



An Exelon Company

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December 17, 2015

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

**RE: Sherry Dixon v. PECO Energy Company**  
**PUC Docket No.: F-2015-2472513**

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 horizontal flourish extending to the right.

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 Sherry Dixon (“Complainant”) in the above-referenced matter on December 4, 2015.

On March 9, 2015, Complainant filed a formal complaint against PECO Energy. In her formal complaint, Complainant disputed the number of medical certificates she had with the company. Respondent, PECO Energy filed an Answer and New Matter on April 6, 2015, denying the allegations in the Complainant’s formal complaint and stated that Complainant had used three medical certificates and was not eligible for another.

On May 6, 2015, Administrative Law Judge Christopher P. Pell (“ALJ Pell”) issued a Prehearing order, scheduling the case for June 25, 2015. The Complainant requested a continuance of the June 25, 2015, hearing to obtain an attorney and ALJ Pell granted the Complainant’s request. On August 12, 2015, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and location of the hearing. On October 15, 2015, the telephonic hearing convened before ALJ Pell. The Complainant did not dial in to the telephonic hearing or contact ALJ Pell to advise that she would not appear for the hearing. PECO Energy requested dismissal of the Complainant’s formal complaint with prejudice for failure to prosecute.

On October 15, 2015, ALJ Pell issued an initial decision in the matter of *Sherry Dixon v. PECO Energy. Co.*, F-2015-2472513 (“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 15, 2015 at 10:00 a.m. PECO Energy appeared for the hearing with one witness, ready to put on its case.

Complainant did not call into the hearing. 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.<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 August 12, 2015. The hearing notice was not returned by the United States Postal Service as

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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).

undeliverable. The notice is therefore presumed to have been received.<sup>5</sup> By failing to appear at the October 15, 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 called in for the hearing and was told that ALJ Pell would call her back or write a decision. Complainant states she called on the date of the hearing. What Complainant neglects to state in her exceptions is that she called ALJ Pell's office but it was at least two hours after the hearing convened. Complainant had no compelling reason why she did not call in at the scheduled hearing time, nor did she ask for a continuance of the hearing.

Complainant's exceptions reflect the fact that she knew about the hearing because she called in the date of the hearing. As described above, Complainant received a formal hearing notice from the PUC. Despite this, the Complainant failed to call in at the scheduled time. The Complainant had ample time to inform the Commission and PECO Energy if the date and time was not convenient for her or that she needed to appear later than the appointed hearing time. Plainly, Complainant's participation in the hearing was not "unavoidable."<sup>6</sup> Complainant simply failed to dial in for the hearing at the designated time.

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

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<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).

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

PUC's and utility company's resources. Indeed, this is the second formal complaint the Complainant has filed. The Complainant filed a complaint at docket number F-2013-2353645 disputing incorrect billing and requesting a payment agreement. Administrative Law Judge David A. Salapa dismissed the Complainant's case and determined she was responsible for paying her \$7,825.59 bill. Now, the Complainant has filed the present formal complaint disputing medical certificates and as a result of the formal complaint appeal process, she now has a \$17,000 balance. Notably, PECO Energy is required to hold collection activity on the Complainant's account balance because of the formal complaint process. Clearly, the public and PECO would be prejudiced by reopening this case once again and continue to hold collection on the Complainant's \$17,000 balance. 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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