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April 23, 2015

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

RE: Miro Kamenik v. PECO Energy Company
PUC Docket No.: C-2013-2379058

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Reply Exceptions* with regard to the matter referenced above.

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

cc: Certificate of Service
Miro Kamenik

SL/ab

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Miro Kamenik (“Complainant”) in the above-referenced matter on April 13, 2015. PECO was served with the Complainant’s Exceptions on August 22, 2015.

On August 15, 2013, Complainant filed a formal complaint against PECO Energy. In his formal complaint, Complainant alleged that his income had dropped significantly and requested a payment agreement that was spread out over five years. Respondent, PECO Energy filed an Answer and New Matter on August 22, 2013, denying the allegations in the Complainant’s formal complaint and stating that the Complainant was not eligible for another Public Utility Commission issued payment agreement because he had not proved a change in income. On August 28, 2013, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and location of the hearing. On October 16, 2013, ALJ Fordham issued a Prehearing Order, advising of the date and time of the scheduled hearing. On November 12, 2013, the hearing convened before Administrative Law Judge Cynthia Williams Fordham (“ALJ” Fordham”). 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 2, 2015, ALJ Fordham issued an initial decision in the matter of *Miro Kamenik v. PECO Energy. Co.*, C-2013-2379058 (“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 November 12, 2013 at 9:30 a.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 his 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 August 28, 2013. 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

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).

received notice when ALJ Fordham mailed Complainant a prehearing order on October 16, 2013. By failing to appear at the November 12, 2013, hearing, Complainant waived his opportunity to participate in the hearing and cannot now reopen the record without proof that his 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. On close of business, November 7, 2013, the Complainant submitted a continuance request to ALJ Fordham stating he was consumed with a pressing matter at home involving his 15 year old daughter. The Complainant did not attach any records, documentation or other to substantiate his unavailability. 52 Pa. Code § 1.15(b) states:

Only for good cause shown will requests for continuance be considered.

In this case, the Complainant has not established "good cause" for his continuance request because he failed to attach any substantiating documentation to support his request. Further, as described above, Complainant received a formal hearing notice from the PUC on August 28, 2013, and a pre-hearing order from ALJ Fordham on October 16, 2013. Despite this, the Complainant waited until November 7, 2013 to request a continuance and did not serve the request on PECO. ALJ Fordham was out of the office on Friday, November 8, 2013 and there was a holiday on Monday, November 11, 2013. Accordingly, there was not sufficient time for ALJ Fordham to review the request and advise PECO Energy prior to the scheduling hearing. Complainant never received notification from ALJ Fordham that his continuance request was granted, yet he failed to show up for the hearing. Plainly, Complainant's participation in the

hearing was not “unavoidable.”⁶ The Complainant should have appeared for the hearing when he did not receive an acknowledgment from ALJ Fordham that his continuance request had been granted. Again, Complainant cannot establish that his 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. Indeed, this is the third formal complaint the Complainant has filed requesting a payment agreement. The Complainant filed a complaint at docket number F-2011-2281997 appealing a Bureau of Consumer Services payment agreement granted to him. He filed another formal complaint at docket number F-2012-2281997 where Special Agent Tiffany Hunt granted him a payment agreement. And now, the Complainant filed the present formal complaint requesting a payment agreement and failed to show up at the hearing. Clearly, the public and PECO would be prejudiced by reopening this case once again to litigate the same payment issues that have been brought up since 2011. 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.

⁶ 66 Pa. C.S. 332(f).

Respectfully submitted,



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