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July 27, 2017

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

**RE: Eric Hudson v. PECO Energy Company**  
**PUC Docket No.: C-2016-2555083**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Reply Exceptions of PECO Energy Company*.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawane Lee".

Shawane Lee  
Counsel for PECO Energy Company

cc: Certificate of Service

SL/ab  
Enclosure



## **REPLY EXCEPTIONS OF PECO ENERGY COMPANY**

PECO Energy Company ("PECO") hereby replies to the Exceptions filed by Eric Hudson ("Complainant") in the above-referenced matter on July 9, 2017. PECO was served with the Exceptions on July 12, 2017.

On July 7, 2016, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant ticked the box "The utility is threatening to shut off my service or has already shut off my service." The Complainant requested a payment agreement and "assistance in setting up a payment plan for [his] outstanding CAP arrears." The Complainant attached a detailed attachment to his complaint stating that his family has experienced unexpected financial hardships as a result of injuries sustained in an automobile accident and the loss of employment. The Complainant alleged that his electric service is critical as his son has chronic asthma and must use doctor-ordered nebulizer treatments multiple times a day. The Complainant stated that he applied for a medical certification and his son's doctor completed the request; however, PECO did not process the request.

PECO filed a Motion for Judgment on the Pleadings, requesting dismissal of the complaint, pursuant to *res judicata*, as the allegations were the same allegations the Complainant averred in a formal complaint Eric Hudson v. PECO Energy Company, Docket number C-2014-2418563 heard before Administrative Law Judge Cynthia Williams Fordham ("ALJ Fordham") at a hearing on July 10, 2014. PECO averred that permitting the Complainant a hearing on the same matters raised in 2014 will only contribute to increasing the Complainant's \$18,213.54 balance and allow him the opportunity to continue to use the PUC administrative process to avoid paying his electric service.

PECO's Motion for Judgment on the Pleadings was denied in part and the Complainant's claims were scheduled for a hearing. On February 8, 2017, Administrative Law Judge Darlene Davis Heep ("ALJ Heep") issued a Prehearing order, scheduling a hearing for Friday, April 7, 2017. On April 7, 2017, the hearing proceeded as scheduled. PECO appeared with one witness. The Complainant failed to appear for the hearing as set forth in the hearing notice or contact ALJ Heep to advise that he would not appear for the hearing. ALJ Heep attempted to contact the Complainant twice by telephone but he did not answer. PECO requested dismissal of the Complainant's formal complaint with prejudice for failure to prosecute.

Shortly after the hearing date, PECO was notified by ALJ Heep that the Complainant sent a letter dated April 13, 2017, requesting to reschedule the hearing, stating that he was the sole caretaker for his daughter and he had to address her medical issues. On April 19, 2017, PECO sent correspondence to ALJ Heep objecting to any further hearings. In the company's correspondence to ALJ Heep, PECO noted:

PECO and Mr. Hudson have been in litigation since he filed a formal complaint in 2014 at docket number C-2014-241563 alleging threat of service termination, billing issues and his son's asthma medical condition. During that formal complaint, Mr. Hudson did not show up at the scheduled hearing and then claimed after the hearing there was an automobile accident on the highway. See ALJ Fordham's Initial Decision in the matter Eric Hudson v. PECO, C-2014-241563 (Initial Decision entered March 6, 2015). Mr. Hudson has filed eighteen informal and informal complaints to use the PUC administrative process to avoid paying his electric service. Throughout the entire PUC process, PECO was required to hold collection on the Complainant's balance. Additionally, he has used the bankruptcy process to avoid collection on his bills by filing bankruptcies that are later dismissed.

Now, the Complainant has filed the current formal complaint with the same exact dispute he raised in previous complaints. Once again, PECO is required to hold collection on the Complainant's balance. The Complainant has skillfully avoided termination by

filing PUC cases and dismissed bankruptcies and has incurred a \$20,856.79 balance.

ALJ Heep gave the Complainant an opportunity to submit supporting documentation, demonstrating why he did not dial in for the April 7, 2017, hearing. The Complainant forwarded the same medical information he attaches in his exceptions, which includes a January 10, 2017, medical report for his daughter. The Complainant failed to explain why a medical condition on January 10, 2017, prevented him from participating in the April 7, 2017, hearing.

On May 18, 2017, ALJ Heep issued an initial decision in the matter of *Eric Hudson v. PECO Energy. Co.*, C-2016-2555083 (“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 April 7, 2017 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 and did not respond to two telephone calls made to him by ALJ Heep requesting his whereabouts. 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 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 February 8, 2017. 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 April 7, 2017, 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 was dealing with a medical emergency for his daughter who suffers from extreme bipolar disorder and who was experiencing a manic episode.

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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).

<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).

However, the Complainant failed to submit any medical documentation to support that a medical event occurred on April 7, 2017. The Complainant submitted medical records dated January 2017, but these records do not show why three months later he was not available for the hearing. If his daughter, had a “medical emergency” certainly there would be medical records in the form of a doctor or hospital visit to show the event occurred. The hearing notice stated that he needed to be available for the hearing at his telephone number. The Complainant failed to answer ALJ Heep’s two telephone calls to him. The Complainant had no compelling reason why he was not available at the scheduled hearing time and has not provided proof of a reason.

Complainant’s exceptions reflect the fact that he knew about the hearing because he states that he allegedly called Judge Heep’s office the day of the hearing between 10:44 – 10:47 AM after his “daughter was calm.” As described above, Complainant received a formal hearing notice from the PUC. Despite this, the Complainant failed to respond to ALJ Heep’s telephone calls at the scheduled time. The Complainant could have called the Judge to let her know that a medical emergency was taking place and he could not attend. He could have sent email correspondence to PECO’s counsel or ALJ Heep. He did neither. Plainly, Complainant’s participation in the hearing was not “unavoidable.”<sup>6</sup> Complainant simply failed to participate in the hearing or contact ALJ Heep 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 July 2016 due to

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

Complainant filing bankruptcies that are ultimately dismissed in an effort to stop collection on his balance. PECO has been required to hold collection activity on the Complainant's balance during this formal complaint process and the balance has grown to \$22,259.90. The Complainant has skillfully avoided termination by filing PUC cases, dismissed bankruptcies and now exceptions for failing to appear at a 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.

Clearly, here, the Complainant is delaying this matter to avoid paying his electric bill and is using the formal complaint process, bankruptcies and PUC appeals process to prevent paying the bill. Clearly, the public and PECO would be prejudiced by reopening this case once again and continue to hold collection on a balance that has now increased to \$22,259.50. 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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