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January 27, 2019

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

RE: Eleni DiSabatino v. PECO Energy Company
PUC Docket Nos.: C-2018-3005278 and C-2018-3005452

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Reply Exceptions of PECO Energy Company* with regard to the matter referenced above.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

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 Eleni DiSabatino (“Complainant”) in the above-referenced matter on May 3, 2019. On October 11, 2018, Complainant filed a formal complaint against PECO. In her formal complaint, Complainant stated that PECO was threatening to shut off her service and that there were incorrect charges on her bill. Specifically, the Complainant alleged that there were charges from a previous address which she disputed. On October 17, 2018, the Complainant filed a second Complaint against PECO which was the same as the Complaint filed on October 11, 2018. Respondent, PECO filed an Answer to the first Complaint on October 22, 2018 denying the material allegations of the Complaint.

On November 6, 2018, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and location of the hearing. The Hearing Notice advised the parties of the procedure for the hearing, as well as the date, time and location of the scheduled hearing and warned in italicized and underlined type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*”

On November 19, 2018, PECO filed an Answer to the second Complaint denying the material allegations of the Complaint. On November 19, 2018, PECO also filed a Motion to Consolidate the Complaints in the cases. On December 19, 2018, Administrative Law Marta Guhl (“ALJ Guhl”) issued an Order granting the request to consolidate the Complaints. The Order indicated that both matters would be heard at the hearing on December 21, 2018.

On December 21, 2018 at approximately 8:30am, the Complainant contacted ALJ Guhl’s office and requested a continuance of the hearing. She was told that she needed to appear for the hearing to explain why she was making a continuance request. The Complainant indicated that

she would be late but did not indicate that she would not appear for the hearing. On December 21, 2018, the hearing convened as scheduled. ALJ Guhl waited till approximately 11:30am to commence the hearing to provide the Complainant with enough time to appear for the hearing. PECO appeared at the in-person hearing with one witness prepared to testify. The Complainant did not show up at the hearing and PECO motioned to dismiss the case with prejudice for lack of prosecution.

On April 10, 2019, ALJ Guhl issued an initial decision in the matter of *Eleni DiSabatino v. PECO Energy Co.*, C-2018-3005278 & C-2018-3005452 (“Initial Decision”). The Initial Decision ordered dismissal of the formal complaints 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 December 21, 2018 at 10:00am. Both parties were advised of the procedures for requesting a continuance. Complainant did not properly request a continuance. PECO appeared for the hearing with the company’s witness, 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 her 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

The PUC satisfied its due process requirement by mailing Complainant the hearing notice on November 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.⁵ By failing to appear at the December 21, 2018 hearing, without establishing good cause why she could not appear, 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 has no justification for failing to appear and therefore cannot satisfy this heightened standard. While the Complainant contacted ALJ Guhl's office on the date of the

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).

⁵ 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).

hearing, requesting a continuance, she did not proffer any reasons for the request. ALJ Guhl'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). The Complainant did not specifically articulate any unforeseen circumstances that prevented her from appearing.⁶ The Complainant had been aware of the hearing since November 6, 2018 and yet, she waited until the hearing date to call and request a continuance without following the process set forth in the Prehearing Order. She had plenty of opportunity to be heard in this proceeding but voluntarily chose not to do so. 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'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. Notably, PECO is required to hold collection activity on the Complainant's account balance because of the formal complaint process. Presently, the Complainant has a \$2,973.47 balance. Nor should the public be prejudiced by the Complainant's wasteful use of the PUC's and utility company's resources. Accordingly, the Initial Decision properly dismissed the formal complaint in this matter with prejudice.

⁶ 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);

⁷ 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 line extending to the right from the end of the signature.

Shawane L. Lee
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ELENI DISABATINO

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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**Docket Nos. C-2018-3005278
C-2018-3005452**

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).

**Eleni DiSabatino
22 Wheatsheaf Lane
Worcester, PA 19403**

Dated at Philadelphia, Pennsylvania, June 27, 2019.



Shawane L. Lee
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