



An Exelon Company

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

Direct Dial: 215.841.6841

July 31, 2017

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

RE: Eartha Page v. PECO Energy Company
PUC Docket No.: F-2016-2571178

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", with a stylized flourish at the end.

Shawane Lee
Counsel for PECO Energy Company

cc: Certificate of Service

SL/ab
Enclosure

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company ("PECO Energy") hereby replies to the Exceptions filed by Eartha Page ("Complainant") in the above-referenced matter on July 13, 2017. The Exceptions were served on PECO by the Commission on July 24, 2017.

On October 9, 2016, Complainant filed a formal complaint against PECO Energy. In her formal complaint, Complainant alleged that PECO had terminated her service and she requested a payment agreement. Respondent, PECO Energy filed an Answer and New Matter on November 1, 2016, denying the allegations in the Complainant's formal complaint and stated that Complainant was not entitled to a payment agreement.

On November 8, 2016, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and location of the hearing. On November 9, 2017, Administrative Law Judge Marta Guhl ("ALJ Guhl") issued a Prehearing Order, advising of the date and time of the scheduled hearing. On January 9, 2017, the in person hearing convened before ALJ Guhl. The Complainant did not appear at the hearing. PECO's counsel, Shawane L. Lee, Esquire, contacted the Complainant on her cellphone to determine whether she was on her way to the hearing. The Complainant stated that she was having car trouble and would not be able to make it to the hearing. Notably, the Complainant did not contact the Commission to advise that she was having car trouble and would not attend the hearing. It was only after Ms. Lee followed up with the Complainant that the parties learned that she would not be attending the hearing. ALJ Guhl granted the Complainant a continuance.

On January 13, 2017, the PUC mailed the parties a rescheduling notice, advising that the hearing was rescheduled to take place on February 21, 2017 at 10:00 a.m. On February 21, 2017, the in person hearing convened before ALJ Guhl. Once again, the Complainant did not

appear at the hearing. PECO motioned to dismiss the case for failure to prosecute. On May 19, 2017, ALJ Guhl issued an initial decision in the matter of *Eartha Page v. PECO Energy Co.*, F-2016-2571178 (“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 21, 2017 at 10:00 a.m. PECO Energy appeared for the hearing with the company’s 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 her 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.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

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 be present and participate in the hearing.”).

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 January 13, 2017. 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 February 21, 2017, hearing, Complainant waived her opportunity to participate in the hearing and cannot now reopen the record without proof that her 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 claims that she appeared at the hearing and waited outside in a seating area for the hearing to begin. That cannot be true. At ALJ Guhl's instruction, at 10:10 AM, PECO Regulatory Assessor, Michael Begley, went out into the lobby to check to see if anyone was waiting. Mr. Begley walked down to the Department of Public Welfare area and through the Public Utility Commission area – there was no one there. ALJ Guhl convened the hearing at approximately 10:15 AM. PECO's counsel, Ms. Lee and Mr. Begley left the hearing room at approximately 10:20 AM. There was no one waiting at either end of the hallway or in the seating area reserved for the Department of Public Welfare hearings. The Complainant contacted ALJ Guhl's office at 10:20 AM to state that she had waiting outside for the hearing to begin. If she was indeed waiting outside for the hearing to begin, PECO's attorney, Shawane

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).

Lee and Mr. Begley would have seen her when they left the hearing. In that instance, PECO's counsel and Mr. Begley would have returned with the Complainant to the hearing room to convene the hearing as the court reporter had not left. Plainly, Complainant's participation in the hearing was not "unavoidable."⁶ If the Complainant was actually at the hearing location (which she was not), she had ample time to inform ALJ Guhl that she was waiting. Again, Complainant cannot establish that her failure to appear was "unavoidable."

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. Notably, PECO Energy is required to hold collection activity on the Complainant's account balance because of the formal complaint process. At the time of the hearing, the Complainant had a \$2,294.00 balance. Nor should the public be prejudiced by the Complainant's wasteful use of the PUC's and utility company's resources. Accordingly, the Initial Decision properly dismissed the formal complaint in this matter with prejudice.

⁶ 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, wavy flourish extending to the right.

Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
Direct Dial: 215.841.6841
Fax: 215.568.3389

