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December 1, 2017

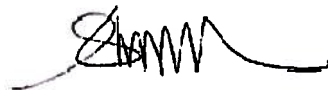
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

RE: Alice Anderson v. PECO Energy Company
PUC Docket No.: F-2017-2614241

Dear Ms. Chiavetta:

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

Very truly yours,



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 Alice Anderson (“Complainant”) in the above-referenced matter on November 20, 2017. PECO was served with the Exceptions on November 30, 2017.

On July 12, 2017, Complainant filed a formal complaint against PECO. In her formal complaint, Complainant ticked the box “The utility is threatening to shut off my service or has already shut off my service.” In the Complainant’s request for relief, she states that PECO is charging her money that her landlord should have paid and her electric bill is so high.

On August 7, 2017, Administrative Law Judge Christopher P. Pell (“ALJ Pell”) issued a Prehearing order, scheduling a hearing for September 26, 2017. On September 26, 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 Pell to advise that she would not appear for the hearing. PECO requested dismissal of the Complainant’s formal complaint with prejudice for failure to prosecute.

On October 31, 2017, ALJ Pell issued an initial decision in the matter of *Alice Anderson v. PECO Energy. Co.*, F-2017-2614241 (“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 Pell mailed the parties a notice that the hearing for this matter would take place on September 26, 2017 at 1:00 p.m. PECO Energy appeared for the hearing with one witness, ready to put on its case. Complainant did not appear at the hearing, call ALJ Pell or send correspondence stating that she would not be able to attend the hearing. 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 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 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 August 7, 2017. The hearing notice was not returned by the United States Postal Service as

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.").

⁴ 66 Pa. C.S. 332(f) (emphasis added).

undeliverable. The notice is therefore presumed to have been received.⁵ By failing to appear at the September 26, 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 states that "she was in the hospital that day" and her lawyer told her she would have a new court date. However, the Complainant failed to submit any medical documentation to support that she was in the hospital on the day of the hearing. Further, no attorney from Legal Aid has ever entered an appearance to formally represent the Complainant in this case or informally contacted counsel for PECO representing Complainant's interests. The Complainant additionally failed to explain why she did not contact ALJ Pell prior to or on the day of the hearing to indicate that she was hospitalized and would not participate in the September 26, 2017, hearing. The Complainant has not provided proof of why she was not available at the scheduled hearing time.

As described above, Complainant received a formal hearing notice from the PUC. Despite this, the Complainant failed to contact ALJ Pell to advise him that she would not be able to attend the hearing. The Complainant or a family member could have called the Judge to let him know that Complainant had been hospitalized and she could not attend. She could have sent correspondence to PECO's counsel or ALJ Pell before or immediately after the hearing. She did neither. Instead, the Complainant waited three months to say that she was hospitalized in the

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).

form of exceptions. Plainly, Complainant's participation in the hearing was not "unavoidable."⁶ Complainant simply failed to participate in the hearing or show up 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. PECO has been required to hold collection activity on the Complainant's balance during this formal complaint process and her balance has grown to \$4,844.40. The Complainant has skillfully avoided termination by filing twelve informal and formal PUC complaints (four filed in 2016 and 2017) and now exceptions for failing to appear at a hearing.

Clearly, here, the Complainant is delaying this matter to avoid paying her electric bill and is using the formal complaint process and PUC appeals process to prevent paying the \$4,844.40 bill. Clearly, the public and PECO would be prejudiced by reopening this case once again. 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,



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