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November 28, 2018

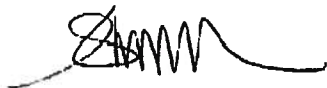
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

RE: Shawn Mathis v. PECO Energy Company
PUC Docket No.: C-2018-3001616

Dear Ms. Chiavetta:

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

Very truly yours,



Shawane Lee
Counsel for PECO Energy Company

SL/ab
Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SHAWN MATHIS

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket Nos. C-2018-3001616

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

**Shawane L. Lee, Esquire
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Philadelphia, PA 19103
215.841.6841
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Counsel for PECO Energy Company**

DATE: November 28, 2018

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Shawn Mathis (“Complainant”) in the above-referenced matter on November 16, 2018. On April 30, 2018, 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 additionally alleged that he believes his meter has foreign wiring attached. Respondent, PECO filed an Answer on May 22, 2018, denying the allegations in the Complainant’s formal complaint and stating that Complainant was not entitled to a payment agreement as he is actively enrolled in PECO’s Customer Assistance Program (CAP) and his balance is comprised of CAP arrears. PECO additionally averred that the company had investigated the Complainant’s foreign wiring concerns at a June 20, 2017, field visit and concluded there is no foreign wiring.

On May 30, 2018, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and location of the hearing. On June 5, 2018, Administrative Law F. Joseph Brady (“ALJ Brady”) issued a Prehearing Order, advising of the date and time of the scheduled hearing. On July 12, 2018, the Complainant sent correspondence requesting a continuance of the hearing. In his request, he stated that he has a key witness to support his case and the witness is not available on the date of the scheduled hearing. On July 18, 2018, ALJ Brady issued an Order granting the Complainant’s continuance request for “good cause.” ALJ Brady rescheduled the hearing to take place on Friday, August 31, 2018.

On August 9, 2018, PECO filed a Motion for a Continuance, requesting a continuance due to the unavailability of the High Bill field foreman who was required to testify regarding the Complainant’s foreign wiring allegations and the high bill field investigation. On August 16,

2018, ALJ Brady issued a hearing notice, granting PECO's continuance request and rescheduled the hearing to take place on October 4, 2018. On September 7, 2018, ALJ Brady issued a hearing notice, cancelling the October 4, 2018, hearing and rescheduled the hearing to take place October 29, 2018.

On October 11, 2018, the Complainant sent correspondence, requesting a second continuance. In his request, the Complainant stated that he had started new employment with the federal government in the Social Security Administration and could not take any time off as he is in the training phase of his employment. PECO objected to the continuance request, stating that the Complainant has a \$9,913.06 balance and has not made any payments to his account for an entire year. On October 19, 2018, ALJ Brady issued an Order, denying the Complainant's continuance. ALJ Brady noted in his Order that the Complainant did not mention any employment start dates. On October 29, 2018, the hearing convened as scheduled. PECO appeared at the in-person hearing with two witnesses prepared to testify. The Complainant did not show up at the hearing and PECO motioned to dismiss the case for failure to prosecute.

On October 29, 2018, ALJ Brady issued an initial decision in the matter of *Shawn Mathis v. PECO Energy. Co.*, C-2018-3001616 ("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, the PUC mailed the parties a notice that the hearing for this matter would take place on October 29, 2018 at 10:00 a.m. PECO appeared for the hearing with two witnesses, ready to put on its case. Complainant did not appear. PECO 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.¹ The due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.²

Once the PUC meets its due process requirement, the burden falls upon the parties to appear and participate in the hearing.³ 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.⁴

By failing to appear at the October 29, 2018, 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 unforeseen

¹ 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)).

² See *id.*

³ 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.”).

⁴ 66 Pa. C.S. 332(f) (emphasis added).

circumstances, and inabilities to attend due to work and professional commitments as a newly-hired employee.” ALJ Brady’s Prehearing Order states that requests for a continuance are only granted “in rare situations where good cause exists.” (Prehearing Order, citing 52 Pa. Code § 1.15). However, Complainant did not submit documentation from his employer proving that he is a new employee. The Complainant did not specifically articulate the unforeseen circumstances that prevented him from appearing and submitted no proof in his continuance request or in his exceptions of new employment.⁵ The Complainant had been aware of the hearing since September 7, 2018, and had plenty of opportunity to make alternative arrangements with his employer. Yet, he waited until the hearing date was upon the parties to say that he could not take any time off.”⁶ The Complainant failed to establish good cause for a continuance. Plainly, Complainant’s participation in the hearing was not “unavoidable.”⁷

Complainant also cannot establish that a reopening of the proceeding would not prejudice the public’s or PECO Energy’s interests. PECO should not be prejudiced by holding collection activity on the Complainant’s account balance because of the formal complaint process. Notably, the Complainant has filed six informal complaints with the Bureau of Consumer Services in an effort to stop collection on his account. As a result, the Complainant has skillfully avoided termination and has not paid his electricity bill since September 2017. The Complainant

⁵ See e.g. *Marilyn Day v. PECO Energy Company*, Docket No. C-2010-2181515 (Order entered June 10, 2011) (*Marilyn Day*) (affirmed ALJ’s decision to dismiss complaint *with prejudice* because, although the complainant’s failure to appear at hearing was due to a scheduling conflict with the start date of the complainant’s new employment, the oral request for continuance was made the same morning of the hearing and not supported by any written documentation);

⁶ See e.g. *Madajewski v. UGI Utilities, Inc.*, Docket No. C-2008-2070793 (Order entered July 30, 2009) (*Madajewski*) (affirmed ALJ’s decision to dismiss complaint *with prejudice* because the complainant sent a letter to presiding officer in advance of hearing not requesting a continuance but stating that his employer would not permit his participation in the hearing by telephone and it was “not worth the hassle” for him to request leave from his employment in order to participate in the hearing)

⁷ 66 Pa. C.S. 332(f).

now has a \$10,051.06 balance and PECO is required to hold collection on this balance during this PUC process.

PUC Commissioner Pamela A. Witmer 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, continuances and now claiming the inability to “take any time off” 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 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
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SHAWN MATHIS

COMPLAINANT

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RESPONDENT

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Docket Nos. C-2018-3001616

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).

**Shawn Mathis
1828 West Diamond Street, Apartment 1R
Philadelphia, PA 19121**

Dated at Philadelphia, Pennsylvania, November 28, 2018.



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