



An Exelon Company

Legal Department
2301 Market Street / S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Direct Dial: 215.841.6841

July 29, 2016

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

RE: Paul Kopanycia v. PECO Energy Company
PUC Docket No.: C-2016-2526619

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 Paul Kopanycia ("Complainant") in the above-referenced matter on June 20, 2016.

On January 28, 2016, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant alleges that PECO is threatening to terminate his service; that the company will not recognize he has a chronic medical condition; and there is a pending Public Utility Commission complaint that has never been disposed of. The Complainant requests a payment agreement. Respondent, PECO filed an Answer on February 15, 2016, denying the allegations in the Complainant's formal complaint. PECO averred that Complainant has a history of informal and formal complaints; he is not entitled to another medical certificate, and cannot receive another payment agreement pursuant to 66 Pa.C.S. § 1405(d).

On February 23, 2016, Administrative Law Judge Darlene D. Heep ("ALJ Heep") issued a Hearing Notice, scheduling the hearing for March 31, 2016. On February 24, 2016, ALJ Heep issued a Pre-hearing Order once again noting the date of the hearing. On March 30, 2016, the Complainant sent correspondence to PECO and the Commission, requesting to withdraw his complaint. See Complainant's Correspondence, dated 3/30/16, attached hereto as Exhibit "1". On March 30, 2016, PECO sent correspondence to ALJ Heep advising that the company objected to the Complainant's withdrawal. See PECO's Correspondence, dated 3/30/16, attached hereto as Exhibit "2". In that letter, PECO stated that the Complainant had filed 9 informal complaints and 7 formal complaints in an effort to avoid paying his \$6,000 balance. On March 31, 2016, an in-person hearing proceeded as scheduled. PECO appeared with one witness. The Complainant failed to appear for the hearing or contact ALJ Heep 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 5, 2016, ALJ Heep issued an initial decision in the matter of *Paul Kopanycia v. PECO Energy Co.*, C-2016-2526619 ("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 Heep mailed the parties a notice that the hearing for this matter would take place on March 31, 2016 at 9:30 a.m. PECO Energy appeared for the hearing with one witness, ready to put on its case. Complainant assumed that ALJ Heep had received and ruled on his request to withdraw his complaint and did not appear for 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 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:

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

*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 February 23, 2016. The hearing notice was not returned by the United States Postal Service as undeliverable. The notice is therefore presumed to have been received.⁵ By failing to appear at the May 31, 2016, 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 he sent correspondence to the Commission on March 29, 2016, requesting to withdraw his complaint. The Complainant states that in his withdrawal, he requested mediation of the complaint but did not receive a response to that request. However, the record reflects that the Complainant actually sent the letter on March 30, 2016 – one day before the hearing. See Exhibit "1". On March 30, 2016, ALJ Heep forwarded a copy of the Complainant's correspondence to PECO. The same day, PECO sent correspondence to ALJ Heep and the Complainant objecting to the withdrawal as the Complainant has been abusing the administrative process to avoid paying his bill. See Exhibit "2".

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).

On March 31, 2016, the Complainant did not show up at the hearing and ALJ Heep dismissed the case for failure to prosecute. As Complainant did not hear from ALJ Heep regarding whether his withdrawal had been accepted, he should have appeared at the hearing, or at the very least, contacted ALJ Heep on the day of the hearing. Complainant had no compelling reason why he did not contact ALJ Heep or show up.

The Complainant had ample time to make an attempt to reach the Judge when he did not hear a response on his request to withdraw the complaint. He could have called ALJ Heep or tried to contact PECO. He did neither. Plainly, Complainant's participation in the hearing was not "unavoidable."⁶ Complainant simply failed to show up for the hearing.

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, the Complainant is abusing the PUC administrative process by filing multiple informal and formal complaints. To date, the Complainant has filed sixteen complaints with the Public Utility Commission, including 9 informal and 7 formal complaints. During the PUC process, PECO is required to hold collection on the Complainant's balance. The Complainant has skillfully avoided termination by filing PUC cases and his balance now exceeds \$6,000. By filing multiple complaints, attempting to withdraw the complaint and now filing exceptions, the Complainant is abusing the PUC process.

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).

⁶ 66 Pa. C.S. 332(f).

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.

As stated above, PECO has been required to hold collection activity on the Complainant's \$6,000 plus balance as a result of the formal complaint process. Clearly, the public and PECO would be prejudiced by reopening this case once again and continuing to hold collection on the \$6,000 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,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841
Fax: 215.568.3389

EXHIBIT 1

Wednesday, March 30, 2016

TO: Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, Pa. 17120

HON. JUDGE ERANDA VERO

FAX: 717-783-9526
215-560-3133

Subject: Docket C-2016-2526619

After long consideration and a conversation with Teresa A. Ferrier, Senior Regulatory Assessor for PECO, I am withdrawing my formal complaint, you r docket number C-2016-2526619. There is no point pursuing this on my part since PECO cannot see beyond the dollar signs and the regulations that it shields itself with. The point of all of my complaints was to show that a person who has a chronic illness should have added consideration with the utility. Their internal issues such as not giving customers clear answers or explanations are beyond my powers to resolve or even understand. There will come a time when they will have their feet put to the fire because of the negligence of their workers. But this is beyond me. I apologize for all the complaints. I had considered applying for mediation and would still consider it if you were to agree and if the entire matter of my balance owed were to be discussed. Otherwise consider my complaint withdrawn. Thank you.

Sincerely,



Paul Kopanycia
46 Hemlock Road
Levittown, Pa. 19056
acct: 67477-01618

MAR 30 2016
PUBLIC UTILITY COMMISSION
PHILADELPHIA OFFICE
ADMINISTRATIVE LAW JUDGE

EXHIBIT 2



An Exelon Company

Legal Department
2301 Market Street / S23-1
Philadelphia, PA 19101-8699

Direct Dial: 215-841-6841
Fax: 215-568-3389

March 30, 2016

(VIA EMAIL)

Administrative Law Judge Darlene D. Heep
Pennsylvania Public Utility Commission
801 Market Street
Philadelphia, PA 19107

**Re: Paul Kopanycia v. PECO Energy Company
PUC Docket No. C-2016-2526619**

Dear Judge Heep:

Kindly recall that this matter is scheduled for a Call of the Docket hearing before Your Honor tomorrow, March 31, 2016. I am in receipt of Complainant's correspondence, requesting to withdraw the above-referenced formal complaint against PECO. Please be advised that PECO objects to Mr. Kopanycia's withdrawal of the formal complaint and the company declines mediation.

Complainant files PUC complaints in an effort to suspend collection activity on his account. To date, Mr. Kopanycia has filed sixteen complaints with the Public Utility Commission, including 9 informal and 7 formal complaints. During the PUC process, PECO is required to hold collection on the Complainant's balance. The Complainant has skillfully avoided termination by filing PUC cases and his balance is approaching \$6,000. By filing multiple complaints and now attempting to withdraw the complaint, Complainant is abusing the PUC process.

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.

Page 2 of 2

This is clearly what is happening in the Paul Kopanycia case. Complainant is delaying this matter to avoid paying his electric bill. While PECO is able to identify this abuse, the company is unable to mitigate this issue while the Complainant uses the formal complaint process to prevent paying the bill.

In light of the above and the prejudice it is causing to PECO, the company requests that the hearing scheduled tomorrow move forward.

If you have any questions, please do not hesitate to contact me directly.

Very truly yours,



Shawane L. Lee
Counsel, PECO Energy Company
Encl.

cc: Paul Kopanycia (via email)
Tiffany Hunt (via email)



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July 29, 2016

Rosemary Chiavetta, Secretary
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Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

RE: Paul Kopanycia v. PECO Energy Company
PUC Docket No.: C-2016-2526619

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Motion to File Reply Exceptions Nunc Pro Tunc* 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

SL/alb
Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PAUL KOPANYCIA
COMPLAINANT**

v.

**PECO ENERGY COMPANY
RESPONDENT**

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:
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Docket No. C-2016-2526619

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion of PECO Energy Company within 20 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to PECO's Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

File with:
Rosemarie Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:
Shawane L. Lee, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, July 29, 2016



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6841
Shawane.Lee@exeloncorp.com

5. 52 Pa. Code § 1.1 et seq. governs the rules of administrative practice and procedure before the Public Utility Commission.

6. 52 Pa. Code § 1.2 states that the procedural rules of Title 52 shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The section further states that the "presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties."

7. Furthermore, the Pennsylvania Commonwealth Court has held that the PUC has authority to waive procedural defects when they do not affect the substantive rights of the parties. Info. Connections, Inc. v. Pennsylvania Public Utility Commission, 630 A.2d 498 (Pa. Cmwlth. 1993).

8. PECO Energy respectfully submits that the late filing of its reply exceptions was due to an administrative oversight.

9. More importantly, the acceptance of its reply exceptions *nunc pro tunc* does not affect the substantive rights of the Complainant in this matter. The Response does not contain any information that was not already expressed to the Complainant, nor does PECO Energy's response contain any new allegations that require a response from the Complainant.

10. Further, the Complainant's exceptions have not been reviewed; therefore, there is no delay in the adjudication of this case.

11. Accordingly, PECO Energy respectfully requests that PECO's Reply Exceptions be accepted for filing *nunc pro tunc* so that this matter can be decided on the merits.

WHEREFORE, PECO Energy Company respectfully requests that PECO's Reply
Exceptions be accepted for filing *nunc pro tunc*.

Respectfully Submitted,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
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(215) 841-6841
Fax: 215.568.3389

