision, nor a lawful basis for the Complainant’s failure to participate in the Remand Hearing, which the Complainant initiated through her first set of Exceptions.

Accordingly, we shall deny the Complainant’s Exceptions and adopt the ALJ’s Initial Decision on Remand, as modified by this Opinion and Order, to dismiss, with prejudice, any portion of the Complaint pertaining to the allegation of foreign load, based upon the Complainant’s action in disconnecting from the telephonic hearing without a valid reason.

B. Exceptions Held in Abeyance

Turning to the Complainant’s first set of Exceptions which were held in abeyance by our *October 2023 Order*, we shall deny the Complainant’s Exceptions.

In our *October 2023 Order* we summarized the Complainant's allegations in her first set of Exceptions as follows:

1. ALJ Ashton erred in determining that the Complainant did not meet her burden of proof that PECO did not provide her with adequate and reasonable service which violated the Public Utility Code;
2. ALJ Ashton erred in determining that the Complainant did not meet her burden of proof that PECO's transfer of the balance from the Service Address to the Complainant's Current Address violated the Public Utility Code; and
3. ALJ Ashton denied Ms. Flowers a fair and impartial hearing, violating Ms. Flowers' due process rights.

Exc. at 2-7; *October 2023 Order* at 10.

The Complainant's second Exception above has already been decided against the Complainant as it relates directly to the Complainant's foreign load claim, discussed, *supra*, which was decided against the Complainant on remand based upon the Complainant's voluntary act of disconnecting from the telephonic hearing without a valid reason. I.D.R. at 6-8. Therefore, only the Complainant's first and third Exceptions remain to be addressed.

As for the first Exception, regarding adequate and reasonable service, Ms. Flowers explains that her electric service is faulty because her lights dim and flicker and her appliances overheat and have caught fire. Complaint at ¶ 4; Tr. at 15-16. In its Replies, PECO asserted that it was made aware of the Complainant's flickering lights and that the Complainant did not have access to the breaker box. PECO advised the Complainant to contact her landlord to obtain access so that an inspection could be conducted. PECO was unsuccessful in its attempt to further contact the Complainant. R. Exc. at 4.

With respect to the alleged light flickering, the Complainant did not specify the duration of the alleged violation or present any documentary evidence to establish an issue with the breaker box or proof of an electrician's finding. As for the alleged overheating of appliances and fires, again, the Complainant did not present any reliable evidence to corroborate her allegations.¹⁰

Under the Commission's Regulations the dimming of lights for a second or two is not an electric reliability standard violation. Section 57.192(i)(A) of the Commission's Regulations, 52 Pa. Code § 57.192(i)(A), defines an interruption of electric service beyond an electric distribution company's control that affects 10% of the customers in the territory and lasts five (5) minutes or more as a major event. Therefore, interruptions that last less than five (5) minutes would be minor or momentary. There is no reliability standard for dimming lights.

Importantly, the standard to determine the adequacy of a utility's service and facilities is one of reasonableness. The reasonableness standard is not one of perfect performance. *Re Metropolitan Edison Company*, 80 Pa. PUC 663, 672 (1993). In the instant case, the fact that Ms. Flowers did not testify to the duration of the flickering lights does not provide us with substantial evidence to establish that PECO failed to provide the Complainant with reasonable service.

Additionally, we note that the record before us demonstrates that PECO had processes and personnel in place which could have worked with the Complainant to

¹⁰ During the first hearing held in this proceeding, on direct and cross examination, the Complainant provided conflicting testimony as to when the alleged overheating and catching fire of appliances took place. *See* Tr. at 19-20, 39-42. As the ultimate factfinder, the Commission can make determinations of credibility, accept or reject testimony of a witness in whole or in part and may accept or reject inferences from the evidence. *See Moore, supra*. Here, the Complainant's testimony does not make clear when the alleged incidences occurred and therefore, we cannot consider this as credible evidence when making our final determination.

investigate and diagnose any issue with the breaker box, which may have been the source of the alleged light flickering and overheating. However, PECO was unable to make such a diagnosis because the Complainant did not have access to the breaker box at the Service Address. PECO maintains that it must have access to a breaker box to investigate an electric service complaint and that in a rental property where the unit does not have direct access to the breaker box, under PECO's policy, the tenant will be informed of its responsibility to contact the landlord to obtain access to the breaker box before the scheduling of an inspection. Tr. at 49; I.D. at 7. We find that PECO's position is correct in that a utility's responsibility stops at the meter on the homeowner's property and that anything beyond the meter, including the meter box, the breaker box, and anything going into the home is the homeowner's responsibility. *See, Michael Robinson v. PECO Energy Company*, Docket No. C-2014-2413368, 2015 WL 1291614, at *1 (Opinion and Order March 11, 2015). Additionally, we note that in a rental property, this responsibility does not shift to the utility.

In this case, the Complainant alleges that she does not have access to the breaker box in her unit and that her landlord has access. However, Ms. Flowers did not present any evidence as to efforts that she may have made to request that her landlord provide the Company with access to the breaker box. Therefore, we agree with the ALJ that the Complainant failed to carry her burden of proof to demonstrate that PECO did not provide reasonable service. Accordingly, the first Exception is denied.

Next, we turn to the Complainant's third Exception concerning due process rights and ALJ bias. In her Exceptions to the Initial Decision, the Complainant accuses the Commission of denying her due process and violating her civil rights.

The Commission is clearly bound by the due process provision of constitutional law and by the principles of common fairness. *See, Town Development Inc. v. Pa. PUC*, 411 A.2d 1317 (Pa. Cmwlth. 1980). The fundamental requirement of

due process is an opportunity to be heard at a meaningful time and in a meaningful manner. *See Montefiore Hospital Association of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481 (Pa. Cmwlth. 1980).

Review of the record shows that Ms. Flowers was afforded adequate due process in this proceeding. On September 22, 2022, the Complainant filed an informal complaint with BCS, who investigated her allegations and determined them to be unsubstantiated. Ms. Flowers exercised her right to appeal BCS' informal decision on January 10, 2023. She then filed the instant Complaint with the Commission on January 25, 2023. Ms. Flowers' Complaint followed the normal course and procedure that other consumer complaints filed with the Commission routinely are afforded. The Complaint was served upon all other parties involved in the dispute and was assigned to an ALJ for review and handling, as deemed appropriate, consistent with Commission Regulations. Ms. Flowers was afforded a hearing where she was able to present evidence and cross examine PECO's witness. After a review of the record, including the pleadings, exhibits, and hearing transcript, the ALJ issued an Initial Decision with a recommendation to dismiss the Complaint, finding that the evidence presented by the Complainant was insufficient to sustain her Complaint. Once the Initial Decision was issued, the Complainant was afforded yet another opportunity to voice her objections through the Exceptions process. The Complainant took advantage of this opportunity and filed her first set of Exceptions on August 3, 2023, as mentioned, *supra*. Those Exceptions are now before us for consideration and disposition.

As noted previously, we are of the opinion that the record plainly demonstrates that the procedure instituted by the Commission to handle Complaints and conduct hearings adequately ensures that each Complainant receives ample opportunity to be heard and guarantees that each Complaint is reviewed and adjudicated in a meaningful and timely manner.

For these reasons, we reject the Complainant's contention that her due process rights were violated by the ALJ's recommendation of the dismissal of the Complaint, by the Initial Decision issued on July 14, 2023.

Regarding the alleged bias of the ALJ, Ms. Flowers offers no detail in her Exceptions regarding such bias, other than the allegations that she was precluded from cross examining PECO's witness, which we find is contrary to the record, and that her Answer to PECO's answer was excluded from the record by the ALJ. *See* Tr. at 58-79 (where Ms. Flowers cross examined PECO's witness, Ms. Migliaccio). Our Regulation at Section 5.483(a) authorizes the presiding ALJ "to exclude irrelevant, immaterial or unduly repetitive evidence, to prevent excessive examination of witnesses . . . and to otherwise regulate the course of the proceeding." 52 Pa. Code § 5.483(a). The ALJ is required to conduct a fair and impartial hearing and maintain order. *See* 52 Pa. Code § 5.485(a); 66 Pa.C.S. § 331(d)(3)-(4).

In its Reply Exceptions, PECO contends that ALJ Ashton provided the Complainant with ample opportunity to present evidence, cross examine PECO's witness, and present any objections to evidence during the hearing. R. Exc. at 4. We agree with PECO that the record reflects that Ms. Flowers was afforded an opportunity to present evidence to support the claims raised in her Complaint and was also given an opportunity to cross examine PECO's witness. Based on our review of the record, there is no evidence to support that the ALJ erred or abused her discretion. Again, the Complainant has not provided any detail, nor has she cited to any section of the hearing transcript or within the ALJ's Initial Decision to support her contention of the ALJ's bias.

In its Replies, PECO points out that the Complainant did not raise any specific allegation that the ALJ made an error of law or abused her discretion in any manner and instead made a general claim that she was biased. R. Exc. at 4. PECO cites to two (2) cases in which it has been held that a mere bald assertion, personal opinions, or

perceptions do not constitute evidence to bolster a claim.¹¹ *Id.* Additionally, PECO submits that ALJ Ashton’s I.D. is well-reasoned with ample support from the record. *Id.* at 5.

We further note that recitation of the law “without proof of *specific* disqualifying acts, are tantamount to mere assertions” presenting insufficient grounds to remove an ALJ. *Mosso v. Peoples Natural Gas Company*, 70 Pa. P.U.C. 146 (1989), 0089 WL 1646825 at 2 (emphasis added). Further, “[t]o be disqualifying, personal bias must result in an opinion on the merits of a case not supported by the record.” *Re Pennsylvania Gas and Water Company*, 1991 Pa. PUC LEXIS 155 at 3-4 (citations omitted). As set forth above, we find the ALJ had support on the record for her decision, and any adverse conclusions, opinions, and findings are not evidence of bias. “Opinions are the culmination of a decision-maker's deliberative process. ... [I]n order to insure that decision-makers are free to say whatever needs to be said and to conclude what needs to be concluded, opinions are not normally proper evidence in support of recusal.” *Id.* at 8 (citations omitted).

Regarding the exclusion of Ms. Flowers’ Answer to PECO’s Answer by the ALJ from the record, under the Commission's procedural rules, there is no filing that can be made in opposition to an Answer, save to move to strike the Answer. As PECO’s Answer in the instant matter is not scandalous, libelous, or legally deficient, there is no basis to strike the Answer. Therefore, we find that Ms. Flowers’ Answer to PECO’s Answer was properly excluded from the record.

In conclusion, we find no basis to support Ms. Flowers’ claim of bias toward her by the ALJ. Accordingly, this Exception is denied.

¹¹ *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).

III. Conclusion

For the reasons discussed herein, we will deny the Exceptions of Ms. Flowers and adopt the Initial Decision on Remand of ALJ Ashton, consistent with this Opinion and Order; **THEREFORE**,

IT IS ORDERED:

1. That the Exceptions of Vanee Flowers, filed on September 9, 2024, at Docket No. F-2023-3037961, are denied, consistent with this Opinion and Order.
2. That the Exceptions of Vanee Flowers, filed on August 3, 2023, at Docket No. F-2023-3037961, are denied, consistent with this Opinion and Order
3. That the Initial Decision on Remand of Administrative Law Judge Arlene Ashton, issued on August 19, 2024, at Docket No. F-2023-3037961, is adopted, as modified, consistent with this Opinion and Order.
4. That the Formal Complaint of Vanee Flowers, filed on January 25, 2023, against PECO Energy Company at Docket No. F-2023-3037961, is dismissed, and to the extent the Formal Complaint raises allegation of foreign load, the Formal Complaint is dismissed, with prejudice, consistent with this Opinion and Order.

5. That the proceeding at this docket be marked 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: January 23, 2025

ORDER ENTERED: January 23, 2025