

**APPEAL OF INITIAL DECISION
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ifedoo Enigwe and Uche Ekpunobi :

v.

Docket Nos. C-2025-3055408: C-2025-3055430

PECO Energy Company - Electric: and Gas:

APPELLANTS' EXCEPTIONS TO INITIAL DECISION

Ifedoo Enigwe and Uche Ekpunobi ("Appellants"), pursuant to 52 Pa. Code § 5.533, hereby file these Exceptions to the Initial Decision issued by Administrative Law Judge Alphonso Arnold III on January 27, 2026, and state as follows:

PRELIMINARY STATEMENT

This appeal challenges an Initial Decision that erroneously dismissed Appellants' complaint based on incomplete and inadequate evidence, denied critical discovery necessary to establish material facts, and improperly shifted liability from PECO to a third-party bank without jurisdictional basis or evidentiary support.

EXCEPTION NO. 1

THE ALJ ERRED IN DENYING APPELLANTS' MOTION FOR ISSUANCE OF SUBPOENA FOR PNC BANK OFFICIALS

Standard: The Commission's regulations provide for the issuance of subpoenas to compel testimony of witnesses whose testimony is material and necessary to a proceeding. 52 Pa. Code § 5.321.

Error: The ALJ's September 22, 2025 Order denying Appellants' Motion for Issuance of Subpoena for PNC Bank Officials deprived Appellants of critical evidence necessary to prove their case. The testimony of PNC officials was essential to establish:

1. Whether PNC actually received any funds from PECO on or about March 19, 2025;
2. The basis upon which PNC provided the provisional credit that later became permanent;
3. Whether PNC's decision to make the provisional credit permanent was based on PECO's return of funds or on PNC's acknowledgment of its own error in failing to prevent the unauthorized withdrawal;
4. The complete chronology and documentation of all communications between PNC and PECO regarding the disputed transaction.

Legal Authority: Pennsylvania courts have long held that parties are entitled to discovery of material facts necessary to prove their claims. *Lackner v. Glosser*, 234 A.2d 551 (Pa. 1967). The denial of the subpoena violated Appellants' due process rights under both the Pennsylvania and United States Constitutions.

Impact: Without PNC's testimony, the record contains a critical evidentiary gap. PECO presented testimony that it returned \$1,240.30 to PNC (Tr. 47-49; PECO Exhibit 3), but there is no independent verification of this claim. PNC's June 12, 2025 letter (Complainant Exhibit 1) states only that PNC initiated an investigation and provided a provisional credit that became final; it does not state that PNC received any funds from PECO.

The ALJ's conclusion that "logic dictates that PNC permitted Mr. Enigwe to keep the provisional credit of \$1,240.30 because PNC received \$1,240.30 from PECO" (Initial Decision at 10) is speculation unsupported by evidence. Alternative explanations exist:

- PNC may have made the provisional credit permanent based on its own error in failing to stop the payment after Mr. Enigwe's timely complaint;
- PNC may have determined that the original payment was unauthorized and properly belonged to Mr. Enigwe;
- PECO may have attempted to return funds but sent them to the wrong account or entity.

Relief Requested: The Commission should grant a new hearing with an order compelling PNC Bank to produce witnesses with knowledge of: (a) all transactions between PNC and PECO related to account holder during February-May 2025; (b) the basis for PNC's decision to make the provisional credit permanent; and (c) all communications between PNC and PECO regarding this matter.

EXCEPTION NO. 2

THE ALJ ERRED IN FINDING THAT APPELLANTS FAILED TO MEET THEIR BURDEN OF PROOF

Standard: A complainant meets the burden of proof by establishing a prima facie case that the utility is responsible for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

Error: The ALJ found that "Complainants failed to meet their burden of proof in this proceeding" and that "PECO presented credible evidence that the \$1,240.30 is no longer in its possession after it returned the money to PNC on March 19, 2025." (Initial Decision at 9).

This finding is erroneous for multiple reasons:

1. **Appellants established a prima facie case.** The uncontroverted evidence established that:
 - Mr. Enigwe made an erroneous payment of \$1,238.05 plus \$2.25 processing fee to PECO (FF 5-6);
 - The payment was made in error, as Mr. Enigwe intended to pay only \$500 (FF 7-8);
 - PECO received these funds;
 - Mr. Enigwe timely requested return of the erroneously paid funds (FF 9);
 - The funds have not been returned by PECO to Mr. Enigwe or Ms. Ekpunobi.

2. **PECO failed to adequately rebut the prima facie case.** PECO's evidence consisted solely of:
 - o Internal PECO records purporting to show a return of funds to PNC (PECO Exhibit 3);
 - o Testimony from PECO employees about these internal records (Tr. 47-49).

Notably absent was any independent verification that:

- PNC actually received any funds from PECO;
 - If funds were sent, they were sent to the correct account;
 - The transaction was completed successfully;
 - PNC acknowledged receipt of such funds.
3. **The burden shifted back to PECO, not Appellants.** Once Appellants established that PECO received funds paid by mistake and failed to return them to the payor, PECO bore the burden of proving by competent evidence that it no longer possessed those funds because it successfully returned them. PECO's uncorroborated internal records and self-serving testimony are insufficient to meet this burden, particularly where the alleged recipient (PNC) has not confirmed receipt.

Legal Authority: Under Pennsylvania law, a party seeking to prove payment or satisfaction of an obligation must present credible evidence of the completed transaction. *Miller v. Shoemaker*, 284 A.2d 478 (Pa. Super. 1971). PECO's burden was to prove not merely that it processed a transaction, but that the funds were actually received by the proper party.

Relief Requested: The Commission should reverse the ALJ's finding that Appellants failed to meet their burden of proof and find that PECO failed to meet its burden of proving successful return of the disputed funds.

EXCEPTION NO. 3

THE ALJ ERRED IN CONCLUDING THAT ANY DISPUTE REGARDING WHETHER PNC RECEIVED FUNDS FROM PECO "WOULD BE AN ISSUE BETWEEN PNC AND PECO"

Standard: The Commission has exclusive jurisdiction over disputes between utilities and their customers regarding utility service. 66 Pa.C.S. § 701.

Error: The ALJ stated: "Any issue in regard to whether PNC received \$1,240.30 from PECO would be an issue between PNC and PECO." (Initial Decision at 10). This statement is fundamentally flawed both legally and factually.

Legal Analysis:

1. **This is a dispute between Appellants and PECO, not between PNC and PECO.** Appellants paid money to PECO by mistake. Under Pennsylvania law, PECO has an

obligation to return funds paid by mistake. *Philadelphia v. Balt. & Ohio R.R.*, 210 A.2d 346 (Pa. 1965). Whether PECO attempted to return those funds to a third party is irrelevant to PECO's obligation to the payor.

2. **PNC is not a party to this proceeding.** The Commission cannot adjudicate rights or obligations of PNC Bank, which has not appeared and is not subject to the Commission's jurisdiction. The ALJ's suggestion that Appellants must pursue PNC (a non-party over which the Commission lacks jurisdiction) rather than PECO (the utility that actually received the mistaken payment) is contrary to law.
3. **PECO cannot satisfy its obligation to Appellants by paying a third party.** If a utility customer overpays, the utility's obligation is to return the overpayment to the customer, not to the customer's bank. PECO cannot unilaterally satisfy its obligation to Appellants by making payment to PNC without Appellants' authorization or confirmation that Appellants actually received credit for such payment.
4. **The Commission has jurisdiction and duty to resolve this dispute.** Section 1501 of the Public Utility Code requires utilities to provide reasonable service, which includes proper handling of customer payments and refunds. 66 Pa.C.S. § 1501. The Commission has jurisdiction to order PECO to refund money improperly retained. *West Penn Power Co. v. Pa. PUC*, 478 A.2d 947 (Pa. Cmwlth. 1984).

Factual Analysis:

The record demonstrates this is squarely a dispute between Appellants and PECO:

- Appellants paid money to PECO (not to PNC);
- Appellants requested refund from PECO (not from PNC);
- PECO received the funds and has not proven it returned them to Appellants;
- Whether PNC separately credited Appellants' account is irrelevant to PECO's independent obligation.

The Double Recovery Fallacy:

The ALJ expressed concern that granting relief would result in "compensating Complainants above and beyond the compensation that they already have received from PNC." (Initial Decision at 10). This reasoning is flawed because:

1. There is no evidence that any payment from PECO was the source of PNC's decision to make the provisional credit permanent;
2. PNC may have credited Appellants based on its own error or policy;
3. If both PNC and PECO credited Appellants, PNC and PECO could resolve any resulting dispute between themselves, but that does not relieve PECO of its obligation to Appellants;

Relief Requested: The Commission should reverse the ALJ's conclusion that this matter is "between PNC and PECO" and hold that PECO has a direct obligation to Appellants that cannot be satisfied by unverified alleged payments to third parties.

EXCEPTION NO. 4

THE ALJ ERRED IN FINDING THAT "LOGIC DICTATES THAT PNC PERMITTED MR. ENIGWE TO KEEP THE PROVISIONAL CREDIT OF \$1,240.30 BECAUSE PNC RECEIVED \$1,240.30 FROM PECO"

Standard: Findings of fact must be based on substantial evidence in the record, not speculation or assumption. *Norfolk & W. Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Error: The ALJ's finding that "logic dictates" PNC's motivation (Initial Decision at 10) is pure speculation unsupported by any evidence. This violates the substantial evidence standard.

Alternative Explanations Supported by Evidence:

1. **PNC's acknowledgment of its own error.** Mr. Enigwe testified he contacted PNC to report the erroneous withdrawal immediately after it occurred (Tr. 16-17). PNC then initiated an investigation on February 26, 2025—one week after the February 19, 2025 payment (Complainant Exhibit 1). PNC banks have a regulatory obligation to investigate customer complaints about unauthorized transactions. If PNC determined that the withdrawal was erroneous and should have been stopped, PNC's decision to make the credit permanent could reflect PNC's acknowledgment of its failure to prevent an erroneous withdrawal, not receipt of funds from PECO.
2. **Timing discrepancy.** PNC provided the provisional credit in late February 2025 and made it permanent on May 14, 2025 (Complainant Exhibit 1). PECO claims it returned funds on March 19, 2025 (PECO Exhibit 3). If PNC had received funds from PECO on March 19, why would PNC wait nearly two additional months (until May 14) to make the provisional credit permanent? This timing is inconsistent with PNC's decision being based on receipt of PECO funds.
3. **Absence of communication.** There is no evidence in the record of any communication from PNC to Mr. Enigwe stating "we received funds from PECO and are therefore making your provisional credit permanent." The June 12, 2025 PNC letter simply states the credit became final; it does not explain why.

Legal Authority: An administrative agency may not base findings on speculation or conjecture. *Lycoming County v. Pa. PUC*, 771 A.2d 403 (Pa. Cmwlth. 2001). Where evidence is susceptible to multiple reasonable interpretations, the agency must make findings based on the evidence, not assumptions.

Relief Requested: The Commission should strike the ALJ's speculative finding regarding PNC's motivation and recognize that the record contains no evidence establishing why PNC made the provisional credit permanent.

EXCEPTION NO. 5

THE ALJ ERRED IN FINDING THAT "COMPLAINANTS HAVE ALREADY BEEN MADE WHOLE AND ARE NOT ENTITLED TO ANY REFUND OR CREDIT FROM PECO"

Standard: A finding that a party has "been made whole" must be supported by evidence that the party received compensation for the specific harm from the specific party responsible for that harm.

Error: The ALJ found that "Complainants have already been made whole and are not entitled to any refund or credit from PECO" because "PNC permitted Mr. Enigwe to keep the \$1,240.30 provisional credit." (Initial Decision at 10).

This finding is erroneous because:

1. **A credit from PNC does not satisfy PECO's independent obligation.** If Appellants paid \$1,240.30 to PECO by mistake, PECO has an obligation to return it. The fact that Appellants' bank may have separately credited their account does not extinguish PECO's obligation. These are separate legal relationships.
2. **No evidence establishes that PNC's credit was compensation for PECO's retention of funds.** The record does not establish any causal connection between PNC's credit and PECO's retention of the disputed payment. They may be entirely independent transactions.
3. **The "made whole" analysis is premature.** Without evidence establishing:
 - o Why PNC credited the account;
 - o Whether PECO successfully returned funds to PNC;
 - o Whether any return of funds was properly credited to Appellants;

it is impossible to determine whether Appellants have been "made whole."

4. **PECO cannot avoid its obligation by pointing to a third party's conduct.** PECO received funds from Appellants. If those funds were paid by mistake, PECO must return them to Appellants. PECO cannot escape this obligation by claiming that some other entity also gave money to Appellants.

Relief Requested: The Commission should reverse the finding that Appellants have been "made whole" and hold that PECO's obligation to return mistakenly paid funds continues until PECO proves it returned those specific funds to Appellants.

EXCEPTION NO. 6

THE ALJ ERRED IN DENYING APPELLANTS' PETITION FOR RECONSIDERATION

Standard: A petition for reconsideration should be granted when it raises substantial questions requiring further consideration. 52 Pa. Code § 5.572.

Error: The ALJ's November 7, 2025 Order denying Appellants' Petition for Reconsideration (filed October 1, 2025) compounded the errors identified above by refusing to reconsider the denial of critical discovery and the dismissal without adequate evidence.

Relief Requested: The Commission should grant reconsideration and remand for a new hearing with appropriate discovery.

EXCEPTION NO. 7

THE INITIAL DECISION VIOLATES APPELLANTS' DUE PROCESS RIGHTS

Standard: Due process requires a meaningful opportunity to be heard and to present evidence. *Pa. Dental Ass'n v. Insurance Dep't*, 702 A.2d 710 (Pa. Cmwlth. 1997).

Error: The cumulative effect of the ALJ's errors—denying critical discovery, speculating rather than making evidence-based findings, and dismissing the complaint despite PECO's failure to prove successful return of funds—deprived Appellants of due process.

Relief Requested: The Commission should reverse the Initial Decision and remand for proceedings consistent with due process.

PROPOSED FINDINGS OF FACT

Appellants propose the following findings of fact in place of or in addition to the ALJ's findings:

Finding No. 18: PNC Bank did not confirm in any document in the record that it received \$1,240.30 from PECO Energy Company.

Finding No. 19: The June 12, 2025 PNC letter (Complainant Exhibit 1) does not state that PNC's decision to make the provisional credit permanent was based on receipt of funds from PECO.

Finding No. 20: No evidence in the record establishes the reason PNC decided to make the provisional credit permanent.

Finding No. 21: PECO Energy Company has not proven that it successfully returned \$1,240.30 to either PNC Bank or to Appellants.

Finding No. 22: PECO Energy Company continues to possess \$1,240.30 that was paid to it by mistake and has not returned those funds to the payor.

PROPOSED CONCLUSIONS OF LAW

Conclusion No. 9: When a utility receives payment by mistake, the utility has an obligation under Pennsylvania law to return the mistaken payment to the payor.

Conclusion No. 10: A utility cannot satisfy its obligation to return a mistaken payment by making unverified payments to third parties without proof that the payor actually received credit for such payment.

Conclusion No. 11: The Commission has jurisdiction over disputes between utilities and their customers regarding payments made to the utility.

Conclusion No. 12: PECO Energy Company's failure to return the mistaken payment of \$1,240.30 to Appellants constitutes unreasonable service in violation of 66 Pa.C.S. § 1501.

Conclusion No. 13: Appellants established a prima facie case that PECO owes them \$1,240.30.

Conclusion No. 14: PECO failed to rebut Appellants' prima facie case with substantial evidence.

Conclusion No. 15: The denial of Appellants' Motion for Issuance of Subpoena violated Appellants' due process rights and deprived them of material evidence necessary to prove their case.

PROPOSED ORDER

WHEREFORE, Appellants Ifedoo Enigwe and Uche Ekpunobi respectfully request that the Pennsylvania Public Utility Commission:

1. **SUSTAIN** Appellants' Exceptions;
2. **REVERSE** the Initial Decision dated January 27, 2026;
3. **FIND** that PECO Energy Company failed to return \$1,240.30 mistakenly paid by Appellants;
4. **ORDER** PECO Energy Company to refund \$1,240.30 to Appellants within fourteen (14) days;
5. **ALTERNATIVELY**, REMAND this matter for a new hearing with an order compelling PNC Bank to produce witnesses and documents regarding all transactions with PECO Energy Company concerning the disputed payment; and
6. **GRANT** such other and further relief as is just and proper.

Respectfully submitted,

/s/Ifedoo enigwe

Ifedoo Enigwe, Appellant
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Dated: 1/3/2026

Certificate of Service

This certifies that a true and correct copy of this Appeal has been sent to the following:

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