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May 24, 2018

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

**RE: Jacque Whaumbush v. PECO Energy Company**  
**Docket No. C-2017-2622269**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Reply of PECO Energy Company to Complainant's Petition to Reopen Case* with regard to the matter referenced above.

Very truly yours,



Shawane L. Lee  
Counsel for PECO Energy Company

SL/ab  
Enclosure

cc: Honorable Conrad A. Johnson, ALJ  
Certificate of Service

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## REPLY OF PECO ENERGY COMPANY

PECO Energy Company (“PECO”) hereby replies to the Petition to Re-open filed by Jacque Whaumbush (“Complainant”) in the above-referenced matter on December 14, 2017. PECO was served with the Petition on May 15, 2018.

On August 30, 2017, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant stated that PECO was threatening to terminate his service and requested a payment agreement. The Complainant requested an account in his own name for service at 967 Clyde Lane, Philadelphia, PA and not to be responsible for the balance incurred on the account for his deceased wife, Angela Whaumbush. Respondent, PECO filed an Answer on September 19, 2017, denying the allegations in the Complainant’s formal complaint and stating that Complainant is responsible for the \$7,607.69 balance incurred on his wife’s account because he benefitted from the service.

On October 25, 2017, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and dial in telephone number for the hearing. On October 25, 2017, Administrative Law Judge Conrad A. Johnson (“ALJ Johnson”) issued a Prehearing Order, advising of the date and time of the scheduled telephonic hearing to take place on December 1, 2017, at 10:00 a.m. The Prehearing Order stated: “At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed.” The Prehearing Order additionally stated: “Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.”

On December 1, 2017, the telephonic hearing convened as scheduled. The Complainant did not call into the hearing or notify ALJ Johnson that he would not be able to participate in the hearing. PECO requested dismissal of the Complainant’s formal complaint with prejudice for

failure to prosecute. On December 4, 2017, ALJ Johnson issued an initial decision in the matter of *Jacques Whaumbush v. PECO Energy. Co.*, C-2017-2622269 (“Initial Decision”). The Initial Decision ordered dismissal of the formal complaint with prejudice for failure to prosecute.

By way of background, this is the second formal complaint filed by the Complainant wherein he alleges that he is not responsible for the balance incurred at 967 Clyde Lane. On March 5, 2013, PECO was served with a complaint filed by the Complainant at docket number C-2013-2351152, stating that he wanted an account in his name and that a tenant, Angela Whaumbush, incurred the balance and the balance was her responsibility. PECO filed an answer to the complaint, stating that the Complainant was responsible for the \$5,933.98 balance incurred on the account because he benefitted from the service. A hearing convened before Administrative Law Judge Marta Guhl (“ALJ Guhl”) on March 27, 2013 at 10:00 a.m. The Complainant failed to appear for the hearing or contact ALJ Guhl prior to the hearing to request a continuance. ALJ Guhl issued an Initial Decision on July 12, 2013, dismissing the formal complaint for failure to prosecute. The Commission issued a Final Order on September 9, 2013, closing the case. From the date the complaint was served to the entry of the Final Order seven months later, PECO was required to hold collection on the Complainant’s \$5,933.98 balance.

Now at this current docket, the Complainant files a Petition to Reopen the Record, claiming:

It was unfortunate that I was not able to make the call because of a personal medical emergency with my 94-year mother in law who because of my wife’s passing I have become her care giver. Judge Johnson if given the opportunity to reschedule a second call I feel that I am and will be prepared to defend my position in this case.

PECO respectfully requests that the Complainant’s Petition be dismissed because the Initial Decision properly dismissed Complainant’s formal complaint for his failure to appear for

an in person hearing. Further, the Complainant has previously failed to show up at a hearing for the same issues raised in this complaint. PECO avers that the Complainant is using the Public Utility Commission process to avoid paying his large balance.

***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 October 25, 2017. The hearing notice was not returned by the United States Postal Service as

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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).

undeliverable. The notice is therefore presumed to have been received.<sup>5</sup> Complainant also received notice when ALJ Johnson mailed Complainant a prehearing order on October 25, 2017. By failing to dial in for the December 1, 2017, hearing, without establishing good cause why he could not appear, 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 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 did not appear for the hearing due to "a personal medical emergency with my 94-year mother in law who because of my wife's passing I have become her care giver." However, Complainant did not submit medical or other documentation proving that he had a personal medical emergency with his mother in law. Absent proof that he had a medical emergency, the Complainant failed to establish good cause for a continuance. Plainly, Complainant's participation in the hearing was not "unavoidable."<sup>6</sup>

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. This is the second formal complaint and scheduled hearing that the Complainant has failed to attend without requesting a continuance. PECO is required to hold collection activity on the Complainant's account balance because of the formal complaint process. Notably, the Complainant's balance during the first formal complaint was \$5,933.98. When the Complainant filed the second complaint, his balance had increased to \$7,607.69. Since August 31, 2017,

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<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).

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

PECO has been required to hold collection on the Complainant's balance, which has now increased to \$8,627.17. If the Commission reopens this case, the Complainant would have skillfully avoided termination and not paying his electricity bill.

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.

This is clearly what is happening in this case. Complainant is delaying this matter to avoid paying his electric bill with the filing of PUC cases, not appearing at the hearing, and now claiming "a personal medical emergency" to delay the hearing and collection. PECO, the public and the PUC are being prejudiced by Complainant's wasteful use of the PUC's and utility company's resources in an effort to avoid paying his bill. Accordingly, the Complainant's Petition to Reopen the formal complaint should be dismissed.

**WHEREFORE**, for the reasons set forth above, PECO respectfully requests that the Commission deny the Complainant's Petition to Reopen the Complaint and issue a Final Order closing the case in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Shawane L. Lee', with a long horizontal flourish extending to the right.

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Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19101-8699  
Direct Dial: 215.841.6841  
Fax: 215.568.3389

**JACQUE WHAUMBUSH**

**COMPLAINANT**

**v.**

**PECO ENERGY COMPANY,**

**RESPONDENT**

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**Docket Nos. C-2017-2622269**

**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: May 24, 2018

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Shawane L. Lee

