

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Clark O'Donnell v. FirstEnergy Pennsylvania Electric Company

Docket No. F-2025-3054625

**EXCEPTIONS OF COMPLAINANT CLARK O'DONNELL TO THE INITIAL
DECISION OF ADMINISTRATIVE LAW JUDGE MARY D. LONG**

Clark O'Donnell ("Complainant"), proceeding *pro se*, respectfully files these Exceptions to the Initial Decision entered by Administrative Law Judge Mary D. Long on December 3, 2025, pursuant to 52 Pa. Code § 5.533.

These Exceptions challenge specific Findings of Fact, Conclusions of Law, and portions of the Discussion that are erroneous, unsupported by substantial evidence, against the weight of the evidence, or contrary to law.

Each Exception identifies the relevant section of the Initial Decision, states the grounds for objection, and references supporting evidence from the record.

INTRODUCTION

The ALJ committed substantial legal errors in dismissing Complainant's formal complaint. The ALJ misapplied Commission regulations, improperly allocated the burden of proof, ignored uncontroverted evidence, and failed to address ongoing violations of the Public Utility Code. These errors warrant reversal.

EXCEPTIONS

EXCEPTION NO. 1: The ALJ erred in finding no violation of 52 Pa. Code § 56.282(4) regarding the security deposit waiver requirement (Findings of Fact Nos. 46-48; Discussion at 17-21; Conclusion of Law No. 6).

The ALJ found that Respondent properly required a security deposit because Complainant's participation in Medical Assistance for Workers with Disabilities (MAWD) uses a "different income threshold" than Customer Assistance Program (CAP) eligibility. Initial Decision at 20-21. This finding reflects multiple legal errors and is unsupported by the record.

First, 52 Pa. Code § 56.282(4) states that an applicant is "confirmed to be eligible for a customer assistance program by the public utility if the applicant provides income documents or other information attesting to his or her eligibility for State benefits based on household income eligibility requirements that are consistent with those of the public utility's customer assistance programs" (emphasis added). The regulation requires income thresholds that are "consistent with" CAP requirements, NOT "identical to" them. "Consistent with" means compatible or comparable, not exactly the same. The ALJ applied the wrong legal standard by treating "consistent with" as requiring identical thresholds. *Black's Law Dictionary* defines "consistent" as "compatible; not contradictory." Two programs with overlapping income eligibility ranges are "consistent with" each other even if not identical.

Second, once Complainant provided documentation of State benefits based on household income (MAWD card; WTCO at 3), the burden shifted to Respondent to prove that MAWD income thresholds are *inconsistent* with CAP thresholds. Respondent never met this burden. Ms. Sukhu merely asserted that the thresholds "are different" without providing evidence of what either threshold actually is or how they differ materially (FE PA St. 2 at 5-6; Initial Decision at

20-21). The ALJ accepted this bare assertion without requiring proof, improperly placing the burden on Complainant throughout. Under Pennsylvania law, the party asserting incompatibility bears the burden of proving it. *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040 (Pa. 2007). Respondent provided no evidence comparing actual eligibility thresholds, no documentation of CAP income limits, and no analysis of whether MAWD eligibility could overlap with or be "consistent with" CAP requirements.

Third, the regulation explicitly requires that eligibility be "confirmed... by the public utility." 52 Pa. Code § 56.282(4) (emphasis added). Respondent cannot outsource this statutory duty to Dollar Energy Fund. The regulation imposes a non-delegable obligation on the utility itself to confirm eligibility when documentation of qualifying state benefits is provided. By conditioning the security deposit waiver on contact with a third-party entity over which it has no control, Respondent violated the regulation's plain language requiring utility confirmation.

Fourth, even if contact with Dollar Energy Fund were permissible (which it is not), Respondent failed to provide an accessible method for Complainant to complete the confirmation process. Complainant has a documented disability preventing telephone communication. Finding of Fact 3; WTCO at 2-3; doctor's letter in record. Respondent required telephone contact with Dollar Energy Fund while providing no equally effective written alternative, despite being on notice of Complainant's disability since at least November 2024 (Ex. CH-6; Finding of Fact 13). This renders the security deposit waiver illusory for disabled applicants and independently violates the reasonableness standard under 66 Pa.C.S. § 1501.

The ALJ's finding that Complainant "did not offer any evidence that he attempted to contact the Dollar Energy Fund" in January 2025 (Initial Decision at 20) again misplaces the

burden. Once Complainant provided MAWD documentation—which the regulation explicitly identifies as qualifying "State benefits based on household income eligibility"—Respondent had a regulatory duty to either (a) confirm eligibility directly, or (b) prove the income thresholds are inconsistent. Complainant had no obligation to contact a third party to exercise a regulatory right explicitly requiring utility confirmation.

Moreover, Complainant's Exhibit B demonstrates that Dollar Energy Fund required phone contact in 2021 and could not assist him because the account was not in his name—the very problem Respondent created by refusing to establish service in Complainant's name without paying Jean O'Donnell's legacy balance. The ALJ ignored this evidence.

The Commission should reverse and direct Respondent to accept MAWD documentation as sufficient confirmation of CAP eligibility and establish service in Complainant's name without a deposit.

EXCEPTION NO. 2: The ALJ erred in finding no violation of 66 Pa.C.S. § 1501 regarding reasonable service (Discussion at 11-16; Conclusion of Law Nos. 4-5, 9).

The ALJ found that Respondent provided "reasonable customer service" despite acknowledging that Respondent required telephone communication "in certain situations" (Initial Decision at 14-16; FE St. 2 at 7). This finding is legally erroneous, against the weight of the evidence, and ignores ongoing violations that continue to this day.

First, the ALJ's own factual findings establish that Respondent repeatedly required telephone communication despite knowing of Complainant's disability:

- Respondent told Complainant he would "have to speak to Customer Care by telephone" to set up payment plans (Finding of Fact 14; Ex. CH-6 at 17).
- Respondent stated Complainant would "need to speak with Customer Care directly" due to "complexity" (Finding of Fact 31; Ex. CH-6 at 12).
- Respondent required phone calls for identity verification, CAP enrollment, and payment arrangements (Findings of Fact 28, 31, 33; FE St. 2 at 7).

These are not isolated incidents but a systematic pattern over four years. Ex. CH-6 documents Complainant's repeated requests for written accommodation from November 2024 through January 2025, each met with insistence on phone contact.

Second, these violations are ongoing and caused actual harm during this proceeding. On July 24, 2025, while this case was pending before the Commission, Respondent terminated electric service at 865 Little Deer Creek Valley Road based on nonpayment on Jean O'Donnell's account. Exhibit K; Responsive Testimony at 10-11. The ALJ erred in the August 27, 2025 Interim Order by striking Exhibit K and Section VI of Responsive Testimony as "new allegations." The July 24 termination was not a new claim but direct evidence of the ongoing unreasonable service and "catch-22" alleged in the original Complaint. By excluding this evidence, the ALJ prevented the record from reflecting the true extent of the violation. Service was restored only after Jean O'Donnell made a phone call—proving Complainant had no independent, accessible means to restore power at his own residence.

This termination occurred:

- During 90-degree heat (Responsive Testimony at 13)
- While Complainant's formal complaint was pending

- Without any accessible method for Complainant to independently prevent or remedy it
- Based on an account in someone else's name for charges Respondent admits Complainant is not liable for

As of this filing, service remains in Jean O'Donnell's name, Complainant continues receiving termination notices for Jean's account, and Respondent has never engaged in any interactive process to accommodate Complainant's disability. Finding of Fact 49; WTCO at 2-3; Responsive Testimony at 4-6, 11-12.

Third, the ALJ misapplied *Harper v. PPL Elec. Utils. Corp.*, Docket No. F-2014-2422449 (Final Order entered Mar. 12, 2015). In *Harper*, the Commission found no Section 1501 violation because PPL corrected its error and stopped calling the complainant after being notified of the disability. Here, Respondent has not corrected anything—Complainant still cannot establish service without making phone calls Respondent knows he cannot make. *Harper* actually supports Complainant's position: when a utility's communication requirements make service inaccessible to a disabled customer, Section 1501 is violated.

The ALJ distinguished this case by characterizing Respondent's actions as a mere "mistake or misunderstanding," but the record shows a systemic pattern, not isolated errors. Ex. CH-6 spans multiple months and shows consistent insistence on phone contact after repeated notification of disability. Moreover, Respondent's own witness testified that certain transactions require phone calls "as a matter of policy" (FE St. 2 at 7), not due to mistake.

Fourth, "reasonable service" must be evaluated from the perspective of the individual customer seeking service, not an abstract standard. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984). For a customer with a documented disability

preventing telephone communication, requiring phone calls for critical functions—establishing service, setting up payment arrangements, confirming CAP eligibility, preventing termination—is *per se* unreasonable under Section 1501.

The ALJ's conclusion that written communication was sufficient because Respondent sent "a significant amount of communication" by email misses the point entirely. Initial Decision at 15-16. The issue is not volume of email but whether essential account functions can be accomplished without phone calls. The record unequivocally establishes they cannot:

- Identity verification: Required phone call or phone-centric website (FE St. 2 at 2)
- Security deposit waiver: Required phone contact with Dollar Energy Fund (Finding of Fact 47; Ex. RS-1)
- Payment arrangements: Required speaking with Customer Care (Finding of Fact 14)
- Service restoration after July 24 shutoff: Required Jean O'Donnell's phone call (Exhibit K; Responsive Testimony at 10-11)

Moreover, Respondent's delegation of accessibility to Dollar Energy Fund without ensuring an equally effective written alternative violates the objective reasonableness standard. The utility cannot satisfy its Section 1501 obligation by pointing to a third party's inaccessible procedures.

The Commission should reverse and find Respondent's service unreasonable under Section 1501, directing implementation of accessible written procedures for all account functions.

EXCEPTION NO. 3: The ALJ erred in finding Complainant was not "primarily responsible" for payment under 52 Pa. Code § 56.282(1) and in concluding no violation regarding coerced payments (Discussion at 16-17, 21; Conclusion of Law No. 9).

The ALJ found that Complainant was not "primarily responsible" for payment of the service, precluding him from establishing creditworthiness under Section 56.282(1), and that Respondent did not improperly hold him responsible for legacy balances. Initial Decision at 21, 16-17. These findings are against the weight of the evidence and legally erroneous.

Complainant testified without contradiction that he "made payments on the account from his own income for the last five years" (Finding of Fact 10; WTCO at 2; payment records in testimony). If Complainant made 100% of payments from his own income for five years, he is by definition "primarily responsible" for payment. The regulation asks who actually paid for the service, not whose name appears on the account. The ALJ's reasoning—that because the account was in Jean O'Donnell's name, she retained "responsibility and control" (Initial Decision at 16)—confuses legal liability with actual payment responsibility. Jean O'Donnell may be legally liable as the account holder, but Complainant was factually responsible for payments. Section 56.282(1) uses "primarily responsible for payment," not "legally liable." The plain language addresses actual payment patterns.

Moreover, Jean O'Donnell has never resided at the Service Address (Finding of Fact 8), while Complainant has resided there for over ten years (Finding of Fact 2) and is a legal co-owner of the property (Exhibit J; Responsive Testimony at 9). Common sense dictates that the person who lives at the premises, owns the property, and makes all payments is "primarily responsible" for the service consumed at that location.

The ALJ also failed to consider Complainant's payment history as "credit information" demonstrating creditworthiness under § 56.282(3). That subsection allows utilities to consider payment history as evidence that an applicant "is not an unsatisfactory credit risk," and explicitly states that "absence of prior credit history does not, of itself, indicate an unsatisfactory risk." 52 Pa. Code § 56.282(3). Five years of consistent payments—even if on another account—demonstrates creditworthiness. The ALJ's narrow focus on § 56.282(1) ignored this alternative regulatory pathway.

Additionally, the ALJ failed to apply § 56.282(2), which waives deposits for property owners. Complainant provided his deed showing co-ownership since October 2023 (Exhibit J; Responsive Testimony at 9). The regulation states a utility shall not require a deposit when "the applicant owns... real property located in the area served by the public utility... unless the applicant has an otherwise unsatisfactory credit history as a public utility customer within 2 years prior to the application for service." 52 Pa. Code § 56.282(2). Respondent never established any "unsatisfactory credit history" within two years of Complainant's January 2025 application. To the contrary, Complainant made consistent payments. The ALJ dismissed Exhibit J as "incomplete" (Initial Decision at 21) without explanation, despite it showing the grantees, property address, and recording date—all elements required by the regulation.

Regarding coerced payments, the ALJ characterized as a "private issue" between family members Complainant's claim that he paid several thousand dollars under threat of termination toward charges he was not responsible for. Initial Decision at 16-17. This ignores Respondent's role in creating and perpetuating the coercion. For years, Respondent refused to establish service in Complainant's name unless Jean O'Donnell's legacy balance—including charges transferred from other premises where Complainant never lived—was paid first. Ex. CH-6 at 14; WTCO at

3; Responsive Testimony at 3, 5-6. Only after Complainant filed with the Commission did Respondent change its position.

This practice violates 52 Pa. Code § 56.36, which limits when utilities may condition new service on outstanding balances. Section 56.36(a) prohibits requiring payment of another's balance except in specific circumstances not present here. The person seeking service (Complainant) did not previously receive service at the premises in his own name, nor was he an account holder for the prior service. The charges Respondent demanded payment for included amounts transferred from 867 Little Deer Creek Valley Road, where Complainant never lived or benefited from service.

The ALJ's statement that Respondent "agreed that it will not hold the Complainant responsible" (Initial Decision at 17) ignores that Respondent extracted payments under termination threats for years before taking that position, and still conditions service establishment on procedures Complainant cannot access. The harms are not hypothetical—they already occurred, and Complainant seeks refunds for coerced payments plus prospective relief.

The Commission should reverse and order: (1) refunds of coerced payments totaling approximately \$18,000; (2) recognition that Complainant's payment history establishes creditworthiness under § 56.282(1) or (3); and (3) waiver of deposit under § 56.282(2) based on property ownership.

EXCEPTION NO. 4: The ALJ erred in finding the June 2025 termination notices did not violate 52 Pa. Code § 56.141 (Finding of Fact No. 50; Discussion at 22-23; Conclusion of Law No. 7).

The ALJ found that 52 Pa. Code § 56.141(2)'s termination stay did not apply because Complainant must still "pay undisputed portions of the bill" (Initial Decision at 22-23). This is legal error.

Section 56.141(2) states: "when a termination dispute or complaint has been properly filed in accordance with this subchapter, termination shall be prohibited until resolution of the dispute or complaint. However, the disputing party shall pay undisputed portions of the bill." 52 Pa. Code § 56.141(2) (emphasis added).

Complainant's formal complaint disputed his fundamental liability for charges on Jean O'Donnell's account. He alleged Respondent was "holding him responsible for charges in the name of Jean O'Donnell" and sought a "refund" of money paid "under threat of termination." Initial Decision at 1-2. When liability itself is disputed—as opposed to merely disputing the amount or accuracy of specific charges—the entire balance is in dispute, not just a portion. The notices (Exs. D, CH-7; Finding of Fact 50) were sent on June 9 and June 17, 2025, for delinquent charges, but the entire account setup, billing allocation, and Complainant's forced subsidization of Jean O'Donnell's account were the subject of the pending complaint. All charges flowing from that improper structure are "disputed portions" under § 56.141(2).

Furthermore, the termination notices were sent to Jean O'Donnell—the legal account holder—not to Complainant. If Jean O'Donnell is the responsible party (as Respondent and the ALJ repeatedly state), she is the proper party to dispute charges on her account or pay "undisputed portions." Yet Complainant—who filed the complaint and is not the account holder—is expected to pay someone else's undisputed portions or face termination at his home. This creates an impossible catch-22: Respondent refuses to establish service in Complainant's

name, refuses to allow him to access assistance programs, then threatens termination based on nonpayment by the person whose name is on the account.

Moreover, this is not hypothetical. On July 24, 2025, during the pendency of this proceeding, Respondent terminated service at 865 based on Jean O'Donnell's nonpayment. Exhibit K; Responsive Testimony at 10-11. **Although the ALJ struck Exhibit K in the Interim Order, Complainant excepts to that evidentiary ruling. The termination of service during the pendency of a complaint regarding that very service is relevant and admissible evidence of a violation of § 56.141.**

This termination occurred:

- After Complainant filed his formal complaint (April 14, 2025)
- While testimony was being exchanged (July 1, 21, August 11)
- Based on the same account structure Complainant complained about

The regulation's purpose is to prevent utilities from using termination threats to coerce payment or retaliate while disputes are pending. That is exactly what occurred here. Respondent's July 24 termination—ostensibly because the "customer of record" did not pay—demonstrates the danger of the ALJ's interpretation. Under that view, a utility can continue terminating a disputing party's electricity by pointing to nonpayment by a third party the disputing party has no control over.

The Commission should reverse and find that termination notices and the July 24 termination violated § 56.141's stay of termination during pending complaints.

EXCEPTION NO. 5: The ALJ's factual findings regarding Jean O'Donnell's telephone contacts lack adequate evidentiary support, and the ALJ misapplied the burden of proof (Findings of Fact Nos. 15, 19, 26, 29; Discussion at 11, 24; Conclusion of Law No. 2).

The ALJ made numerous findings that "Respondent spoke with Jean O'Donnell" on various dates. Findings of Fact 15, 19, 26, 29. These rest solely on Respondent's customer contact records (Ex. CH-6)—hearsay evidence that Complainant could not cross-examine because the parties agreed to waive cross-examination of factual witnesses.

Complainant testified under oath that Jean O'Donnell has never resided at the Service Address (Finding of Fact 8; WTCO at 2). Given that Jean lives next door at 867 Little Deer Creek Valley Road with a separate account for her actual residence, it strains credulity that she would repeatedly call customer service about the 865 account while Complainant—who lives at 865, pays all bills, and filed the complaint—simultaneously emails requesting the same information. The more probable explanation is that either: (a) Jean made calls at Complainant's request because he could not call himself (demonstrating the inaccessibility problem), or (b) the calls concerned Jean's own 867 account and were misattributed in Respondent's records.

Either interpretation undermines the ALJ's conclusion that Respondent's service was reasonable. At minimum, the ALJ should have acknowledged the evidentiary weakness of these findings—uncross-examined hearsay contradicted by sworn testimony—and declined to give them significant weight. Instead, she treated them as established facts and used them to justify Respondent's insistence on telephone communication. Initial Decision at 16 ("Sometimes Jean O'Donnell spoke with customer service. Sometimes the Complainant communicated with customer service in writing. ").

Additionally, the ALJ misapplied the preponderance standard under 66 Pa.C.S. § 332(a) and *Popowsky*, 937 A.2d 1040. The ALJ credited Respondent's unexplained assertions while discounting or ignoring Complainant's uncontroverted evidence:

- Ignored: Doctor's letter documenting disability (WTCO at 2-3)
- Ignored: Email chains in Ex. CH-6 showing repeated accommodation refusals
- Ignored: Exhibit J deed showing co-ownership since October 2023, qualifying for deposit waiver under § 56.282(2)
- Improperly Excluded: Exhibit K showing July 24, 2025 termination (erroneously struck in Interim Order despite proving ongoing harm)
- Ignored: Exhibit L driver's license proving Complainant always had required ID
- Credited without scrutiny: Ms. Sukhu's testimony that certain transactions "require" phone calls without any explanation of why written communication is inadequate (FE St. 2 at 7)
- Credited without scrutiny: Bare assertion that MAWD and CAP thresholds are "different" without evidence of either threshold or analysis of "consistent with" standard

Under *Popowsky*, Complainant had the burden to prove violations by a preponderance of evidence. He did so. Respondent had the burden to prove affirmative defenses (e.g., that MAWD is inconsistent with CAP, that phone calls are operationally necessary). They did not. The ALJ's conclusions reverse these burdens, requiring Complainant to prove negatives and accepting Respondent's unsupported assertions as fact.

The Commission should reverse findings based on inadequate evidence and reweigh the record in accordance with proper burden allocation.

EXCEPTION NO. 6: The ALJ erred in failing to address Complainant's request for prospective relief and ongoing accommodation obligations.

The ALJ's decision dismisses the complaint based on past conduct but fails entirely to address that the violations are ongoing. As of this filing:

- Service remains in Jean O'Donnell's name (Finding of Fact 49)
- Complainant continues receiving termination notices for Jean's account
- Respondent has never engaged in the interactive process required to accommodate Complainant's disability
- Complainant still cannot establish service, access CAP, or conduct account transactions without phone calls he cannot make
- The termination demonstrated real-world harm during this very proceeding

Even if the ALJ believed past conduct did not violate regulations (which is error), she had an obligation to address prospective relief to prevent ongoing and future violations. The Commission has authority to order prospective compliance with its regulations independent of finding past violations. 66 Pa.C.S. § 1505.

Complainant's requested relief explicitly sought prospective orders: establish service in his name without phone requirements, implement accessible procedures, engage in interactive process, prevent future terminations based on non-occupant nonpayment. Responsive Testimony at 13-14. The Initial Decision's silence on these requests is legal error requiring reversal or remand.

RELIEF REQUESTED

WHEREFORE, Complainant respectfully requests that the Commission:

1. Reverse the Initial Decision and find that Respondent violated: a. 52 Pa. Code § 56.282(4) by improperly requiring a security deposit after Complainant provided MAWD documentation; b. 52 Pa. Code § 56.282(2) by failing to waive deposit based on property ownership; c. 66 Pa.C.S. § 1501 by failing to provide reasonable, accessible service; d. 52 Pa. Code § 56.141 by issuing termination notices and terminating service during a pending dispute; e. 52 Pa. Code § 56.36 by conditioning new service on payment of another's balance.
2. Order Respondent to immediately: a. Establish service at 865 Little Deer Creek Valley Road in Complainant's name without requiring telephone communication, payment of any security deposit, or payment of any balance in Jean O'Donnell's name; b. Accept Complainant's MAWD documentation as sufficient confirmation of CAP eligibility pursuant to 52 Pa. Code § 56.282(4), or alternatively waive deposit based on property ownership under § 56.282(2); c. Enroll Complainant in CAP or equivalent low-income assistance program retroactive to the earliest date he would have been eligible; d. Refund all payments Complainant made under threat of termination on Jean O'Donnell's account from 2020 to present with interest; e. Engage in an interactive process as required by federal and state disability law to provide reasonable accommodations for Complainant's inability to communicate by telephone; f. Develop and implement written procedures ensuring all account functions—including identity verification, income verification, service establishment, payment arrangements, and dispute resolution—can be completed entirely through written communication (email) without requiring telephone contact; g. Cease issuing termination notices to Jean O'Donnell's account based on charges at 865

Little Deer Creek Valley Road, where she does not reside and from which she does not benefit; h. Ensure that any third-party vendors used for utility functions (such as Dollar Energy Fund) provide equally effective written alternatives, or cease requiring customers to interact with vendors that lack accessible procedures.

3. Award such other relief as the Commission deems just and proper, including: a. Ordering Respondent to provide formal training to customer service representatives on disability accommodations and Commission regulations; b. Directing a compliance review to ensure Respondent's policies align with §§ 56.282, 56.36, 56.141, and 1501; c. Any other remedial or prospective relief necessary to prevent recurrence of these violations.

Respectfully submitted,

/s/ Clark O'Donnell

Clark O'Donnell

865 Little Deer Creek Valley Road

Russelton, PA 15076

odonnellclark.j@gmail.com

Date: December 23, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December 2025, I served a true and correct copy of the foregoing Exceptions to Initial Decision upon the following via electronic mail:

Margaret A. Morris, Esq.

mmorris@regerlaw.com

Reger Rizzo & Darnall LLP

Cira Centre, 13th Floor 2929 Arch Street

Philadelphia, PA 19104

Tori L. Giesler PA

RegulatoryComplaints@firstenergycorp.com

FirstEnergy Service Company

2800 Pottsville Pike

Reading, PA 19605

/s/ Clark O'Donnell

Clark O'Donnell