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July 7, 2016

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

**RE: Billy Wilburn v. PECO Energy Company**  
**PUC Docket No.: F-2015-2516708**

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,



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 Billy Wilburn (“Complainant”) in the above-referenced matter on June 29, 2016. On December 7, 2015, Complainant filed a formal complaint against PECO Energy. In his formal complaint, Complainant stated that PECO was threatening to terminate his service and requested a payment agreement. Respondent, PECO Energy filed an Answer on December 14, 2015, denying the allegations in the Complainant’s formal complaint and stating that Complainant was not entitled to a payment agreement as he defaulted on a previous Bureau of Consumer Services (“BCS”) issued payment agreement.

On December 21, 2015, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and location of the hearing. On February 2, 2016, Administrative Law Cynthia Williams Fordham (“ALJ Fordham”) issued a Prehearing Order, advising of the date and time of the scheduled hearing. On February 13, 2016, the Complainant requested a continuance of the hearing, stating that he had a “work commitment” and did not explain further why he was prevented from attending the hearing. PECO objected to the Complainant’s continuance request, stating that the Complainant is abusing the PUC process and that he did not establish “good cause” for his continuance request. ALJ Fordham denied the Complainant’s continuance request by Order dated February 23, 2016. The hearing convened on February 29, 2016. 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 May 23, 2016, ALJ Fordham issued an initial decision in the matter of *Billy Wilburn v. PECO Energy Co.*, F-2015-2516708 (“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 February 29, 2016 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.<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 December 21, 2015. 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> Complainant also received notice when ALJ Fordham mailed Complainant a prehearing order on February 2, 2016. By failing to appear at the February 29, 2016, hearing, without establishing good cause why he could not appear, 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 he did not appear for the hearing due "to extenuating circumstances related to work." ALJ Fordham's Prehearing Order states that requests for a continuance are only granted "in rare situations where good cause exists." (Prehearing Order, citing 52 Pa. Code § 1.15). However, Complainant did not submit documentation from his employer proving he had extenuating circumstances and he did not specifically articulate the extenuating circumstances that prevented him from appearing. The Complainant had been aware of the hearing since December 2015, and had plenty of opportunity to request a vacation day or make alternative arrangements with his employer. Yet, he waited until the hearing date was upon the parties to say he had "a work commitment." The Complainant failed to establish good

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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).

cause for a continuance. Plainly, Complainant's participation in the hearing was not "unavoidable."<sup>6</sup>

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, the Complainant has filed four formal complaints and twelve informal complaints with the PUC and Bureau of Consumer Services in an effort to stop collection on his account. As a result, the Complainant has skillfully avoided termination and not paid his electricity bill. The Complainant claims in his exceptions that he has "filed prior complaints, it was not in an attempt to abuse the system but to get a resolution to his situation." If the Complainant truly wanted a resolution to his situation he would have properly planned with his employer back in December 2015, so that he could attend the February 29, 2016, hearing.

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 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.

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

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 work commitment” and “extenuating circumstances related to work” to delay the hearing and collection. 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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**BILLY WILBURN**

**COMPLAINANT**

**v.**

**PECO ENERGY COMPANY,**

**RESPONDENT**

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**Docket Nos. F-2015-2516708**

**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: July 7, 2016

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Shawane L. Lee

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**BILLY WILBURN**

**COMPLAINANT**

**v.**

**PECO ENERGY COMPANY,**

**RESPONDENT**

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**Docket Nos. F-2015-2516708**

**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).

**Billy Wilburn  
3806 Bensalem Boulevard, Apartment 102  
Bensalem, PA 19020**

Dated at Philadelphia, Pennsylvania, July 7, 2016.



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