



An Exelon Company

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January 13, 2016

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

RE: Andrew Kossman v. PECO Energy Company
PUC Docket No.: F-2015-2500351

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 Andrew Kossman (“Complainant”) in the above-referenced matter on January 3, 2016. On August 24, 2015, Complainant filed a formal complaint against PECO Energy. In his formal complaint, Complainant requested an affordable payment agreement. Respondent, PECO Energy filed an Answer on September 14, 2015, denying the allegations in the Complainant’s formal complaint and stated that Complainant was not entitled to a payment agreement as he defaulted on a previous Bureau of Consumer Services (“BCS”) issued payment agreement.

On September 29, 2015, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and location of the hearing. On October 13, 2015, Administrative Law Angela T. Jones (“ALJ Jones”) issued a Prehearing Order, advising of the date and time of the scheduled hearing. On December 9, 2015, the in person hearing convened before ALJ Jones. The Complainant did not appear at the hearing. PECO Energy requested dismissal of the Complainant’s formal complaint with prejudice for failure to prosecute.

On December 11, 2015, ALJ Jones issued an initial decision in the matter of *Andrew Kossman v. PECO Energy. Co.*, F-2015-2500351 (“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 December 9, 2015 at 9:30 a.m. PECO Energy appeared for the hearing with one witness, 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 September 29, 2015. 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 received notice when ALJ Jones mailed Complainant a prehearing order on October 13, 2015.

By failing to appear at the December 9, 2015, hearing, Complainant waived his opportunity to

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., *Munma 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).

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. Complainant states that he did not appear for the hearing due to a family emergency. Complainant claims that he sent a letter to ALJ Jones explaining that he could not attend. The Complainant knew he had a pending hearing against PECO but did not follow up with ALJ Jones to determine whether she had received his letter and whether she granted his continuance request. The Complainant never followed up with a telephone call to confirm cancellation of the hearing – he simply did not show up. Plainly, Complainant's participation in the hearing was not "unavoidable."⁶

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. PECO Energy is required to hold collection activity on the Complainant's account balance because of the formal complaint process. Notably, this is the thirteenth complaint Complainant has filed with the BCS and PUC. As a result, the Complainant has skillfully avoided termination and not paid his electricity bill.

PUC Commissioner Pamela A. Witmer recently warned PECO about this very issue in the Daniel Vermeychuk v. PECO matter at Docket No. C-2013-2388323 (November 5, 2015). Commissioner Witmer stated that "the Complainant was not only ignoring his obligation to pay his

⁶ 66 Pa. C.S. 332(f).

bills but was actively employing various strategies to avoid paying in a timely manner.”

Commissioner Witmer pointed out:

...It is critically important to the customers, who are ultimately left footing the bills for such abuses, that our utilities act vigilantly to prevent them, continue to take steps to identify them, and mitigate their effects as quickly as possible. I remind PECO and all of our regulated utilities of this responsibility.

This is clearly what is happening in this case. Complainant is delaying this matter to avoid paying his electric bill with the filing of PUC cases, not appearing at the hearing, and now claiming a continuance was filed. PECO, the public and the PUC are being prejudiced by Complainant’s wasteful use of the PUC’s and utility company’s resources in an effort to avoid paying his bill. 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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