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September 10, 2013

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

RE: Ron Carson v. PECO Energy Company
PUC Docket No.: C-2012-2337615

Dear Ms. Chiavetta:

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

- Answer
- Answer & New Matter
- Motion Objecting to Continuance Request
- Motion for Judgment on the Pleadings
- Motion to Admit Exhibits
- Preliminary Objection
- Exceptions
- **X** **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: Ron Carson (via First Class Mail)

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Ron Carson (“Complainant”) in the above-referenced matter on September 5, 2013. The Exceptions were served on PECO by the Complainant on September 9, 2013. On November 29, 2012, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant made several allegations, including, but not limited to: (1) PECO had terminated his service without proper notice; (2) there were frequent service interruptions at his residence; and (3) PECO claimed he defaulted on a payment agreement he did not know about. Respondent, PECO filed an Answer on December 14, 2012, denying the allegations in the Complainant’s formal complaint. On February 4, 2013, the Pennsylvania Public Utility Commission (“PUC”) mailed the parties an Initial Hearing Notice, advising of the date, time and location of the hearing. On February 26, 2013, Administrative Law Judge Eranda Vero issued a Prehearing Order, advising of the date and time of the scheduled hearing. On March 19, 2013, the hearing convened before ALJ Vero. The Complainant appeared at the hearing and represented himself *pro se*.

PECO presented the testimony of two witnesses, including the testimony of an engineer who testified concerning the reliability issues alleged by the Complainant. Additionally, PECO presented the testimony of a Regulatory Assessor concerning the Complainant’s billing and medical certificate dispute claims. After extensive testimony by these two witnesses, the Complainant stated on the record that he wished to withdraw all of his claims against PECO with the exception of a request for a payment agreement.

On August 7, 2013, ALJ Vero issued an Initial Decision in the matter of *Ron Carson v. PECO Energy Co.*, C-2012-2337615 (“Initial Decision”). The Initial Decision ordered dismissal of the formal complaint and the Complainant’s request for a payment agreement

pursuant to 66 Pa.C.S. § 1405(d). The Initial Decision is well-reasoned with ample support from the record. As detailed in the Initial Decision, the Complainant previously received a Level 2 Commission-issued payment agreement in August 2012. The Complainant defaulted on that payment agreement and presented testimony that his income had subsequently increased. PECO respectfully requests that the Exceptions be dismissed because the Initial Decision properly dismissed Complainant's formal complaint.

In the Complainant's Exceptions, he does not allege that ALJ Vero made an error of law or abused her discretion in any manner. Instead, Complainant requests that ALJ Vero's Initial Decision be set aside because he wants to obtain legal counsel to prosecute his case. Specifically in his exceptions, Complainant states:

1. I did appear in court on March 19, 2013.
2. Having read documents which described the hearing as initial, I appeared alone.
3. I explained to the judge that I thought this was preliminary, and therefore would be requesting time to obtain counsel.
4. As the Utility had 3 persons present, I allowed the hearing to proceed. One witness had been dismissed and was called back.
5. I ask this decision to be set aside while I obtain counsel.

Pursuant to 52 Pa. Code 5.533(b), "[e]ach exception must . . . identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision," and "[s]upporting reasons for the exceptions shall follow each specific exception." Complainant's attempt to further litigation in this matter by claiming he wanted to obtain counsel, without identifying any specific error of law or abuse of discretion fails to satisfy the requirements; is procedurally improper, and should be dismissed summarily.

By way of further response, the Complainant admits in his Exceptions that he "read documents which described the hearing as initial." Essentially, the Complainant received the

Initial Hearing Notice sent to the parties by the PUC on February 4, 2013. The Hearing Notice, specifically states:

Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must be provided to each party of record.

Individuals representing themselves do not need to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you should file a Notice of Appearance before the scheduled hearing date.

The Complainant admitted that he read this notice. The notice sufficiently notified the Complainant that he needed to appear on the hearing date and present his case. If he did not present his case on that date, he may lose the case. Further, the Hearing Notice advised in “Bold” font to clearly draw to the Complainant’s attention that he did not need to be represented, but if he did require an attorney, an attorney should file a Notice of Appearance before the hearing date. The Hearing Notice was mailed on February 4, 2013. The hearing convened on March 19, 2013. The Complainant had ample time to obtain counsel, or in the alternative, to request a continuance prior to the hearing in order to obtain counsel. The Complainant did neither and now requests that ALJ Vero’s Initial Decision be set aside to give him an opportunity to obtain counsel. The Commission should dismiss the Complainant’s Exceptions and deny his request to set aside the Initial Decision.

Once the PUC meets its due process requirement, the burden falls upon the parties to appear and participate in the hearing.¹ The PUC satisfied its due process requirement by mailing the Complainant the Hearing Notice on February 4, 2013. The Complainant received and read the notice. A Prehearing Order was also mailed to the Complainant by ALJ Vero on February 26, 2013. The Prehearing Order specifically states:

Pursuant to 52 Pa. Code §§ 1.21 and 1.22, you may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you.

Complainant waived his opportunity to have counsel at the hearing and cannot now have ALJ Vero's Initial Decision set aside without prejudicing PECO and the public interest. The Complainant states no purported justification for failing to obtain counsel. He simply states in his Exceptions that he thought the hearing "was preliminary, and therefore would be requesting time to obtain counsel". The Complainant's Exceptions reflect the fact that he knew about the Hearing Notice and read the contents. The Hearing Notice and the Prehearing Order provided instructions, regarding obtaining counsel. Despite this, the Complainant failed to obtain counsel or request a continuance of this matter in order to obtain counsel. Additionally, at the hearing the Complainant had an opportunity to put on his case and to be heard.

Complainant cannot establish that setting aside ALJ Vero's Initial Decision and remanding this case for another hearing would not prejudice the public's or PECO's interests. PECO should not be prejudiced by having to expend an inordinate amount of its resources to prepare for another hearing, particularly as the company already participated in the hearing and

¹ 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.").

offered several hours of witness testimony. 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.

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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RON CARSON

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket Nos. C-2012-2337615

VERIFICATION

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

Date: September 10, 2013



Shawane L. Lee

