



An Exelon Company

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April 29, 2015

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

**RE: Cynthia Santore v. PECO Energy Company**  
**PUC Docket No.: F-2014-2446204**

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,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a stylized flourish at the end.

Shawane Lee  
Counsel for PECO Energy Company

cc: Certificate of Service  
Cynthia Santore

SL/ab



## REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Cynthia Santore (“Complainant”) in the above-referenced matter on March 26, 2015. The Exceptions were never served on PECO Energy by the Public Utility Commission (“PUC”) or the Complainant. On September 15, 2014, Complainant filed a formal complaint against PECO Energy. In her formal complaint, Complainant alleged that her bills were too high and requested money back. Respondent, PECO Energy filed an Answer on October 20, 2014, denying the allegations in the Complainant’s formal complaint. On November 17, 2014, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and location of the hearing. On November 21, 2014, Administrative Law Cynthia Williams Fordham (“ALJ Fordham”) issued a Prehearing Order, advising of the date and time of the scheduled hearing. On January 12, 2015, the hearing convened before 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 February 5, 2015, ALJ Fordham issued an initial decision in the matter of *Cynthia Santore v. PECO Energy. Co.*, F-2014-2446204 (“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 January 12, 2015 at 10:00 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 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.<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 notice on November 17, 2014. The hearing notice was not returned by the United States Postal Service as undeliverable. The notice is therefore presumed to have been received.<sup>5</sup> Complainant also received notice when ALJ Fordham mailed Complainant a prehearing order on November 21, 2014. By failing to appear at the January 12, 2015, hearing, Complainant waived her

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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).

opportunity to 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 the flu. The Complainant claimed that she sent a letter to ALJ Fordham's office and called her office, presumably to request a continuance. Yet, ALJ Fordham did not receive a letter or a telephone call. The Complainant did not attach to her Exceptions a copy of the letter she allegedly sent to ALJ Fordham requesting a continuance or a telephone record showing she made a call to ALJ Fordham to substantiate the fact she requested a continuance. The Complainant's failure to submit any substantiating documentation with her Exceptions demonstrates she did not properly request a continuance of this matter. Additionally, Complainant's Exceptions indicates that she knew about the hearing in advance of the hearing. As described above, Complainant received a formal hearing notice from the PUC and a pre-hearing order from ALJ Fordham in November 2014. 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 inability to appear at the hearing because she had the flu. 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

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

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.

**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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