

Legal Department
2301 Market Street / S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Direct Dial: 215 841.6841

July 5, 2019

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

RE: Vilma DeMarco v. PECO Energy Company
PUC Docket No. C-2019-3008544

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Reply of PECO Energy Company to Complainant's Petition to Reopen the Record* 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

SL/alb
Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**VILMA DEMARCO
COMPLAINANT**

vs.

**PECO ENERGY COMPANY,
RESPONDENT**

Docket No. C-2019-3008544

**REPLY OF PECO ENERGY COMPANY TO
COMPLAINANT'S PETITION TO REOPEN THE RECORD**

**Shawane L. Lee, Esquire
2301 Market Street
Philadelphia, PA 19103
215.841.6841
Shawane.Lee@exeloncorp.com
Counsel for PECO Energy Company**

DATE: July 5, 2019

**REPLY OF PECO ENERGY COMPANY TO COMPLAINANT'S
PETITION TO REOPEN THE RECORD**

PECO Energy Company ("PECO Energy") hereby replies to the Petition to Reopen the Record filed by Vilma DeMarco ("Complainant") in the above-referenced matter on May 6, 2019.

On March 14, 2019, Complainant filed a formal complaint against PECO Energy. In her formal complaint, Complainant alleges that PECO is threatening to terminate her service. The Complainant alleges that her former tenant Barbara Miller is responsible for a utility bill incurred at her rental property. Respondent, PECO Energy filed an Answer to the complaint on March 19, 2019, denying the allegations in the Complainant's formal complaint and stating that the Complainant is responsible for the bill because it accrued from foreign wiring that was discovered on the Complainant's rental property. PECO Energy also noted that the Complainant had previously filed a similar complaint in the case Vilma DeMarco v. PECO Energy Company, C-2017-2613087 (Opinion and Order entered December 20, 2018) disputing the foreign wiring charges and her complaint was dismissed for failure to prosecute. In the previous case, the Complainant filed a Petition for Rescission and it was also denied by the Public Utilities Commission on December 20, 2018.

On March 26, 2019, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and location of the telephonic hearing. On April 19, 2019, ALJ Andrew M. Calvelli ("ALJ Calvelli") issued a Prehearing Order, advising of the date and time of the scheduled hearing. ALJ Buckley's Prehearing Order stated in bold, underlined type: "**You must call into the hearing at this time or you may lose your case. You must dial the toll-free bridge number of 1-877-923-4048 and then enter the PIN number of 62918422 followed by the pound sign (#) in order to call into the hearing.**"

On April 29, 2019, the telephonic hearing convened before ALJ Calvelli. PECO Energy appeared for the hearing with its witness, ready to put on its case. The Complainant failed to appear by telephone for the hearing. PECO Energy requested dismissal of the Complainant's formal complaint with prejudice for failure to prosecute. PECO Energy respectfully requests that the Complainant's Petition to Reopen the Record be denied for her failure to appear for a telephonic 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

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).

The PUC satisfied its due process requirement by mailing Complainant the hearing notice on March 26, 2019. The hearing notice was not returned by the United States Postal Service as undeliverable. The notice is therefore presumed to have been received.⁵ Complainant also received notice when ALJ Calvelli mailed Complainant a prehearing order on April 19, 2019. By failing to appear at the April 29, 2019, telephonic 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 Energy and the public interest will not be prejudiced.

Complainant's purported justification for failing to appear cannot satisfy this heightened standard. The Complainant does not dispute being notified about the scheduled hearing on April 29, 2019. In the Complainant's Petition, she claims that she did not appear for the telephonic hearing because she thought the ALJ was going to call her. However, both the hearing notice and prehearing order stated clearly that the parties were to dial into the telephonic hearing. 52 Pa. Code § 1.15(b) states:

Only for good cause shown will requests for continuance be considered.

In this case, the Complainant has not established "good cause" for her continuance request because she failed to attach any substantiating documentation to support her request. Further, the fact that she thought the ALJ would call her is not a good excuse. The instructions on the hearing notice and prehearing order are very clear. To appear for the telephonic hearing, the Complainant should have dialed the number that was provided in the hearing notice and prehearing order. With knowledge of the hearing through the hearing notice, the Complainant

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).

had a responsibility to dial into the telephonic hearing. Plainly, Complainant's participation in the hearing was not "unavoidable."⁶

Complainant also cannot establish that reopening the proceeding would not prejudice the public's or PECO Energy's interests. By failing to attend the hearing, Complainant is deemed to have waived the opportunity to participate. In order to overcome this waiver, Complainant must show that the failure to attend was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting the reopening of the case. Complainant has not overcome her waiver. She has not demonstrated that her failure to attend was unavoidable and that PECO and the PUC would not be prejudiced.

PECO Energy 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. Indeed, this is the second formal complaint the Complainant has filed regarding this issue. The Complainant filed a complaint at docket number C-2017-2613087 claiming that she was being incorrectly charged for electric bills that were the responsibility of her tenant. On January 24, 2018 failed to show up at the telephonic hearing for that complaint before ALJ Calvelli and her case was dismissed accordingly. Interestingly, the Complainant is using the same tactic in this case as she used in her previous case. In her previous case, the Complainant attempted to reopen the record with excuses for failing to appear. Her request was denied, and she filed a Petition for Rescission at the PUC. The Commission denied her Petition and upheld the Initial Decision in an Opinion and Order entered on December 20, 2018. See Vilma DeMarco v. PECO, Docket No. C-2017-2613087 (Opinion and Order adopted, Dec. 20, 2018). Clearly, the

⁶ 66 Pa. C.S. 332(f).

public and PECO would be prejudiced by reopening this case once again to litigate the same payment issues that have been brought up since 2017. The Complainant is abusing the informal and formal complaint PUC process and failing to show up at hearings to avoid paying the foreign wiring charges. Accordingly, the Complainant's Petition to Reopen the Record should be denied.

WHEREFORE, for the reasons set forth above, PECO respectfully requests that the Commission deny the Complainant's Petition to Reopen the Record and issue an Initial Decision dismissing the Complainant's formal complaint for failure to prosecute.

Respectfully submitted,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
Direct Dial: 215.841.6841
Fax: 215.568.3389

**BEFORE THE
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**VILMA DEMARCO
COMPLAINANT**

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RESPONDENT**

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Docket No. C-2019-3008544

CERTIFICATE OF SERVICE

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

**Vilma DeMarco
38 Lenape Way
Honey Brook PA 19344**

Dated at Philadelphia, Pennsylvania, July 5, 2019.



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
Direct Dial: 215.841.6841;
Fax: 215.568.3389