



An Exelon Company

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June 22, 2016

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

**RE: Jermaine Walker v. PECO Energy Company**  
**PUC Docket No.: C-2015-2472503**

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") hereby replies to the Exceptions filed by Jermaine Walker ("Complainant") in the above-referenced matter on June 20, 2016.

On March 9, 2015, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant alleged that PECO would not allow him to put service in his name and the company is holding him responsible for a back bill accumulated by his mother. Respondent, PECO filed an Answer on May 6, 2015, denying the allegations in the Complainant's formal complaint and stated that Complainant benefitted from the service and was responsible for the balance.

On May 4, 2015, Administrative Law Judge Angela T. Jones ("ALJ Jones") issued a Prehearing order, scheduling the case for June 24, 2015. On May 5, 2015, ALJ Jones issued a Pre-hearing Order. On May 10, 2015, the Complainant requested a telephonic hearing. On May 18, 2015, ALJ Jones issued a second hearing notice converting the hearing to a telephonic hearing. On May 10, 2015, the Complainant requested a continuance of the hearing, stating that he needed to find an attorney to represent him at the hearing. On June 19, 2015, ALJ Jones issued an Order granting the Complainant's continuance request. On August 12, 2015, ALJ Jones issued a hearing notice, setting a telephonic hearing date for October 14, 2015. On August 13, 2015, ALJ Jones issued a Pre-hearing order.

On September 18, 2015, the Complainant requested a continuance of the October 14, 2015, hearing, stating that he was incarcerated. On October 7, 2015, ALJ Jones issued an Order granting the Complainant's continuance request. On October 7, 2015, ALJ Jones issued a Prehearing Order, setting the hearing date to take place on November 18, 2015. On October 29, 2015, ALJ Jones sent a hearing notice rescheduling the hearing to take place on December 9,

2015. On December 1, 2015, the Complainant sent correspondence requesting a continuance stating that he would not be released from jail until January 14, 2016. On December 8, 2015, ALJ Jones granted the Complainant's continuance request. On December 21, 2015, ALJ Jones sent a hearing notice, rescheduling the case to take place on March 1, 2016.

Prior to the March 1, 2016, hearing date, the parties resolved the case and PECO filed a Certificate of Satisfaction. On March 5, 2016, the Complainant objected to the Certificate of Satisfaction. On March 28, 2016, ALJ Jones sent a hearing notice, scheduling an in person hearing to take place on May 4, 2016. On April 14, 2016, the Complainant requested a continuance of the hearing stating that he would be out of town on the hearing date. The Complainant also requested a telephonic hearing. On April 21, 2016, PECO objected to the Complainant's continuance request and request for a telephonic hearing, stating that there had been multiple continuances and there was a credibility issue regarding who was prosecuting the case – Jermaine Walker or his mother (Sherry Dixon), who is a Complainant in two separate formal complaints. On March 28, 2016, ALJ Jones issued a hearing notice converting the hearing to a telephonic hearing. On April 25, 2016, ALJ Jones issued an Order, denying Complainant's request for a continuance. On May 4, 2016, the telephonic hearing proceeded as scheduled. PECO appeared with one witness. The Complainant failed to dial-in for the telephonic hearing as set forth in the hearing notice or contact ALJ Jones to advise that he would not appear for the hearing. PECO Energy requested dismissal of the Complainant's formal complaint with prejudice for failure to prosecute.

On May 11, 2016, ALJ Jones issued an initial decision in the matter of *Jermaine Walker v. PECO Energy. Co.*, C-2015-2472503 ("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, ALJ Jones mailed the parties a notice that the telephonic hearing for this matter would take place on May 4, 2016 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 his 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>

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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).

The PUC satisfied its due process requirement by mailing Complainant the hearing notice on March 28, 2016. 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> By failing to appear at the May 4, 2016, telephonic hearing, Complainant waived his opportunity to 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 the notice he received states that he would be called on the day of the hearing. The Complainant states that he did not receive a call on the date of the hearing. However, Complainant is incorrect. The hearing notice stated that he needed to dial in to a bridge number provided by ALJ Jones. The Complainant failed to dial into that number on the date of the hearing. Complainant had no compelling reason why he did not call in at the scheduled hearing time.

Complainant's exceptions reflect the fact that he knew about the hearing because he states in his exceptions that the hearing date was May 4, 2016. 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 make an attempt to reach the Judge when he did not receive a telephone call as he expected. He could have called ALJ Jones' legal assistant or tried to contact PECO. He did neither. Plainly, Complainant's

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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).

participation in the hearing was not “unavoidable.”<sup>6</sup> Complainant simply failed to dial in for the hearing or contact ALJ Jones at the designated hearing time.

Complainant also cannot establish that a reopening of the proceeding would not prejudice the public’s or PECO’s interests. PECO 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 PUC’s and utility company’s resources. Indeed, this case has been open since May 2015 due to Complainant’s multiple continuance requests. ALJ Jones has been required to issue multiple orders, hearing notices and prehearing orders to reschedule the hearings. PECO has been required to hold collection activity on the \$16,000 balance in dispute as a result 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 \$16,000 balance in dispute. Accordingly, the Initial Decision properly dismissed the formal complaint in this matter with prejudice.

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

**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,

A handwritten signature in black ink, appearing to read 'Shawane L. Lee', with a stylized, cursive script.

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