

GRIESING LAW^{LLC}

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March 9, 2020

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

**RE: Joseph Epp & Cynthia Rao v. PECO Energy Company
PUC Docket No. F-2019-3013395**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are *Reply Exceptions of Respondent, 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,



Angela Lorenz, Esq

Cc: Certificate of Service

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Joseph Epp and Cynthia Rao (“Complainants”) in the above-referenced matter on February 3, 2020.

On September 30, 2019, the Complainants filed a formal complaint against PECO. In the formal complaint, Complainants stated: “PECO needs to improve customer service and bill procedures. They are to stop repeating same charges in billing summary on customer bills.” The Complainants requested that the Commission order PECO to refund duplicate charges, refund late fees, and provide them with a copy of the bills for the billing periods from June 12, 2018 – July 12, 2018 and July 12, 2018 – August 3, 2018.

On October 28, 2019, PECO filed an Answer to the formal complaint, denying that there were any improper charges assessed to the Complainants. PECO requested a dismissal of the Complaint.

On October 30, 2019, a Hearing Notice was served on the parties scheduling a hearing on January 6, 2020 at 1:30 p.m. with Special Agent Alphonso Arnold, III (“Special Agent Arnold”). The Hearing Notice stated “Attention: you may lose the case if you do not take part in this hearing and present facts on the issues raised.”

On December 10, 2019, a Prehearing Order was issued and reminded the parties of the date and time of the hearing and addressed the procedures applicable to the hearing and the method by which the party could request a change of the scheduled hearing date if the date was not convenient. Furthermore, the Prehearing Order stated the following: “You must be available on the scheduled day and time. If you fail to be available, your case will be dismissed.”

Both the Hearing Notice and the Pre-Hearing Order notified the parties that Special Agent Arnold would call the parties by phone on the hearing date and time to connect the parties to the hearing.

On January 6, 2020 at 1:30, Special Agent Arnold called the parties. Attorney Edward Fisher, Esquire was present on behalf of Respondent, PECO Energy. Additionally, Attorney Fisher had one witness present and ready to testify. At 1:30 p.m., consistent with the Pre-Hearing Order and Hearing Notice, Special Agent Arnold contacted the Complainants at two (2) separate phone numbers. When he did not reach the Complainants at either number provided, he left a voicemail advising that he would call back at 1:45. Special Agent Arnold contacted the Complainants again at 1:45, on both numbers, to no avail. At that time, PECO made a Motion to dismiss the Complaint with prejudice for failure to prosecute.

On January 14, 2020, Special Agent Arnold issued an initial decision in the matter of *Joseph Epp and Cynthia Rao v. PECO Energy Co.*, F-2019-3013395 (“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 January 6, 2020 at 1:30 PM. Per the documents, PECO appeared by phone for the hearing with one witness, ready to put on its case. Complainants did not appear by phone for the telephonic hearing, call Special Agent Arnold, or send correspondence stating that they would not be able to participate in the hearing. PECO respectfully requests that the Exceptions be dismissed because the Initial Decision properly dismissed Complainants’ formal complaint for 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.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 October 30, 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 By failing to appear at the January 6, 2020, hearing, Complainants waived their opportunity to participate in the hearing and cannot now reopen the record without proof that their failure to appear was unavoidable and that the interest of PECO and the public interest will not be prejudiced.

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).

Complainant's purported justification for failing to appear cannot satisfy this heightened standard. Complainants state that "[Complainants] missed the scheduled hearing due to one of us being called into work and the other suffering from a medical issue." Complainants then go on to state "Second, due to a family issue we cannot continue to pursue this case at this time." However, the Complainants failed to submit any medical documentation to support that one was suffering from a medical issue on the day of the hearing or that one had a conflict due to a work obligation. The Complainants additionally failed to explain why they did not contact Special Agent Arnold or the PUC prior to the hearing to indicate that Complainants had a conflict that would result in neither participating in the hearing. If the Complainants had contacted Special Agent Arnold or the PUC, 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 Complainants have not provided proof of why they were not available at the scheduled hearing time for their Complaint and have not shown good cause as is required. Moreover, the Complainants' exceptions go on to state that they will not be pursuing this case at this time. Both are reasons that the Initial Decision of Special Agent Arnold must be affirmed.

As described above, Complainants received a formal hearing notice from the PUC. Despite this, the Complainants failed to contact Special Agent Arnold to advise him that they were not be able to attend the hearing. The Complainants or a family member could have called Special Agent Arnold to let him know that Complainants had a work or a medical conflict and that neither could attend. They could have sent correspondence to PECO's counsel or Special Agent Arnold immediately after the hearing. They did neither. Instead, the Complainant waited to say that they were at work and had a medical issue in the form of exceptions. Plainly,

Complainants' failure to participate in the hearing was not "unavoidable."⁶ Complainants simply failed to participate in the hearing or answer the phone at the designated hearing time.

Complainants 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 Complainants do not appear. Nor should the public be prejudiced by the Complainants' wasteful use of the PUC's and utility company's resources. PECO has been required to hold collection activity on the Complainants' balance during this formal complaint process and their balance has grown to \$285.47 which is due on or before March 11, 2020.

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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⁶ 66 Pa. C.S. 332(f).

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOSEPH EPP & CYNTHIA RAO

COMPLAINANTS

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket No. F-2019-3013395

CERTIFICATE OF SERVICE

I, Angela M. Lorenz, 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).

Joseph Epp and Cynthia Rao
344 Lincoln Ave.
Newtown, PA 18940

Dated at Philadelphia, Pennsylvania, March 9, 2020



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