



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: Mr. and Mrs. David M. Montanez v. PECO Energy Company
PUC Docket No.: F-2015-2493956

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".

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 Mr. and Mrs. David M. Montanez, Sr. (“Complainants”) in the above-referenced matter on December 7, 2015. The Complainants did not serve PECO with the Exceptions.

On July 21, 2015, Complainants filed a formal complaint against PECO Energy. In their formal complaint, Complainants request a payment agreement and state there are incorrect charges on their bill. Respondent, PECO Energy filed an Answer and New Matter on August 4, 2015, denying the allegations in the Complainants’ formal complaint. PECO averred that the Complainants were not eligible for a Public Utility Commission issued payment agreement because their entire balance is comprised of Customer Assistance Program (CAP) arrears. On August 17, 2015, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and location of the hearing. On August 24, 2015, ALJ Heep issued a Prehearing Order, advising of the date and time of the scheduled hearing. On October 13, 2015, the hearing convened before Administrative Law Judge Darlene D. Heep (“ALJ Heep”) at 9:30 a.m. The Complainants failed to appear for the hearing. PECO Energy requested dismissal of the Complainants’ formal complaint with prejudice for failure to prosecute.

On November 17, 2015, ALJ Heep issued an initial decision in the matter of *Mr. and Mrs. David Montanez, Sr. v. PECO Energy. Co.*, F-2015-2493956 (“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 13, 2015 at 9:30 a.m. PECO Energy appeared for the hearing, ready to put on its case. Complainants did not appear. PECO Energy respectfully requests that the Exceptions

be dismissed because the Initial Decision properly dismissed Complainants' formal complaint for their failure to appear for an in-person hearing.

Complainants' 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 Complainants the hearing notice on August 17, 2015. The hearing notice was not returned by the United States Postal

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).

Service as undeliverable. The notice is therefore presumed to have been received.⁵

Complainants also received notice when ALJ Heep mailed Complainants a prehearing order on August 24, 2015. By failing to appear at the October 23, 2015, hearing, Complainants waived their opportunity to participate in the hearing and cannot now reopen the record without proof that their failure to appear was unavoidable and that the interest of PECO Energy and the public interest will not be prejudiced.

Complainants' purported justification for failing to appear cannot satisfy this heightened standard. In the Complainants' exceptions they state the 9:00 a.m. court time was not convenient for them because Mr. Montanez is mentally ill and handicapped and they have a two-year old. The Complainants exceptions reflect the fact that they knew about the hearing because they say the court time was not convenient for them. As described above, Complainants received a formal hearing notice from the PUC and a pre-hearing order from ALJ Heep for the hearing. Despite this, the Complainants failed to request a continuance of this matter or an alternative to the in person hearing such as a telephonic hearing. The Complainants had ample time to inform the Commission and PECO Energy that this court date and time was not convenient for them and they would require a continuance. Plainly, Complainants' participation in the hearing was not "unavoidable."⁶ Complainants simply failed to show up for the hearing.

Complainants 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 Complainants do not appear. Nor should the public be prejudiced by the Complainants' wasteful

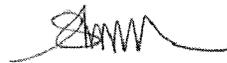
⁵ See *Brown v. PECO Energy*, at 7 ("Notice mailed to a party's last known address and not returned by the post office is presumed to have been received.") (citing *Meierdierck v. Miller*, 394 Pa. 484 (Pa. 1959), among others).

⁶ 66 Pa. C.S. 332(f).

use of the PUC's and utility company's resources. Indeed, this is the second formal complaint the Complainants have filed. The Complainants filed a complaint at docket number F-2014-2440651, disputing incorrect billing and requesting a payment agreement. Administrative Law Judge Angela T. Jones dismissed the incorrect billing allegation and did not give the Complainants a payment agreement because their entire balance is comprised of CAP arrears. And now, the Complainants filed the present formal complaint requesting a payment agreement and allege incorrect billing 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 and incorrect billing issues that have been brought up since 2014 regarding a balance that is comprised entirely of CAP arrears. 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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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| MR. & MRS. DAVID M. MONTANEZ | : | |
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| COMPLAINANTS | : | |
| | : | |
| v. | : | Docket No. F-2015-2493956 |
| | : | |
| PECO ENERGY COMPANY, | : | |
| | : | |
| RESPONDENT | : | |
| | : | |

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).

**Mr. and Mrs. David M. Montanez
14 West Basin Street
Norristown, PA 19401**

Dated at Philadelphia, Pennsylvania, December 16, 2015.



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