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September 5, 2018

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

**RE: Shenik Harvey v. PECO Energy Company**  
**PUC Docket No.: C-2018-3002514**

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 Shenik Harvey (“Complainant”) in the above-referenced matter on August 28, 2018.

On June 6, 2018, the 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.” The Complainant requested a payment agreement. On June 20, 2018, PECO filed an Answer to the formal complaint, averring that the Complainant is not eligible for a payment agreement pursuant to 66 Pa.C.S.A. § 1405(c) because her entire balance is comprised of Customer Assistance Program arrearage.

On June 26, 2018, Special Agent Alphonso Arnold, III (“Special Agent Arnold”) issued a Prehearing order, scheduling a telephonic hearing on August 3, 2018, at 10:00 AM. On September 28, 2018, Special Agent Arnold issued a Hearing Notice, which reiterated the date and time of the telephonic hearing and included a dial-in number. On August 3, 2018, the telephonic hearing proceeded as scheduled. PECO dialed into the Toll-free Bridge Number provided by Special Agent Arnold with one potential witness on the call. The Complainant failed to dial in and appear for the hearing as set forth in the hearing notice or contact ALJ Arnold 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 August 6, 2018, Special Agent Arnold issued an initial decision in the matter of *Shenik Harvey v. PECO Energy Co.*, C-2018-3002514 (“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, Special Agent Arnold mailed the parties a notice that the hearing for this matter would

take place on August 3, 2018 at 10:00 AM. PECO appeared for the hearing with one witness, ready to put on its case. Complainant did not appear at the hearing, call Special Agent Arnold, or send correspondence stating that she would not be able to attend the hearing. PECO 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.<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>

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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).

The PUC satisfied its due process requirement by mailing Complainant the hearing notice on June 28, 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 August 3, 2018, 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 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 "admitted to the hospital on August 3, 2018 and was discharged on August 7, 2018." However, the Complainant failed to submit any medical documentation to support that she was in the hospital on the day of the hearing. The Complainant additionally failed to explain why she did not contact Special Agent Arnold prior to the hearing to indicate that she was hospitalized and would not participate in the hearing. The Complainant claims that sometime after 4:30 PM on the day of the hearing, she called Rosemary Chiavetta's number at "717-772-7777" and "called back to that number and was transferred to the correct person." If the Complainant was transferred to the correct person, then Special Agent Arnold would have received notification of the Complainant's "good cause" for not appearing. In that event, the hearing would have been rescheduled rather than dismissed for failure to prosecute. 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 Special Agent Arnold to advise him that she was hospitalized and would not be able to attend the hearing. The Complainant or a family member

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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).

could have called Special Agent Arnold to let him know that Complainant had been hospitalized and she could not attend. She could have sent correspondence to PECO's counsel or Special Agent Arnold immediately after the hearing. She did neither. Instead, the Complainant waited to say that she was hospitalized in the form of exceptions. Plainly, Complainant's participation in the hearing was not "unavoidable."<sup>6</sup> 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 \$3,438.05. The Complainant has skillfully avoided termination by filing eight informal and formal PUC complaints from October 2006 to present 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 \$3,438.05 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.

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<sup>6</sup> 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,

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  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**SHENIK HARVEY**

**COMPLAINANT**

**v.**

**PECO ENERGY COMPANY,**

**RESPONDENT**

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**Docket No. C-2018-3002514**

**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).

**Shenik Harvey  
7705 Juniper Avenue  
Elkins Park, PA 19027**

Dated at Philadelphia, Pennsylvania, September 5, 2018



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