



An Exelon Company

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October 26, 2017

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

RE: Ryan Ingham v. PECO Energy Company
PUC Docket No.: C-2016-2579564

Dear Ms. Chiavetta:

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

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RYAN INGHAM

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket No. C-2016-2579564

PECO ENERGY'S MOTION TO FILE REPLY EXCEPTIONS
NUNC PRO TUNC

Respondent, PECO Energy Company ("PECO"), pursuant to 52 Pa. Code §1.2 respectfully petitions this Honorable Commission to accept the attached Reply Exceptions for filing *nunc pro tunc*.

1. On September 23, 2017, the Complainant filed Exceptions with the Public Utility Commission to Administrative Law Judge Darlene Davis Heep's May 31, 2017, Initial Decision.
2. PECO was never served with a copy of Complainant's Exceptions by the Complainant or the Commission.
3. Pursuant to 52 Pa. Code § 5.535, if PECO had been served with the Exceptions, PECO's Reply to the Complainant's Exceptions were due for filing on or before October 3, 2017.

4. The Complainant electronically filed Exceptions on September 23, 2017, and attached an Affidavit of Service stating that he electronically served PECO; however, PECO did not receive electronic service of the Complainant's exceptions.
5. Further, the Complainant did not follow the procedure for notice via electronic service pursuant to 52 Pa. Code § 1.54(b)(3)(ii)(A) by filing a notice, providing a "link to the document on the electronic system."
6. Additionally, the Complainant did not mail a copy of his exceptions to PECO.
7. As PECO found the Exceptions on the PUC docket today, PECO is filing the response beyond the October 3, 2017, due date.
8. PECO respectfully requests that this Honorable Commission accept the filing of PECO Energy's reply exceptions *nunc pro tunc*.
9. 52 Pa. Code § 1.1 et seq. governs the rules of administrative practice and procedure before the Public Utility Commission.
10. 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."
11. 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).

12. PECO Energy respectfully submits that the late filing of its reply exceptions was due to the fact the company was not served with the exceptions.

13. 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.

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

15. 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
Philadelphia, PA 19103
(215) 841-6841
Fax: 215.568.3389

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RYAN INGHAM

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket No. C-2016-2579564

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: October 26, 2017



Shawane L. Lee



PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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The date filed on will be the current day if the filing occurs on a business day before or at 4:30 p.m. (EST). It will be the next business day if the filing occurs after 4:30 p.m. (EST) or on weekends or holidays.

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Docket Number:	C-2016-2579564
Description:	Ryan Ingham - Reply Exceptions
Transmission Date:	10/26/2017 11:16:29 AM
Filed On:	10/26/2017 11:16:29 AM
eFiling Confirmation Number:	1697372

Uploaded File List

File Name	Document Class	Document Type
Ingham - Reply Exceptions.pdf	Decision	Exception - Reply

For filings exceeding 250 pages, the PUC is requiring that filers submit one paper copy to the Secretary's Bureau within three business days of submitting the electronic filing online. Please mail the paper copy along with copy of this confirmation page to Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA a copy of the filing confirmation page or reference the filing confirmation number on the first page of the paper copy.



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Enclosed for filing with the Commission is *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 Ryan Ingham ("Complainant") in the above-referenced matter on September 23, 2017. Neither the Complainant nor the Commission served the Exceptions on PECO. On October 26, 2017, PECO identified the Exceptions by reviewing the Public Utility Commission docket.

I. Background and Procedural History

On or about December 9, 2016, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant alleged that PECO threatened to terminate his service for failure to install a Smart Meter. The Complainant requested that his pending termination be postponed while he explores his legal options. The Complainant stated there is pending legislation under House Bill 394 and he wanted a postponement until his attorney can address the issue with appropriate counsel. Respondent, PECO filed an Answer on December 14, 2016, stating that pursuant to Act 129, PECO is required to install the Smart Meter and the Commission has upheld the right of PECO to terminate a customer's service for failure to give access to install the meter.

On December 15, 2016, PECO filed a Preliminary Objection, requesting to dismiss the complaint. PECO argued that Complainant's formal complaint is legally insufficient as it failed to allege a violation of any Commission Order, law or tariff. PECO is required to install Smart Meters for its customers and the Commission has previously determined that a complaint raising a delay in installation for pending opt out legislation has been dismissed as legally insufficient. See Ruth Lattanzi vs. PECO Energy Company, Docket No. C-2016-2532575 (Initial Decision entered May 27, 2016) (Final Order entered July 21, 2016).

For the Answer and Preliminary Objection, PECO included a Certificate of Service, dated December 14, 2016, stating: I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Ryan Ingham
213 Brownbacks Church Road
Spring City, PA 19475

The Answer and Preliminary Objection were mailed via United States Postal Service, First Class Mail. PECO did not receive a notice of returned mail and the U.S. Postal Service did not return either pleading as unable to deliver.

On May 31, 2017, Administrative Law Judge Darlene Davis Heep issued an Order granting PECO's Preliminary Objection and dismissed the complaint as legally insufficient. ALJ Heep stated that "Respondent is attempting to comply with Commission directives by attempting to install a smart meter at the property." Complainant "has not alleged that PECO has violated or will violate any provision of the Code, regulations or a standing Commission Order."

On September 5, 2017, the Commission served PECO with a letter, stating that the Complainant was "never served a copy of the Initial Decision or Final Order" and rescinded the Final Order to give the Complainant an opportunity to file Exceptions.

The Complainant electronically filed Exceptions on September 23, 2017, and attached an Affidavit of Service stating that he electronically served PECO; however, PECO did not receive electronic service of the Complainant's exceptions. Further, the Complainant did not follow the procedure for notice via electronic service pursuant to 52 Pa. Code § 1.54(b)(3)(ii)(A) by filing a notice, providing a "link to the document on the electronic system." Additionally, the Complainant did not mail a copy of his exceptions to PECO.

PECO respectfully requests that the Exceptions be dismissed because the Initial Decision properly dismissed Complainant's formal complaint for legal insufficiency. The Complainant has presented no proof that he did not receive PECO's Answer and Preliminary Objection and even if he had, it still does not make his complaint still does not allege a violation of a tariff provision, order or regulation to make his complaint legally sufficient.

II. Legal Argument

A. *Complainant has been served with PECO's Answer and Preliminary Objection*

The Complainant alleges in his exceptions that he has not been served with PECO's Answer and Preliminary Objections, and therefore, he was unable to properly respond. The Complainant states this was a violation of his due process rights.

The Commission noted in its September 5, 2017, correspondence that "Mr. Ingham was never served a copy of the Initial Decision or Final Order because he inadvertently unchecked the box electing service when he signed up for Eservice with the Commission." Now, the Complainant is stating that in addition to not receiving the Initial Decision or Final Order, he did not receive PECO's Answer and Preliminary Objections. The Complainant states that "he was not being properly served with documents related to the instant proceeding." This is incorrect. While the Commission may not have served the Complainant via Eservice, PECO did not use Eservice to serve the Complainant – the company mailed the Answer and Preliminary Objection to the Complainant to his address via United States Postal Service. PECO did not receive a returned mail notice and the pleadings were never returned to the company as undeliverable. See Verification of Legal Assistant, Amy Botak, attached hereto as Exhibit "1".

The Complainant's due process rights were satisfied when PECO mailed the Complainant the pleadings on December 14, 2016. The hearing notice was not returned by the United States Postal Service as undeliverable. The notice is therefore presumed to have been received.¹ See *Brown v. PECO Energy Co.*, no. C-2008-2060121, Initial Decision at 7 (Pa. P.U.C. May 18, 2009) (Chestnut, J.) ("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).

The Complainant cannot now reopen this matter based on excuses that he did not receive the Initial Decision or any of PECO's pleadings. The Complainant's claim that he did not receive PECO's Answer and Preliminary Objection are not supported by the record. The Commission docket reflects that PECO filed a Certificate of Service attesting that the company served these documents via U.S. Postal Service, as well as accompanying instructions in the form of a Notice to Plead. The Complainant's actions in this matter appear to be a tactic to further delay this matter (as requested in his formal complaint) to prevent installation of the Smart Meter in the hope that "opt out" legislation is passed by the Pennsylvania legislature. Absent compelling evidence that Complainant has a problem with his mail, the Commission should deny his Exceptions, uphold ALJ Heep's Initial Decision and issue a Final Order, dismissing this matter.

¹ 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).

B. It is not in the Public Interest to Allow Complainant to Amend His Complaint.

The Complainant argues in his exceptions that he should be afforded an opportunity to amend his formal complaint pursuant to 52 Pa. Code § 5.101(f). The Complainant contends he was not given the opportunity to amend his complaint because he did not receive ALJ Heep's Initial Decision. The Complainant claims this "is especially true where a pleading is stricken for legal insufficiency."

The Complainant is incorrect that the opportunity to amend the pleading is especially true where a pleading is stricken for legal sufficiency. 52 Pa. Code § 5.101(e) sets forth filing an amended pleading when a complaint is stricken for "insufficient specificity." ALJ Heep did not dismiss the complaint for "insufficient specificity" but rather for "legal insufficiency." There is a big difference between the two. Indeed, the Complainant was quite specific in his formal complaint that he wanted to (1) delay his pending service termination until he could find legal options (2) postpone his pending service termination because there is pending legislation to give Pennsylvania residents the ability to opt out of meter installation" and (3) postpone his service termination until his attorney could address the issue with appropriate counsel.

Although the Commission could exercise its discretion and allow the Complainant to amend his formal complaint, no purpose would be served by going through this exercise. The Complainant wants to delay termination and installation of the Smart Meter but PECO is required by Act 129 to install the meter and comply with Commission directives to install the meters for all of the company's customers in its service territory. It would not be in the public interest to allow the Complainant to "create" a complaint against PECO with "legal sufficiency" through filing an amended complaint to delay the installation of the Complainant's Smart Meter.

Permitting this would burden the Commission and PECO's ratepayers with the time and expense of the formal complaint process and potential evidentiary hearing that otherwise may not be necessary. In effect, regardless of the procedural issue raised in the Complainant's exceptions, the substantive issue to be addressed remains unchanged; namely, whether PECO is violating a Commission tariff, regulation or order by attempting to install the Smart Meter. By incorrectly claiming he did not receive PECO's Answer and Preliminary Objection and now using a procedural technicality, the Complainant is attempting to delay this matter, installation of his meter, and termination for failure to give access to install the meter. Notably, the Complainant has never had an attorney enter an appearance or have an attorney reach out to PECO to "address the issue" and he has had plenty of time to find counsel. The fact that no counsel has entered an appearance in practically an entire year goes to the point that the Complainant is using any excuse he can raise as a delay tactic. Accordingly, the Complainant's Exceptions should be denied.

III. Conclusion

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,

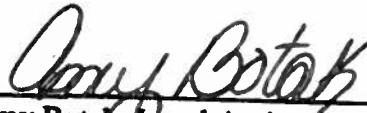


Shawane L. Lee
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EXHIBIT 1

VERIFICATION

I, Amy Botak, hereby state that I mailed PECO's Answer on December 14, 2016, and PECO's Preliminary Objection on December 15, 2016, to Ryan Ingham at 213 Brownbacks Church Road, Spring City, PA. I have not received returned mail notification for either pleading and the United States Postal Service has not returned the pleadings as undeliverable. The facts set forth are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Amy Botak, Legal Assistant
PECO Energy Company
Legal Department, Regulatory Division

Date: