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March 27, 2025

**VIA E-FILING**

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

**RE: Alan Fabius v. PECO Energy Company**  
**Docket No. C-2024-3050914**

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**

**ALAN FABIUS  
COMPLAINANT**

**v.**

**PECO ENERGY COMPANY,  
RESPONDENT**

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**Docket No. C-2024-3050914**

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**REPLY EXCEPTIONS OF PECO ENERGY COMPANY**

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by ALAN FABIUS (“Complainant”) on March 20, 2025. On August 27, 2024, PECO Energy was served with a formal complaint filed by the Complainant against PECO Energy. In his formal Complaint, he alleged that PECO was threatening to shut off or had shut off his service. He also asserted that there were incorrect charges on his bill, inasmuch as his third-party supplier, CleanChoice Energy (“CleanChoice”) fraudulently signed him up for their service without his knowledge or permission and he settled with them for \$5,000.00.

On September 11, 2024, PECO Energy filed an Answer to the Complaint denying all material allegations of the Complaint and averred that the Complainant’s charges were correct. Upon receipt of the Complainant’s supplier enrollment request, PECO Energy sent a notification letter advising the customer that a switch had taken place, as required by the Tariff. After the Complainant contacted PECO to dispute the enrollment with the supplier, PECO Energy dropped the supplier and returned the Complainant to PECO Energy as requested.

On November 26, 2024, a telephonic hearing was conducted before Administrative Law Judge Arlene Ashton (“ALJ Ashton”). At the hearing, the Complainant testified on his behalf.

Exhibits were admitted into evidence by the Complainant and PECO. On March 12, 2025, ALJ Ashton issued a well-reasoned Initial Decision in this matter denying the claims made by the Complainant and dismissed the formal Complaint. ALJ Ashton found that the Complainant failed to meet his burden of proof that there were incorrect charges on his bill or that PECO Energy enrolled the Complainant with a supplier without authorization.

On March 20, 2025, the Complainant filed Exceptions to ALJ Ashton's Initial Decision. In his writing, the Complainant seems to attempt to relitigate the issues in his Complaint. ALJ Ashton provided the Complainant ample opportunity to present evidence, cross examine PECO's witnesses and present any objections to evidence during the hearing. PECO Energy files the instant Reply Exceptions and hereby respectfully requests that the Commission deny the Complainant's Exceptions and issue an Order adopting the Initial Decision of ALJ Ashton.

### **I. Scope of Review**

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility, PECO Energy, is responsible or accountable for the problem described in the Complaint through a violation of the Code or a regulation or order of the Commission. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. denied, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record, which is defined as evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the complainant, shifts to the respondent. If the evidence presented by the respondent is of co-equal value or "weight," the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burlison v Pa. PUC*, 443 A.2d 1371 (Pa. Cmwlth. 1982), *aff'd*, 433 A.2d 1234 (Pa. 1983). While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

It should be noted that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *See also*, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

## II. Legal Argument

### a. The Complainant failed to prove that PECO violated a statute, law or regulation regarding his enrollment with supplier, Clean Choice Energy.

The Complainant alleges that he was enrolled with a supplier without authorization. He asserts that PECO should have sent him a registered letter, requiring a written signature for receipt, in order to avoid the deceptive practices of third-party suppliers. This argument is without merit.

The Complainant was enrolled with CleanChoice in June 2020. On April 17, 2023, three years later, the Complainant contacted PECO about his bill. The Complainant was advised that he should consider changing his supplier, in as much as, his supplier was charging him significantly higher pricing than PECO. The Complainant requested that the supplier be dropped from his account. On April 17, 2023, a drop notification letter was sent to the Complainant and the Complainant was returned to PECO Energy. Pursuant to 52 Pa.Code § 57.173:

When a customer contacts an EGS to request a change from the current EGS or default service provider to a new selected EGS, the following actions shall be taken by the selected EGS and the customer's EDC:

(1) The selected EGS shall notify the EDC of the customer's EGS selection at the end of the 3-business day rescission period under § 54.5(d) (relating to disclosure statement for residential and small business customers) or a future date specified by the customer. The selected EGS may notify the EDC by the end of the next business day following the customer contact upon customer consent.

(2) Upon receipt of this notification, or notification that the customer has authorized a switch to default service, the EDC shall send the customer a confirmation letter noting the proposed change of EGS or change to default service. The notice must include the date service with the new selected EGS or default service provider will begin. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer's selection of an EGS or default service provider.

52 Pa.Code § 57.173.

PECO provided the Complainant with a confirmation as required by regulation. PECO is not required to send the Complainant a certified registered letter requiring a signature as supplier switch notification. It is also important to note that supplier information is listed on every monthly bill that is sent to the Complainant. The Complainant did not at any time prior to April 2023, advise that he did not approve of the supplier on his account.

PECO Energy avers that pursuant to Section 5.3.1 of PECO Energy's Supplier tariff:

It is the EGS's responsibility to maintain evidence of the Customer's written authorization in the event of a dispute, in order to provide documented evidence of authorization to the Company or the Commission.

*See* Section 5.3.1 of PECO's Supplier Tariff.

In this instance, PECO Energy is not a party to the contract with CleanChoice. Consistent with Section 5.3.1 of the tariff, the company is not the supplier and is not responsible for maintaining evidence of the Complainant's written authorization. PECO Energy's responsibility under Section 23.1 of the tariff is to provide notification of the switch and give the customer an opportunity to object to the enrollment if it is not proper. PECO Energy complied with Section 23.1 of the tariff by providing the Complainant notification of the supplier enrollment. At the time an objection to enrollment was made with PECO, a drop notification was immediately sent and the Complainant was returned to PECO Energy in compliance with 52 Pa. Code 57.177.

PECO is not a party to the contract between the Complainant and CleanChoice. PECO is not a party to any settlements made by the Complainant and CleanChoice. In accordance with its tariff, PECO will bill the customer for third-party supplier charges and collect the customer's payment for those supplier charges. *See*, PECO Electric Generation Supplier Coordination Tariff,

at 91-92. The Complainant was billed on actual usage. The Complainant's Exceptions raising this issue is improperly placed against a PECO and should be filed against the supplier, which whom he asserts improperly enrolled him.

The Complainant also disputes his monthly billing. At the time of hearing, the Complainant made four (4) payments to his account since April 17, 2023, when he dropped his supplier and returned to PECO. The Complainant's lack of payment, not high billing, is what led to his large account balance. The Complainant was contacted on multiple occasions to schedule a high bill field investigation, with no response. His assertion that his meter should be tested and replaced is inconsistent with his own behaviors and is without merit.

The Complainant's Exceptions are without merit and should be dismissed.

### III. Conclusion

Based on the credible evidence of record, ALJ Ashton correctly determined that the Complainant had not met his burden of proof in this matter. Accordingly, ALJ Ashton's decision to dismiss the Complainant's case against PECO 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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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: March 27, 2025



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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-mail* to:

ALAN FABIUS  
12 KNOX CT.  
WAYNE, PA 19087  
*Via email: afabius@comcast.net*

Dated: March 27, 2025



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