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August 11, 2025

VIA E-FILING

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

RE: Tonia Robinson v. PECO Energy Company
Docket No. C-2025-3054236

Dear Mr. Homsher:

Enclosed for filing with the Commission is *PECO Energy Company's Brief*.

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 black ink, appearing to read "Khadijah Scott".

Khadijah Scott, Esquire
Assistant General Counsel, PECO Energy Company

Cc: *Not Recommended for Call of the Docket*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TONIA ROBINSON	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2025-3054236
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**MAIN BRIEF OF RESPONDENT,
PECO ENERGY COMPANY**



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I. Introduction and Statement of Case

Tonia Robinson (hereafter “Complainant”), established electric service with PECO Energy Company (hereafter “PECO” or “Respondent”) on February 20, 2021 at 1250 Alcott Street, Philadelphia, PA 19149. The Complainant is enrolled in PECO’s Customer Assistance Program (CAP). On May 4, 2022, the Complainant received a Home Energy Audit under Act 129 at her property. The Act 129 auditor noted in his report that the Complainant’s heat type was a central heat pump. The Complainant asserts that she is entitled to receive PECO’s residential heating rate (“RH”) as of May 4, 2022. The Complainant asserts that she is entitled to retroactive CAP PIPP credits based on the RH rate as of the date of service commencement. Respondent asserts that the auditor’s report does not suffice as actual notice of the Complainant’s qualification for its RH rate.

II. Procedural History

On March 27, 2025, PECO was served with a formal complaint filed by the Complainant. The Complainant alleges that PECO improperly calculated her electric residential heating rate and is in violation of 66 Pa. C.S. 1303. Specifically, the Complainant asserts that the Act 129 audit, conducted on May 4, 2022, placed PECO on notice that she had residential heating and was therefore entitled to its RH rate. The Complainant further asserts that she is also entitled to retroactive RH CAP PIPP credits dating back to the date of her enrollment.

On June 16, 2025, a formal Complaint hearing took place before the Honorable Deputy Chief Administrative Law Judge, Christopher Pell. The Complainant testified on her own

behalf. PECO presented the testimony of senior regulatory assessor, Anthony Costello and customer care administrator, Andrea Lawton.

III. Facts of the Case

The Complainant established electric service with PECO in 2021. (Tr. 15). On May 4, 2022, the Complainant received an Act 129 Home Energy Audit. (PECO Ex. 2; Tr. 18, 31-32) Within the report, the auditor identified her primary fuel as electric. (PECO Ex. 2) The Complainant's primary heat type was identified as a central heat pump. (*Id.*) Prior to May 4, 2022, the Complainant did not contact PECO to advise that her primary heat source was electric heat. (Tr. 20, 59) After the Act 129 audit was completed, the Complainant did not contact PECO to advise that her primary heat source was electric heat. (*Id.*).

IV. Burden of Proof

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

Additionally, the Commission's decision must be supported by substantial evidence in the

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

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

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

V. Summary of Argument

The Complainant asserts she is entitled to retroactive RH credits dating back to May 4, 2022, the date of the Act 129 audit. The Complainant further asserts that she is entitled to retroactive RH CAP PIPP credits dating back to the date of enrollment. The Complainant’s argument relies on the fact that the auditor noted in his report that her primary heat source was electric with a central heat pump.

In this matter, the Complainant is a PECO customer at 1250 Alcott Street. (PECO Ex. 1). She established electric service in February 2021. (Tr. 15) The Complainant did not contact PECO at any time prior to the May 2022 audit to advise that she utilized electric heat. (Tr. 20, 59). The Complainant did not contact PECO at any time after the May 2022 audit to advise that she utilized electric heat. (*Id.*) PECO's first contact regarding the Complainant's request to have RH established on her account was through her counsel's inquiry in 2024. (Tr. 20). In August 2024, Respondent's counsel was advised that the Complainant could contact PECO if she wished to have her residential electric rate changed to the residential heating rate. Respondent's counsel then requested that she be provided with retroactive RH credits dating back to May 2022 and retroactive RH CAP PIPP credits dating back to the date of enrollment in February 2021. As a courtesy, Respondent retroactively credited the Complainant's service back to January 2023, resulting in a \$3,120.00 credit. (tr. 25027; 73-75; 76) The \$3,120.00 credit was based on the Social Security Income (SSI) adjustment for minor as of January 2023 as if the customer had RH service. (*Id.*)

VI. Argument
The Complainant is not entitled retroactive RH credits.

In this matter, PECO did not receive actual notice of the Respondent's heat source. As testified to by PECO during the formal complaint hearing, the purpose of an Act 129 2008 Home Energy Audit is to identify energy inefficiencies and advise on how a customer can reduce energy and consumption costs. (Tr. 65-66). Weatherization and other energy efficiency solutions are discussed with the customer. (Id.) Moreover, there are approximately 8,000 Act 129 audits conducted per year. (Tr. 42; 66-67) There are approximately 4,500 Low Income Usage Reduction Program (LIURP) audits conducted per year. (Id.) It is unreasonable to assert that PECO should have monitored over 12,000 audit reports on the chance that an auditor identified electric as the customer's main heat source. To the contrary, the purpose of an Act 129 Home Energy Audit is to identify energy inefficiencies and advise on how a customer can reduce energy and consumption costs, not to identify whether a customer does or does not qualify for PECO's RH rate. (Tr. 65-66).

The Respondent relies on the premise that because the RH rate is more advantageous than being billed on the residential rate, PECO is in violation of 66 Pa. C.S. 1303. Pursuant to 66 Pa. C.S. 1303:

§ 1303. Adherence to tariffs.

... Any public utility, having more than one rate applicable to service rendered to a patron, shall, **after notice of service conditions**, compute bills under the rate most advantageous to the patron.

66 Pa. C.S. 1303 (*emphasis added*)

It is well settled that a customer is required to provide actual or implied actual notice before a utility is required to determine and apply the most advantageous rate. *Springfield Twp. v. Pa.*

Pub. Util. Comm'n, 676 A.2d 304 (Pa. Cmwlth. 1996); *Mauro v. Duquesne Light Co.*, 69 Pa. PUC 105 (1989); *City of Pittsburgh v. Duquesne Light Co.*, 54 Pa. PUC 460 (1980); *The Victory Condominium Association v. PECO Energy Co.*, Opinion and Order, Docket No. C-2011-2268126, entered September 27, 2012. In *Victory Condominium Association*, the Commission held that,

... the responsibility is upon the ratepayer to provide the utility company with **actual notice** of a change in service conditions before the utility must determine and supply service at the most advantageous rate.

(*emphasis added*) The Commission further cited *City of Pittsburgh v. Duquesne Light Co.*, 54 Pa. PUC 460 (1980) as stating,

The more correct, sensible, and practical interpretation of §1303 is that actual, **not constructive**, notice is required before a utility is required to determine and apply the most advantageous rate. We adopt this interpretation. The term “actual notice” includes such notice as is affirmatively proved to have been given to a party directly, and also such notice as a party is presumed to have received personally because facts within its knowledge were sufficient to place upon the party the duty to inquire about the fact or condition in question. The former is to express actual notice – e.g., written or oral notice – and the latter is implied actual notice.

Victory Condo, at 10, citing, *Springfield Twp. v. Pa. Pub. Util. Comm'n*, 676 A.2d 304 (Pa. Cmwlth. 1996); and *Mauro v. Duquesne Light Co.*, 69 Pa. PUC 105 (1989).

Thus, even assuming *arguendo* that the Complainant’s audit report placed the Respondent on constructive notice, receiving the audit report identifying a heat source amongst over 12,000 annual audit reports, is not actual notice. PECO is therefore, not obligated to retroactively credit the Complainant based on the RH rate, nor is it required to retroactively provide CAP PIPP credits based on the RH rate inasmuch as the Complainant failed to provide

actual notice to PECO. *The Victory Condominium Association* (2011). Accordingly, the Respondent has been billed properly for all electric usage. The bills and balance are correct.

VII. Proposed Findings of Fact

1. The Complainant is Tonia Robinson.
2. The Respondent is PECO Energy Company.
3. The Complainant established service at 1250 Alcott Street, Philadelphia, PA 19149.
4. The Complainant established service with PECO as a residential electric customer with PECO.
5. The Complainant is a CAP Customer.
6. On May 4, 2022, the Complainant received an Act 129 Home Energy Audit.

7. On March 27, 2025, the Complainant filed a formal Complaint with the Public Utility Commission (“PUC”).

8. On April 16, 2025, PECO filed an Answer to the Complainant’s Complaint.

9. The purpose of an Act 129 Home Energy Audit is to identify energy inefficiencies and advise on how a customer can reduce energy and consumption costs.

10. The Complainant is required to provide actual or implied actual notice before a utility is required to determine and apply the most advantageous rate.

VIII. Conclusion

Accordingly, for the reasons set forth above, PECO Energy respectfully requests that the Complainant's Complaint be denied in its entirety.

Respectfully Submitted,



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PECO ENERGY COMPANY	:	
Respondent	:	

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.

Dated: August 11, 2025



Khadijah Scott

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TONIA ROBINSON	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2025-3054236
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I, Khadijah Scott, hereby certify that I have this day served a copy of PECO Energy Company's Memorandum of Law in the above matter upon all interested parties by e-mailing a copy to:

Charlotte Edelstein, Esq.
Community Legal Services, Inc.
1410 West Erie Avenue
Philadelphia, PA 19140
Via Email: CEdelstein@clsphila.org

Dated: August 11, 2025



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