



An Exelon Company

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January 10, 2018

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

RE: KA at Fairless Hills v. PECO Energy Company
PUC Docket No.: C-2017-2592335

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy's Company Motion to file 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/ab

cc: Certificate of Service

PENNSYLVANIA PUBLIC UTILITY COMMISSION

KA at FAIRLESS HILLS :
Complainant :
 :
v. : **DOCKET NO. C-2017-2592335**
 :
PECO ENERGY COMPANY :
Respondent :

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, January 10, 2018



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19103
215-841-6863
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KA at FAIRLESS HILLS	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2017-2592335
	:	
PECO ENERGY COMPANY	:	
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PECO ENERGY'S MOTION TO FILE 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 Exceptions for filing *nunc pro tunc*.

1. On December 19, 2017, the Initial Decision of Administrative Law Judge Eranda Vero was served on PECO, fining PECO \$4,000 and ordering PECO to refund the Complainant \$22,000 in billed electric usage charges.
2. Pursuant to 52 Pa. Code § 5.533, PECO's Exceptions to the Initial Decision were due for filing on or before January 8, 2018.
3. Due to the holiday period, PECO is filing Exceptions two days beyond the January 8, 2018, due date.
4. PECO respectfully requests that this Honorable Commission accept the filing of PECO Energy's Exceptions *nunc pro tunc*.
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. Pursuant to 52 Pa. Code 1.15(a)(1), the Commission may consider PECO's Exceptions if the Commission finds that "reasonable grounds are shown" for not timely filing Exceptions.

9. PECO avers there are reasonable grounds the Exceptions are being filed two days after the January 8, 2018, due date.

10. Exceptions were nominally due in 20 days; that is, on January 8, 2018. However, that period included both the Christmas and New Year's holidays. PECO's lead trial counsel on this matter was marked unavailable with the Public Utility Commission from December 21, 2017 through January 3, 2018 for the holiday vacation period. On January 4 and January 5 a severe snow storm impacted the Philadelphia area closing all schools and City offices, including the Philadelphia Office of Administrative Law Judge. That left one full working day (December 20) for PECO's counsel to draft exceptions. Accordingly, this accounted for the delay in preparing and filing the Exceptions.

11. This case involves a financial controversy between two commercial entities that has been ongoing since at least mid-2016; this short delay therefore does not prejudice the rights of any party. To that end, PECO does not object if the Reply Exception period is extended by two days.

12. Consideration of the Exceptions will assist the Commission in securing a just determination in the proceeding. 52 Pa. Code § 1.2(a)

13. More importantly, the acceptance of its Exceptions *nunc pro tunc* does not affect the substantive rights of the Complainant in this matter and does not delay the adjudication of this case as the Commission has not issued a Final Order.

14. Accordingly, PECO Energy respectfully requests that PECO's 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 Exceptions be accepted for filing *nunc pro tunc*.

Respectfully Submitted,



Ward L. Smith
Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KA at FAIRLESS HILLS	:	
Complainant	:	
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v.	:	DOCKET NO. C-2017-2592335
	:	
PECO ENERGY COMPANY	:	
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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: January 10, 2018



Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KA at FAIRLESS HILLS	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2017-2592335
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Motion to File Exceptions *Nunc Pro Tunc* in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

**KA at Fairless Hills, LP
25A Hanover Street, Suite 350
Florham Park, NJ 07932**

**David S. Dessen, Esquire
600 Easton Road
Willow Grove, PA 19090
Email: ddessen@dms-lawyer.com
Counsel for Plaintiff, KA at Fairless Hills, LP**

Dated at Philadelphia, Pennsylvania, January 10, 2018



**Ward L. Smith
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Counsel for PECO Energy Company
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