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September 4, 2018

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

**RE: Peter Mimmo v. PECO Energy Company**  
**PUC Docket No.: C-2018-3000900**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *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 Peter Mimmo (“Complainant”) in the above-referenced matter on August 15, 2018.

On March 13, 2018, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant alleges that he has numerous outages on his circuit and disputed PECO’s response time to the alleged power outages. Respondent, PECO filed an Answer on April 20, 2018, denying the allegations in the Complainant’s formal complaint. PECO averred that Complainant had no power outages in 2015, not outages in 2016 and only two outages in 2018.

On April 25, 2018, Administrative Law Judge Christopher P. Pell (“ALJ Pell”) issued a Hearing Notice, scheduling an in-person hearing for June 14, 2018. On April 26, 2018, ALJ Pell issued a Pre-hearing Order once again noting the date of the hearing. The Pre-hearing Order noted that PECO should contact the Complainant prior to the scheduled hearing date to see if the parties could resolve any issues in the case. On May 2, 2018, ALJ Pell sent a notice rescheduling the hearing date to June 25, 2018. On May 15, 2018, the Complainant sent correspondence to PECO and the Commission, requesting a continuance of the June 25, 2018, hearing date. On May 22, 2018, ALJ Pell issued an Order, granting the Complainant’s continuance request. On May 23, 2018, ALJ Pell sent a hearing notice, rescheduling the hearing to take place on Friday, July 13, 2018 at 10:00 AM. Pursuant to ALJ Pell’s Prehearing Order, PECO contacted the Complainant and scheduled a resolution conference call to take place on Friday, June 29, 2018. PECO had Reliability Engineer, Nichole DeMott and Vegetation Management Specialist, Tonia Graham participate in the conference call. The Complainant

failed to dial in to participate in the conference call and did not answer telephone calls to his number to join the call.

On July 13, 2018, PECO appeared at the hearing with the company engineer, Ms. DeMott and Vegetation Management Specialist, Tonia Graham along with seven proposed exhibits. The Complainant failed to appear for the hearing or contact ALJ Pell to advise that he would not appear for the hearing. PECO Energy requested dismissal of the Complainant's formal complaint with prejudice for failure to prosecute.

On July 26, 2018, ALJ Pell issued an initial decision in the matter of *Peter Mimmo v. PECO Energy Co.*, C-2018-3000900 ("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 July 13, 2018 at 10:00 a.m. PECO Energy appeared for the hearing with two witnesses, ready to put on its case. Complainant did not appear for the hearing. PECO Energy respectfully requests that the Exceptions be dismissed because the Initial Decision properly dismissed Complainant's formal complaint for his failure to appear for an in-person 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.<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 May 23, 2018. The hearing notice was not returned by the United States Postal Service as undeliverable. The notice is therefore presumed to have been received.<sup>5</sup> By failing to appear at the July 13, 2018, hearing, 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 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 he "he was never given the opportunity to come into court and voice my complaints regarding PECO." The Complainant additionally states that "PECO

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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).

<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).

confused me on purpose to avoid having this hearing.” He claims that PECO “informed me that we would not need to go to court that day and would handle this via a conference call.” The Complainant claims that he could not connect into the June 29, 2018, conference call with PECO. If Complainant did not have the opportunity to speak to PECO on June 29, why would the Complainant then not show up at a hearing that he knew was scheduled to take place on July 13, 2018? If the Complainant did not have an opportunity to speak to PECO on June 29 and really wanted to voice his complaints, he should have contacted ALJ Pell to state that he wanted his hearing to move forward on July 13. The Complainant does not state anywhere in his Exceptions that he did not receive ALJ Pell’s hearing notice. The Complainant does not state that he was unaware of the hearing date, time and place. The Complainant admits in his Exceptions that he knew he had a “scheduled hearing date of July 13.” His excuse for not showing up is that somehow PECO tricked him when a conference call did not proceed on June 29 – well before the hearing date? This is simply not credible.

On July 13, 2018, the Complainant did not show up at the hearing. As Complainant did not hear from ALJ Pell regarding cancellation of the hearing, he should have appeared at the hearing, or at the very least, contacted ALJ Pell to inquire whether the hearing would move forward on the scheduled date. The Complainant was aware of the procedure for contacting the Judge as he had done so previously when requesting a continuance. Complainant has no compelling reason why he did not contact ALJ Pell or show up at a hearing he admits he knew about. Plainly, Complainant’s participation in the hearing was not “unavoidable.”<sup>6</sup> Complainant simply failed to show up for the hearing.

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

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 spent considerable time and resources preparing the company's Engineer and Vegetation Management specialist for this reliability hearing. Both of these key PECO employees had to be reassigned from their scheduled duties to attend the hearing and spent several hours preparing prior to the hearing. Clearly, the public and PECO would be prejudiced by reopening this case once again and continuing to expend resources on this matter. Accordingly, the Initial Decision properly dismissed the formal complaint in this matter with prejudice.

**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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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETER MIMMO**

**COMPLAINANT**

**v.**

**PECO ENERGY COMPANY,**

**RESPONDENT**

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**Docket No. C-2018-3000900**

**CERTIFICATE OF SERVICE**

I, Shawane L. Lee, hereby certify that I have this day served a true copy of the foregoing Reply Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Peter Mimmo  
1420 Valley Road  
Meadowbrook, PA 19046**

Dated at Philadelphia, Pennsylvania, September 4, 2018



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