

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

Direct Dial: 215.841.6841

November 13, 2012

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

**Re: Brittany Vohrer v. PECO Energy Company**  
**PUC Docket No.: C-2012-2303471**

Dear Ms. Chiavetta:

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

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

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/lo

cc: Brittany Vohrer



## **REPLY EXCEPTIONS OF PECO ENERGY COMPANY**

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Brittany Vohrer (“Complainant”) in the above-referenced matter on November 2, 2012. The Exceptions were served on PECO Energy by the Public Utility Commission (“PUC”) on November 12, 2012. On April 30, 2012, Complainant filed a formal complaint against PECO Energy. In her formal complaint, Complainant requested that the electric service at 2 Maisie Drive, Linwood, Pennsylvania where she resides be put in her name. The Complainant claimed that although she resides at the residence, she does not want to be responsible for any amount of the bill that accrued while the electric service was in her step-grandfather’s name.

The Respondent, PECO Energy filed an Answer on May 22, 2012, denying the allegations in the Complainant’s formal complaint. On June 4, 2012, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and location of the hearing. On June 5, 2012, Administrative Law Judge Angela T. Jones issued a Prehearing Order, advising of the date and time of the scheduled in-person hearing. On June 21, 2012, the Complainant requested that the hearing be conducted by telephone and provided a telephone number where she could be reached. On July 16, 2012, the hearing convened as scheduled, with PECO Energy appearing in person, and ALJ Jones called the Complainant at the telephone number provided. ALJ Jones reached a voicemail message.

On July 18, 2012, ALJ Jones issued another Prehearing Order, rescheduling the Initial Hearing to take place on September 14, 2012 at 10:00 a.m. On September 5, 2012, ALJ Jones sent correspondence to the parties, advising that the hearing scheduled for September 14, 2012 would be conducted telephonically. On September 7, 2012, the Complainant called ALJ Jones to give the telephone number where she could be reached for the telephonic hearing. On September

14, 2012, the telephonic hearing convened before ALJ Jones. The Complainant failed to appear for the hearing. ALJ Jones attempted to contact both telephone numbers the Complainant provided (the number for the first hearing and the number provided on September 7<sup>th</sup>). There was no response. PECO Energy requested dismissal of the Complainant's formal complaint with prejudice for failure to prosecute.

On September 26, 2012, ALJ Jones issued an initial decision in the matter of *Brittany Vohrer v. PECO Energy. Co.*, C-2012-2303471 ("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 first hearing for this matter would take place on July 16, 2012 at 10:00 a.m. PECO Energy appeared for the hearing, ready to put on its case. Complainant did not appear and did not answer the telephone number she provided to ALJ Jones. A second hearing notice was sent out to the parties, advising that a telephonic hearing would take place on September 14, 2012. The Complainant failed to respond when ALJ Jones attempted to contact her at the telephone number provider. 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 both hearings.

***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.<sup>1</sup> The due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.<sup>2</sup>

Once the PUC meets its due process requirement, the burden falls upon the parties to appear and participate in the hearing.<sup>3</sup> 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.<sup>4</sup>

The PUC satisfied its due process requirement by mailing Complainant the hearing notices on June 4, 2012 and July 18, 2012. The hearing notices were not returned by the United States Postal Service as undeliverable. The notices are therefore presumed to have been received.<sup>5</sup> Complainant also received notice when ALJ Jones mailed Complainant a prehearing order on June 5, 2012 for the first hearing and a letter dated September 5, 2012, containing a prehearing order and hearing notice for the second hearing. By failing to appear at both the July 15, 2012 and September 14, 2012 hearings, Complainant waived her opportunity to participate in the hearings 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.

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<sup>1</sup> 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)).

<sup>2</sup> See *id.*

<sup>3</sup> 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.”).

<sup>4</sup> 66 Pa. C.S. 332(f) (emphasis added).

<sup>5</sup> 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).

Complainant's purported justification for failing to appear cannot satisfy this heightened standard. In her exceptions, Complainant states that she did not appear for the hearing because she knew nothing about the telephonic hearing. Yet, documentation the Complainant submitted to ALJ Jones on October 9, 2012, completely contradicts her assertion that she did not know about the hearing. In her letter to ALJ Jones, she states:

**I am aware I missed my telephone hearing, I am sorry. My phone was not working because of the rain we had, there is a bad wire outside and I am having that repaired.**

See Correspondence from Complainant, dated 10/16/12, attached hereto as Exhibit "1". The letter Complainant provided reflects the fact that she knew about the second telephonic hearing. As described above, Complainant received a formal hearing notice from the PUC and a pre-hearing order from ALJ Jones for the hearing. Despite this, the Complainant failed to request a continuance of this matter. Plainly, Complainant's participation in the hearing was not "unavoidable."<sup>6</sup> 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 telephone issues and provided another telephone number where ALJ Jones could reach her. No such notice or communication 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

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<sup>6</sup> 66 Pa. C.S. 332(f).

PUC's and utility company's resources. Accordingly, the Initial Decision properly dismissed the formal complaint in this matter with prejudice.

**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,



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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



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>BRITTANY VOHRER</b>	:	
	:	
<b>COMPLAINANT</b>	:	
	:	
<b>v.</b>	:	<b>Docket Nos. C-2012-2303471</b>
	:	
<b>PECO ENERGY COMPANY,</b>	:	
	:	
<b>RESPONDENT</b>	:	
	:	

**CERTIFICATE OF SERVICE**

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

**Brittany Vohrer  
2 Maise Drive  
Linwood, PA 19061**

Dated at Philadelphia, Pennsylvania, November 13, 2012



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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

# **EXHIBIT “1”**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office of Administrative Law Judge  
801 Market Street, Suite 4063 – Philadelphia, Pennsylvania 19107  
Telephone: (215) 560-2105

IN REPLY PLEASE  
REFER TO OUR FILE

October 16, 2012

Shawane L. Lee, Esquire  
Exelon Business Services  
2301 Market St., S 23/1  
Philadelphia, PA 19101-8699



Re: Brittany Vohrer v. PECO Energy Company  
Docket No. C-2012-2303471

Dear Ms. Lee:

Enclosed please find a copy of a letter that I received from the Complainant in the above formal complaint case. Although I have already issued the Initial Decision, I am forwarding a copy of this correspondence to you.

Sincerely,

Angela T. Jones  
Administrative Law Judge

ATJ/mg  
Attachments

cc: Document File

-ALJ-coa.pdf

RECEIVED

OCT 09 2012

Public Utility Commission  
Philadelphia Office  
Administrative Law Judge

BRITTANY VOLKER V. PECO ENERGY

DOCKET NO. C-2012-2303471

ATT. JUDGE ANGELA JONES

THIS CONCERNS MY ELECTRIC,  
WE HAVE BEEN TRYING TO GET  
THIS ELECTRIC IN MY NAME  
FOR MONTHS NOW,  
AND BEINGS I GET NO ELECTRIC  
BILL IN MY NAME,  
I'M SURE MY ELECTRIC BILL  
IS HIGH.

PLEASE CAN YOU HELP ME WITH  
THIS?

I KNOW I HAVE AN OLD BILL  
OF \$1000.00 AND I WILL TAKE  
CARE OF THAT.

AGAIN I AM NOT GOING TO BE  
RESPONSIBLE FOR SOMEONE ELSE'S  
ELECTRIC BILL.

THEY STATE A PERSON ENOS CURL  
HAS A BILL AT THIS ADDRESS,  
NOW HE WAS MY GRAND MOTHER'S  
BOYFRIEND, HE IS NO RELATIONS  
TO ME,

2/

HE MOVED OUT MONTHS AGO,  
ITS ONLY MYSELF AND MY  
GRAND MOM WHOM HAS AN  
ILLNESS  
AND I MOVED IN TO TAKE  
CARE OF HER,

PLEASE UNDERSTAND,  
THIS HAS BEEN GOING ON TOO  
LONG.

I FAXED ALL THE PAPER WORK  
THEY WANTED.

\* I AM AWARE I MISSED MY  
TELEPHONE HEARING,  
I AM SORRY  
MY PHONE WAS NOT WORKING  
BECAUSE OF THE RAIN WE HAD,  
THERE IS A BAD WIRE OUTSIDE,  
AND I AM HAVING THAT REPAIRED,  
THANK YOU!

PLEASE GET BACK TO ME.

BRITTANY VOHRER

a MAISE DRIVE

LINWOOD, PA. 19061

610-485-5741