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October 9, 2018

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

**RE: Amir Williams v. PECO Energy Company**  
**PUC Docket No.: C-2018-3000734**

Dear Ms. Chiavetta:

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

Very truly yours,



Shawane Lee  
Counsel for PECO Energy Company

SL/ab  
Enclosure

cc: Certificate of Service



## **REPLY EXCEPTIONS OF PECO ENERGY COMPANY**

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Amir Williams (“Complainant”) in the above-referenced matter on September 27, 2018.

On March 26, 2018, the Complainant filed a formal complaint against PECO. In his 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 and stated there are incorrect charges on his bill. On April 13, 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 his entire balance is comprised of Customer Assistance Program arrearage.

On April 20, 2018, Administrative Law Judge Benjamin J. Myers (“ALJ Myers”) issued a Prehearing Order, scheduling a telephonic hearing on June 7, 2018, at 10:00 AM. On May 30, 2018, the Complainant filed a Motion to Reschedule Hearing and stated he was “experiencing complications and other adverse effects from pneumonia.” In the Motion, the Complainant provided his “current correct phone number [as]: (267) 778-7652.” On June 6, 2018, ALJ Myers issued a Hearing Notice, which cancelled the June 7, 2018, hearing and rescheduled the hearing as a telephonic hearing on July 26, 2018. The notice provided a dial-in number to call into at the time and date of the hearing. On July 20, 2018, the Complainant filed a Motion for a Face-to-Face Hearing because he was having “difficulty speaking and being heard” and he does not “have a telephone land-line.” On July 26, 2018, the telephonic hearing proceeded as scheduled. PECO dialed into the Toll-free Bridge Number provided by ALJ Myers 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 Myers to advise that he would not appear for the hearing.

PECO requested dismissal of the Complainant's formal complaint with prejudice for failure to prosecute. On August 8, 2018, ALJ Myers issued a second Prehearing Order, giving the Complainant fifteen (15) days from the date of the Order, to provide evidence for his absence from the July 26, 2018, hearing. The Complainant did not comply with ALJ Myers' Prehearing Order and did not submit evidence to PECO or ALJ Myers regarding his absence from the hearing.

On August 28, 2018, ALJ Myers issued an initial decision in the matter of *Amir Williams v. PECO Energy Co.*, C-2018-3000734 ("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 Myers mailed the parties a notice that the telephonic hearing for this matter would take place on July 26, 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 ALJ Myers, or send correspondence stating that he 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 his 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>

The PUC satisfied its due process requirement by mailing Complainant the hearing notice on June 6, 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 26, 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 and the public interest will not be prejudiced.

Complainant's purported justification for failing to appear cannot satisfy this heightened standard. In his Exceptions, Complainant states that he submitted two clear video-audio tape and his sworn testimony to support his legal argument. The Complainant also states that he was

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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).

denied a face-to-face hearing. However, the Complainant failed to state why he was unable to dial in to the hearing from the cell number he provided to ALJ Myers in his first Motion for a Continuance. He also failed to explain why he did not comply with ALJ Myers August 8, 2018, Order which requested evidence to demonstrate why the Complainant did not dial in for the hearing. The Complainant has not provided proof why he 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 Myers to advise him that he would not be able to attend the hearing. Previously, the Complainant has been very effective with filing Motions and sending correspondence to continue hearings. So, why did the Complainant not send correspondence to ALJ Myers prior to the hearing or after the August 8, 2018, Order giving a good reason why he could not dial in for the hearing? Instead, the Complainant waited to file untimely Exceptions, which do not provide any basis for why he was absent from the hearing. For instance, the Complainant does not state in his Exceptions that he was hospitalized or he did not have access to a telephone. Plainly, Complainant's participation in the hearing was not "unavoidable."<sup>6</sup> Complainant simply failed to participate in the hearing or dial-in 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

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

Complainant's balance during this formal complaint process and his balance has grown to over \$2,000. The Complainant has skillfully avoided termination by filing ten (10) informal and formal PUC complaints from June 2008 to present and now exceptions for failing to appear at a hearing.

Clearly, here, the Complainant is delaying this matter to avoid paying his electric bill and is using the formal complaint process and PUC appeals process to prevent paying the \$2,000 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.

**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**

**AMIR WILLIAMS**

**COMPLAINANT**

**v.**

**PECO ENERGY COMPANY,**

**RESPONDENT**

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**Docket No. C-2018-3000734**

**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).

**Amir Williams  
P.O. Box 28053  
Philadelphia, PA 19131**

Dated at Philadelphia, Pennsylvania, October 9, 2018



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