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July 29, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: William L. Jamison v. PECO Energy Company
Docket No. F-2010-2206523

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original of its Reply Exceptions to the Exceptions filed in the above-referenced docket. This document has been e-filed at the Pennsylvania Public Utility Commission's website. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Best Regards,

STEVENS & LEE


Dana Pirone Carosella

Encl.

cc: Certificate of Service

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A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WILLIAM L. JAMISON	:	
Complainant	:	
v.	:	Docket No. F-2010-2206523
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**REPLY EXCEPTIONS
OF PECO ENERGY COMPANY**

Pursuant to 52 Pa.Code §5.535, PECO Energy Company (“PECO”) hereby replies to the Exceptions of the Complainant William L. Jamison (“Complainant”) as follows:

I. PROCEDURAL HISTORY

On October 25, 2010, Complainant filed a Formal Complaint against PECO, alleging the following: that his outstanding balance on July 7, 2009 was zero; that his bills from July 7, 2009 through June 4, 2010, totaled \$505.93; that he paid \$696.44 during that time; that he never asked for a payment plan; and that he wants the additional charges removed. The complaint followed a decision by the Commission’s Bureau of Consumer Services (the “BCS”) that dismissed Complainant’s informal complaint, BCS Case No. 2698136. The BCS determined that the budget bill enrollment (referred to by the Complainant as a payment plan), was proper and Complainant was responsible for the deferred budget bill amount.

On November 16, 2010, PECO filed an Answer to the Complaint which denied that the budget bill enrollment was improper and asserted that all charges billed to Complainant were accurate.

On May 10, 2011, an initial Hearing Notice was issued by ALJ Cynthia W. Fordham. The hearing notice identified the time, date and location of the hearing as 10:00 a.m. on Tuesday, June 21, 2011 in an available hearing room on the 4th floor of 801 Market Street, Philadelphia, PA 19107. The presiding officer sent the parties a Prehearing Order, dated June 2, 2011. The time, date and location were listed on the Prehearing Order as well. Additionally, Renee Tarpley, a senior regulatory assessor for PECO, mailed a letter to Complainant on June 13, 2011. The letter contained the date, time and location of the hearing.

On June 21, 2011, the hearing convened as scheduled. PECO appeared with counsel and a witness, Ms. Tarpley. Complainant, however, failed to appear. Based on Complainant's failure to appear, PECO's counsel moved for dismissal of the Complaint with prejudice for lack of prosecution under 52 Pa.Code §5.245. ALJ Fordham's Initial Decision dismisses the Complaint.

On July 13, 2011, Complainant filed timely Exceptions to the Initial Decision.

II. ARGUMENT

The Pennsylvania Public Utility Commission (the "Commission") should sustain the dismissal of the Complaint and adopt the Initial Decision, as it is devoid of any error. Indeed, the Complainant's Exceptions do not allege any error in ALJ Fordham's findings of fact or in the conclusions of law. Rather, Complainant alleges only that he could not attend the hearing because of an undisclosed personal issue which he claims existed on the day of the hearing. Importantly, he does not dispute that he had notice of the correct time, date, and place of the hearing or that he knew the deadline for requesting a continuance and how to make that request. Nor does Complainant dispute that he failed

to request a continuance five (5) days before the date of the hearing as he was instructed to do. As ALJ Fordham noted, because Complainant had notice and the opportunity to be heard, he was afforded due process. Complainant's failure to avail himself of such due process is not grounds for overturning the Initial Decision. Lastly, it would be unfair to require PECO to expend more time, money and resources for a new hearing when PECO appeared at the scheduled hearing with counsel and a witness, ready to defend itself against the Complaint filed against it. Thus, the Commission should sustain the Initial Decision that dismissed the complaint with prejudice.

Complainant does not dispute that he had notice of the date, time and place of the hearing and that he received clear instructions for requesting a continuance through the Hearing Notice and the Prehearing Order. In addition, Complainant was warned of the dire consequence of failing to appear at the hearing. The Hearing Notice emphasizes that *"You may lose the case if you do not come to this hearing and present facts on the issues raised."* Hearing Notice, May 10, 2011.

The Hearing Notice and the Prehearing Order provide notice and plainly warn Complainant that he could lose his case if he failed to appear. Therefore, Complainant was afforded due process. *Schneider v. Pennsylvania Public Utility Commission*, 479 A.2d 10 (Pa. Cmwlth. 1984) (holding that due process is met when parties have notice and opportunity to be heard).

The issue of a party who, despite notice, fails to appear at a hearing is governed by 66 Pa.C.S. §332(f), which provides, in part, as follows: "Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or

hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat...” Because Complainant failed to appear, ALJ Fordham held that Complainant was deemed to have waived the opportunity to participate in the hearing. 66 Pa.C.S. §332(f). Since Complainant provided no evidence at the hearing to support the Complaint under 66 Pa.C.S. §332(a) (providing that proponent of a rule or order bears the burden of proof), it was proper for ALJ Fordham to grant PECO’s Motion to Dismiss the Complaint.

Second, Complainant’s failure to appear was due to his own negligence. A party has a duty to appear at an administrative hearing under Pennsylvania law: “a party’s own negligence is not sufficient ‘good cause’ as a matter of law for failing to appear at a Referee’s hearing.” *Eat’N Park Hospitality Group, Inc. v. Unemployment Compensation Board of Review*, 970 A.2d 492, 494 (Pa. Cmwlth. 2008).

The case here is simple. Complainant failed to appear through his own negligence. Complainant, who knew how to request a continuance and avoid this result (a dismissal of his Complaint) has no legal remedy available for failing to secure a continuance. *Eat’N Park Hospitality Group Inc., supra*. There is no valid basis to “reopen” the case when Complainant waived his right to a hearing by negligently failing to appear. 66 Pa.C.S. §332(f).

Lastly, it would be unfair to require PECO to expend more time, money and resources to defend its case at a new hearing when it already appeared at the scheduled hearing, with counsel and a witness, prepared to defend its case. ALJ Fordham correctly dismissed the complaint with prejudice. PECO has already spent a considerable amount of resource to prepare for the scheduled hearing; it should not be asked to do more.

III. CONCLUSION

As the Complainant's Exceptions do not find any error with the Initial Decision and merely alleges a personal issue to excuse his negligence, for which no legal remedy is available, the Commission should adopt ALJ Fordham's Initial Decision dismissing the complaint with prejudice.

Respectfully submitted,



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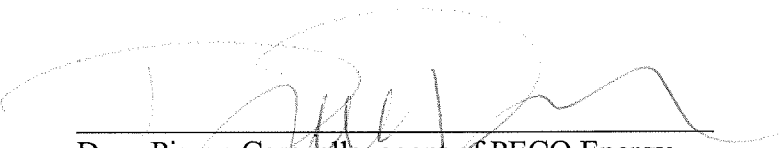
Counsel for PECO Energy Company

Dated: July 29, 2011

Commonwealth of Pennsylvania :
: SS
County of Philadelphia :

AFFIDAVIT

I, Dana Pirone Carosella, being duly sworn according to law, depose and say I am agent of PECO Energy Company and have been authorized to make this affidavit on its behalf and that the facts above set forth are true and correct to the best of my knowledge, information and belief, and PECO Energy Company expects to be able to prove the same at any hearing hereof.

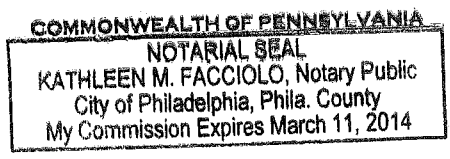


Dana Pirone Carosella, agent of PECO Energy Company

Sworn and subscribed before me this
29th day of July, 2011


Notary

My Commission Expires:



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WILLIAM L. JAMISON	:	
Complainant	:	
v.	:	Docket No. F-2010-2206523
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Reply Exception upon the parties listed below, in accordance with the requirements of 52 Pa.Code §1.54 (relating to service by a party).

VIA First Class U.S. Mail

William L. Jamison
5705 Nassau Road
Philadelphia, PA 19131



Dana Pirone Carosella

DATED: July 29, 2011