



An Exelon Company

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December 16, 2015

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

RE: Lucy DiRemigio v. PECO Energy Company
PUC Docket No.: F-2015-2479220

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Reply Exceptions of PECO Energy Company* 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 long, sweeping underline.

Shawane Lee
Counsel for PECO Energy Company

cc: Certificate of Service

SL/ab

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Lucy DiRemigio (“Complainant”) in the above-referenced matter on December 7, 2015. The Exceptions were never served on PECO Energy by the Complainant.

On April 24, 2015, Complainant filed a formal complaint against PECO Energy. In her formal complaint, Complainant alleged that her bills were incorrect and requested a payment agreement. Respondent, PECO Energy filed an Answer and New Matter on April 28, 2015, denying the allegations in the Complainant’s formal complaint and stated that Complainant was not entitled to a payment agreement as her entire balance is comprised of Customer Assistance Program arrears. On August 28, 2015, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and location of the hearing. On September 8, 2015, Administrative Law Elizabeth H. Barnes (“ALJ Barnes”) issued a Prehearing Order, advising of the date and time of the scheduled hearing. On October 29, 2015, the telephonic hearing convened before ALJ Barnes. The Complainant was not available at the home telephone number or mobile phone number when ALJ Barnes called. PECO Energy requested dismissal of the Complainant’s formal complaint with prejudice for failure to prosecute.

On October 29, 2015, ALJ Barnes issued an initial decision in the matter of *Lucy DiRemigio v. PECO Energy. Co.*, F-2015-2479220 (“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 October 29, 2015 at 10:00 a.m. PECO Energy appeared for the hearing with two witnesses, 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 a telephonic 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, 2015. The hearing notice was not returned by the United States Postal Service as

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).

undeliverable. The notice is therefore presumed to have been received.⁵ Complainant also received notice when ALJ Barnes mailed Complainant a prehearing order on September 8, 2015. By failing to appear at the October 29, 2015, telephonic hearing, Complainant waived her 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 became homeless on June 24, 2015 and was staying in a hotel room. The Complainant knew she had a pending formal complaint against PECO but did not follow up with PECO or the Commission to advise that her address had changed. Additionally, the Complainant states in her Exceptions that she changed her address with the United States Postal Service to the hotel room in Royersford, PA where she was staying and once again changed her address to a facility in Phoenixville, PA. Since she changed her address with the postal service, she should have received her hearing notice and prehearing order advising her of the hearing.

Even if the Complainant was not at the address of record at the time of the hearing, she still had a mobile telephone. The Complainant provided the mobile telephone number on her formal complaint and ALJ Barnes attempted to contact the Complainant at that number. ALJ Barnes left the Complainant a voicemail message and tried back again. The Complainant never responded to ALJ Barnes' voicemail message or made any attempt to answer her phone or

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).

contact the ALJ. Plainly, Complainant's participation in the hearing was not "unavoidable."⁶ The Complainant had ample time to inform the Commission and PECO of a change of address or respond to ALJ Barnes' attempts to contact her. 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. Notably, PECO Energy is required to hold collection activity on the Complainant's account balance because of the formal complaint process. 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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⁶ 66 Pa. C.S. 332(f).

LUCY DIREMIGIO

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket Nos. F-2015-2479220

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: December 16, 2015

Shawane L. Lee

