

Legal Department

Fax 215.568.3389
www.exeloncorp.com

Exelon Business Services Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Direct Dial: 215.841.6841

June 29, 2012

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

Re: Deborah Bethay v. PECO Energy Company
PUC Docket No. F-2011-2266250

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents and copies in the matter referenced above.

___	Answer (1 original)
___	Answer & New Matter (1 original)
___	Motion to Dismiss (original)
___	Motion for Judgment on the Pleadings (1 original)
___	Preliminary Objection (1 original)
___	Exceptions (1 original)
<u> X </u>	Reply Exceptions (1 original)
___	Main Brief (1 original)
___	Reply Petition (1 original)

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,



Shawane Lee
Counsel for PECO Energy Company

SL/adz

Enc.

Scheduling Recommendation: Call of the docket ___ Non Call of the docket ___

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Deborah Bethay (“Complainant”) in the above-referenced matter on April 19, 2011. The Exceptions were served on PECO Energy by the Public Utility Commission (“PUC”) on June 19, 2012. On September 30, 2011, Complainant filed a formal complaint against PECO Energy. In her formal complaint, Complainant denied responsibility for a \$4,000 electricity bill from a previous address. Respondent, PECO Energy filed an Answer on October 26, 2011, denying the allegations in the Complainant’s formal complaint. On February 1, 2012, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and location of the hearing. On February 2, 2012, Administrative Law Judge Ky Van Nguyen issued a Prehearing Order, advising of the date and time of the scheduled hearing. On March 29, 2012, the hearing convened before ALJ Nguyen. The Complainant failed to appear for the hearing. PECO Energy requested dismissal of the Complainant’s formal complaint with prejudice for failure to prosecute.

On March 30, 2012, ALJ Nguyen issued an initial decision in the matter of *Deborah Bethay v. PECO Energy. Co.*, F-2011-2266250 (“Initial Decision”). The Initial Decision ordered dismissal of the formal complaint with prejudice for failure to prosecute. The Initial Decision is well-reasoned with ample support from the record. As detailed in the Initial Decision, the PUC mailed the parties a notice that the hearing for this matter would take place on March 29, 2012 at 1:00 p.m. PECO Energy appeared for the hearing, ready to put on its case. Complainant did not appear. PECO Energy respectfully requests that the Exceptions be dismissed because the Initial Decision properly dismissed Complainant’s formal complaint for her failure to appear for an in-person hearing.

Complainant's Failure to Appear for Hearings Despite Proper Notice

Administrative agencies of the Commonwealth of Pennsylvania, such as the Public Utility Commission ("PUC"), are required to provide due process to the parties appearing before them.¹ The due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.²

Once the PUC meets its due process requirement, the burden falls upon the parties to appear and participate in the hearing.³ As mandated by the Pennsylvania Public Utility Code:

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, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination.⁴

The PUC satisfied its due process requirement by mailing Complainant the hearing notice on February 1, 2012. The hearing notice was not returned by the United States Postal Service as undeliverable. The notice is therefore presumed to have been received.⁵ Complainant also received notice when ALJ Nguyen mailed Complainant a prehearing order on February 2, 2012. By failing to appear at the March 29, 2012, hearing, Complainant waived her opportunity to

¹ See *Brown v. PECO Energy Co.*, no. C-2008-2060121, Initial Decision at 7 (Pa. P.U.C. May 18, 2009) (Chestnut, J.) (citing *Schneider v. Pa. P.U.C.*, 479 A.2d 10 (Pa. Cmwlth. 1984)).

² See *id.*

³ See, e.g., *Mumma v. PPL Elec. Util. Corp.*, No. C-00014869 (Jan. 24, 2002) ("It is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.").

⁴ 66 Pa. C.S. 332(f) (emphasis added).

⁵ See *Brown v. PECO Energy*, at 7 ("Notice mailed to a party's last known address and not returned by the post office is presumed to have been received.") (citing *Meierdierck v. Miller*, 394 Pa. 484 (Pa. 1959), among others).

participate in the hearing and cannot now reopen the record without proof that her failure to appear was unavoidable and that the interest of PECO Energy and the public interest will not be prejudiced.

Complainant's purported justification for failing to appear cannot satisfy this heightened standard. Complainant states that she did not appear for the hearing because she had bi-lateral knee replacements on the date of her hearing. The Complainant attached admission and discharge records to substantiate the fact she was in the hospital at the time of the hearing. The documentation Complainant provided reflects the fact that she knew about the pre-scheduled surgery, to take place on March 19, 2012, well in advance of the hearing. As described above, Complainant received a formal hearing notice from the PUC and a pre-hearing order from ALJ Nguyen at the beginning of February 2012. Despite this, the Complainant failed to request a continuance of this matter. Plainly, Complainant's participation in the hearing was not "unavoidable."⁶ The Complainant had ample time to inform the Commission and PECO Energy that she would require a continuance. Complainant should have notified the Commission of her pending surgery. No such notice was provided. Again, Complainant cannot establish that her failure to appear was "unavoidable."

Complainant also cannot establish that a reopening of the proceeding would not prejudice the public's or PECO Energy's interests. PECO Energy should not be prejudiced by having to expend an inordinate amount of its resources to prepare for hearings in which the Complainant does not appear. Nor should the public be prejudiced by the Complainant's wasteful use of the PUC's and utility company's resources. Accordingly, the Initial Decision properly dismissed the formal complaint in this matter with prejudice.

⁶ 66 Pa. C.S. 332(f).

WHEREFORE, 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,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841
Fax: 215.568.3389

