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November 2, 2012

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

Re: Maria Povacz v. PECO Energy Company
PUC Docket No.: C-2012-2317176

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents in the matter referenced above.

<input type="checkbox"/>	Answer
<input type="checkbox"/>	Answer & New Matter
<input type="checkbox"/>	Motion to Dismiss
<input type="checkbox"/>	Motion for Judgment on the Pleadings
<input type="checkbox"/>	Preliminary Objection
<input type="checkbox"/>	Exceptions
<input checked="" type="checkbox"/>	Reply Exceptions
<input type="checkbox"/>	Main Brief
<input type="checkbox"/>	Reply Petition

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/lo

Scheduling Recommendation: Call of the docket Non Call of the docket

REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Maria Povacz (“Complainant”) in the above-referenced matter on October 22, 2012. On July 13, 2012, Complainant filed a formal complaint against PECO Energy. In her formal complaint, Complainant objected to the installation of an AMI electric “Smart Meter” at her residence and requested to “opt out” of the meter installation. Complainant alleges that she does not want the smart meter installed at her property because she believes that the meters are surveillance devices that violate federal and state wiretapping laws. She also alleges that the smart meter invades her privacy.

Respondent, PECO Energy filed an Answer with New Matter on August 22, 2012, denying the allegations in the Complaint. PECO Energy also filed a Preliminary Objection to Complainant’s Complaint, averring that PECO Energy is required to install the meter pursuant to Act 129 and there are no consumer “opt out” provisions in the current statute. Complainant filed an Answer to PECO Energy’s Preliminary Objections on August 30, 2012, arguing that installation of the meter is not mandatory and that the meter violates federal and state wiretapping laws. On September 28, 2012, Administrative Law Judge Cheskis issued an Initial Decision, dismissing Complainant’s Complaint, holding inter alia that Complainant

...has failed to carry her burden to demonstrate that PECO has violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff when prohibiting Ms. Povacz from opting out of smart meter installation.”

See ALJ Cheskis Initial Decision, attached hereto as Exhibit “1”.

The Commission should sustain the Initial Decision of ALJ Cheskis. Complainant does not allege that ALJ Cheskis made an error of law or abused his discretion in any manner. Instead, Complainant excepts to the decision issued by ALJ Cheskis because she simply

disagrees with his decision. Pursuant to 52 Pa. Code 5.533(b), “[e]ach exception must . . . identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision,” and “[s]upporting reasons for the exceptions shall follow each specific exception.” Complainant’s attempt to further litigation in this matter by simply disagreeing with the outcome of the Initial Decision without identifying any specific error of law or abuse of discretion fails to satisfy the requirements is procedurally improper and should be dismissed summarily.

In her Exceptions, Complainant enumerates nine separate factors as to why ALJ Cheskis’ Initial Decision should be overturned. Eight of the nine factors she raises are public policy arguments (notably, not raised in the initial formal complaint) as to why the meter should not be installed. The only factor she raises that arguably disputes ALJ Cheskis’ application of the law in this instance is Exception 1, where she argues that The Energy Policy Act of 2005 makes meter installation optional. However, what Complainant fails to include in her argument is the fact that The Energy Policy Act of 2005 is not controlling here. ALJ Cheskis correctly states in his Initial Decision that 66 Pa.C.S. §2807(f)(2) is the controlling statute in this case. Specifically, Judge Cheskis holds:

The use of the word “shall” in the statute indicates the General Assembly’s direction that all customers will receive a smart meter. Furthermore, there is no provision in the statute that allows customers to “opt out” of smart meter installation, as Ms. Povacz desires.Nor do the Commission’s Orders implementing this provision of Act 129 or PECO’s specific implementation plan allow customers to “opt out” of smart meter installation.

See Exhibit “1”.

The remaining eight factors the Complainant raises in her Exceptions, even if true, are not pertinent to (1) whether she has the ability to opt out of meter installation pursuant to state law; and (2) whether PECO Energy violated The Public Utility Code, Commission Order or

Commission-approved tariff by following the Act 129 provision to install a meter at her property. Specifically, the Complainant argues in her Exceptions that “the Commission needs to review the impact of all of the Facts and Arguments in support of an investigation of health concerns related to AMI (smart meter) systems deployment and the impact of said technology.” Yet, the Complainant never raised the issue of any alleged health effects of the AMI meter in her formal complaint, and initially stated her reasons for wanting to “opt out” as privacy concerns. Nevertheless, Complainant’s argument regarding whether the Commission should consider the health concerns surrounding the AMI meter still does not challenge ALJ Cheskis’ ruling that there is no “opt out” provision in Act 129 or any Implementation Order; and therefore, is an irrelevant basis to overturn his decision.

The Complainant also argues additional public policy arguments in her Exceptions, including European Union studies related to smart meter technology; fires and property damage; cyber security findings; and the Customer Bill of Rights. None of these arguments challenges the key question of law – whether Act 129 or any other legislation permits the Complainant to opt out of the smart meter installation. In her Exceptions, Complainant has provided no legal justification to support her allegations, regarding opting out of smart meter installation. Complainant’s Exceptions do not present any grounds for overturning the Initial Decision. The Exceptions do not allege any misstatement of facts or misapplication of law. Complainant did not provide any argument regarding why the Initial Decision was incorrect or improper. The Exceptions provide no grounds for overturning the Initial Decision whatsoever, and consist solely of public policy arguments. The Exceptions, raising either irrelevant points or raising public policy arguments, are without any merit. Nothing in the Complainant’s Exceptions warrant a reversal of the ALJ’s decision.

The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. 52 Pa. Code Section 5.101. Pursuant to 52 Pa. Code §5.101(a)(4), a formal complaint may be dismissed without a hearing for legal insufficiency. The Complainant was served with a copy of PECO's Preliminary Objections and she was given the opportunity to respond. Where a question presented to the Commission is one of law, there is no necessity to hold a hearing. White Oak Borough Authority v. Pennsylvania Public Utility Commission, 183 A.2d 502, 175 Pa.Super. 114. The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. Dee-Dee Cab, Inc. v. Pa. Public Utility Comm., 817 A.2d 593, petition for allowance of appeal denied, 836 A.2d 123 (Pa. Commw. 2003); Lehigh Valley Power Committee v. Pa. Public Utility Comm., 563 A.2d 548 (Pa. Commw. 1989); Edan Transportation Corp. v. Pa. Public Utility Comm., 623 A.2d 6 (Pa. Commw. 1993).

Here, as noted by ALJ Cheskis in the Initial Decision, it is clear from the pleadings that "PECO has not violated any provision of the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff by prohibiting Ms. Povacz from opting out." Consistent with 66 Pa.C.S. §2807(f)(2), ALJ determined that there is no "opt out" provision, giving the Complainant a right to "opt out" of meter installation. As ALJ correctly concluded:

Whereas the statute provides that PECO "shall" install these meters and there is no provision in the statute or the Commission's Implementation Order that allows a customer to opt out of the smart meter installation, coupled with the ability of the Commission to dismiss a complaint without a hearing if it is in the public interest, I find that Ms. Povacz is unable to demonstrate that PECO has violated the Public Utility Code, any Commission Order or regulation or any Commission-approved tariff.

ALJ Cheskis' Initial Decision correctly applied the standard for resolving preliminary objections and assumed for decisional purposes that the factual allegations of the Complaint are true. None of the facts asserted in Complainant's formal complaint states a case against PECO Energy and as a matter of law the Complainant has no ability to "opt out" of meter installation. As such, it was proper and appropriate to dismiss the Complaint based on PECO's preliminary objections without holding a hearing. Accordingly, ALJ Cheskis' Initial Decision should be upheld.

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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MARIA POVACZ

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

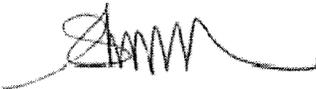
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Docket Nos. C-2012-2317176

VERIFICATION

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

Date: November 2, 2012



Shawane L. Lee

EXHIBIT “1”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Maria Povacz

v.

PECO Energy Company

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:
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:

C-2012-2317176

INITIAL DECISION

Before
Joel H. Cheskis
Administrative Law Judge

HISTORY OF THE PROCEEDING

On July 13, 2012, Maria Povacz filed with the Pennsylvania Public Utility Commission (“Commission”) a formal Complaint against PECO Energy Company (“PECO” or “the Company”), at Docket Number C-2012-2317176. In her formal Complaint, Ms. Povacz averred that she indicated to PECO that she did not give permission for the Company to install a “smart meter.”¹ Ms. Povacz further averred that she did not believe that failure to install a smart meter should be the basis for termination of her account as she has never been late in paying her bill. Ms. Povacz attached to her Complaint a series of letters between her and PECO regarding this matter, including a letter from her to the Company, the smart meter installer and some of Ms. Povacz’s elected officials that lists twenty-five (25) reasons why she believes smart meters “violate the law and cause endangerment to residents.” Ms. Povacz concludes her Complaint by requesting that she be allowed to “opt out” of the smart meter installation and reiterating that she does not give the smart meter installer permission to enter her property.

¹ A “smart meter” is an electric meter that records consumption of electric energy in increments of an hour or less and communicates that information at least daily back to the utility for monitoring and billing purposes.

On August 22, 2012, PECO filed an Answer with New Matter to Ms. Povacz's Complaint. In its Answer, PECO denied all material allegations of fact and conclusions of law in the Complaint. PECO confirmed the contacts between Ms. Povacz and the Company regarding her desire to not have a smart meter installed in her property, including attaching copies of two letters it sent to her about the matter. In its New Matter, which was accompanied by a Notice to Plead, PECO provided extensive background regarding the advent of smart meters, including the legislation signed by Governor Rendell that directed the installation of smart meters, known as Act 129, the Implementation Order adopted by the Commission and PECO's own smart meter implementation plan that was approved by the Commission. PECO concludes its New Matter by averring that Ms. Povacz has not alleged that PECO improperly installed the meter in any way contrary to the Commission-approved plan and that PECO is operating under the basis of Act 129. PECO avers that there is no legal basis for Ms. Povacz's Complaint and that her Complaint should be dismissed.

Also on August 22, 2012, PECO filed a Preliminary Objection. The Preliminary Objection was accompanied by a Notice to Plead. As discussed further below, PECO argued that Ms. Povacz's Complaint should be dismissed because it is legally insufficient. PECO reiterated, and elaborated upon, the extensive background discussion regarding the advent of smart meters that was provided in its New Matter, including further legal support for PECO's position why Ms. Povacz's Complaint does not allege any violation of any order, law or tariff that can be the basis of any finding against the Company. PECO again requests that Ms. Povacz's Complaint be dismissed.

On August 30, 2012, Ms. Povacz filed an Answer to PECO's Preliminary Objection. In her Answer, Ms. Povacz responded to PECO's claim of legal insufficiency. Ms. Povacz argued that smart meters are by definition surveillance devices which she claimed violate federal and state wiretapping laws. She also argued that smart meter installation is not mandatory. Ms. Povacz provided several other arguments in response to PECO's claim that her Complaint is legally insufficient and concluded her Answer by requesting that the matter be presented in front of an administrative law judge.

Ms. Povacz's answer to PECO's New Matter was due no later than September 14, 2012. 52 Pa. Code §§ 5.63(a), 1.12(a), 1.56(a)(1) and (b). Ms. Povacz did not file an answer to PECO's New Matter.

By Motion Judge Assignment Notice dated August 27, 2012, the parties were informed that I was assigned as the Presiding Officer in this matter and responsible for resolving any issues which may arise during the preliminary phase of this proceeding. PECO's Preliminary Objection is procedurally ready to be ruled upon. For the reasons discussed further below, PECO's Preliminary Objection will be granted and Ms. Povacz's Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this proceeding is Maria Povacz.
2. The Respondent in this proceeding is PECO Energy Company.
3. The Service Address is 533 Tori Court, New Hope, PA.
4. On June 15, 2012, Ms. Povacz received a notice from PECO advising her of the installation of smart meters in her area.
5. In response to the June 15, 2012 letter, Ms. Povacz called PECO and stated that she did not give her permission for a smart meter to be installed at her home.
6. Ms. Povacz was informed by PECO personnel that the installation of the smart meters was mandatory.
7. Ms. Povacz has never been late in paying her PECO bill.

8. Ms. Povacz will not allow for the replacement of her meter or for access to her property for such purposes.

9. On June 18, 2012, Ms. Povacz mailed a letter by Certified Mail to PECO and Grid One Solutions, the smart meter installer, with a copy of the letter sent to State Representative Bernard T. O'Neill, United States Representative Michael Fitzpatrick and Bucks County District Attorney David Heckler.

10. In Ms. Povacz's June 18, 2012 letter, she indicated that she denied consent for installation and use of any smart meter "or any other surveillance and activity monitoring device, or devices, at [her] property."

11. In Ms. Povacz's June 18, 2012 letter, she stated twenty-five (25) reasons why she believed smart meters "violate the law and cause endangerment to residents."

12. In Ms. Povacz's June 18, 2012 letter, she "demanded an immediate stop to the installation of all smart meters until all issues are resolved, the smart meters to be removed at customers request with no extra charge, an opt-in only for customers who are properly and fully informed and that must have this technology for their own specific need. This is in the public's best interest."

13. On June 19, 2012, Linda Lamberson, from the PECO AMI Meter Installation Team, sent a letter to Ms. Povacz.

14. In Ms. Lamberson's June 19, 2012 letter, she provided Ms. Povacz with additional information regarding the smart meter project, including information regarding radio frequency issues and stating that "all Pennsylvania utilities are required to install new metering technology for customers as part of Pennsylvania's 2008 Act 129."

15. On July 13, 2012, Ms. Povacz filed a formal Complaint with the Commission against PECO stating her opposition to the installation of a smart meter at her property.

16. On August 22, 2012, PECO filed an Answer with New Matter in response to Ms. Povacz's Complaint denying all material allegations of fact and conclusions of law in the Complaint, and asserting its legal justification for the installation of smart meters.

17. On August 22, 2012, PECO filed a Preliminary Objection seeking the dismissal of Ms. Povacz's Complaint because it is legally insufficient, and reiterated its legal justification for the installation of smart meters.

18. On August 30, 2012, Ms. Povacz filed an Answer to PECO's Preliminary Objection arguing, *inter alia*, that smart meters are by definition surveillance devices which she claimed violate federal and state wiretapping laws and that smart meter installation is not mandatory.

19. Ms. Povacz did not file an Answer to PECO's New Matter.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Chapters 1, 3 and 5, provide for the filing of Preliminary Objections. 52 Pa. Code § 5.101. Commission Preliminary Objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (Equitable). PECO filed a Preliminary Objection arguing that Ms. Povacz's Complaint is legally insufficient. The Commission's Rules provide, in relevant part:

- (a) *Grounds*. Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be

accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

52 Pa. Code § 5.101(a)(1)-(6).

For purposes of disposing of the Preliminary Objection, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A. 2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Ms. Povacz and should dismiss the complaint only if it appears that Ms. Povacz would not be entitled to relief under any circumstances as a matter of law. Equitable, supra; see also, Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 486 Pa. 536, 406 A.2d 1020 (1979).

Also relevant here is Section 703(b) of the Public Utility Code which allows the commission to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b).

PECO's Preliminary Objection will be granted. Even when accepting as true all well pleaded materials facts, and every reasonable inference from those facts, Ms. Povacz's Complaint does not raise a violation of the Public Utility Code, any Commission Order or

regulation or any Commission-approved Company tariff and, therefore, her Complaint will be dismissed.

To begin, Section 2807 of the Public Utility Code provides:

(f) Smart meter technology and time of use rates.—

* * * *

(2) Electric distribution companies *shall* furnish smart meter technology as follows:

- (i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.
- (ii) In new building construction.
- (iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa. C.S. §2807(f)(2)(emphasis added). The use of the word “shall” in the statute indicates the General Assembly’s direction that all customers will receive a smart meter. Furthermore, there is no provision in the statute that allows customers to “opt out” of smart meter installation, as Ms. Povacz desires.

Nor do the Commission’s Orders implementing this provision of Act 129 or PECO’s specific implementation plan allow customers to “opt out” of smart meter installation. PECO relies, in part, on the following language from the Commission’s Implementation Order to support its argument that Ms. Povacz cannot opt out of the smart meter installation:

The Commission believes that it was the intent of the General Assembly to require all covered [Electric Distribution Companies] to deploy smart meters system-wide when it included a requirement for smart meter deployment ‘in accordance with a depreciation schedule not to exceed 15 years.’

Preliminary Objection at 5; *quoting*, Smart Meter Procurement and Installation Implementation Order, Docket No. M-2009-2092655 (entered June 24, 2009). PECO adds that “the

Commission's Order does not have a provision for customers to 'opt out' of the smart meter installation." Id. at 6.

Whereas the statute provides that PECO "shall" install these meters and there is no provision in the statute or the Commission's Implementation Order that allows a customer to opt out of the smart meter installation, coupled with the ability of the Commission to dismiss a complaint without a hearing if it is in the public interest, I find that Ms. Povacz is unable to demonstrate that PECO has violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff. As the party with the burden of proof in this proceeding, *see*, 66 Pa. C.S. § 332(a), Ms. Povacz's Complaint must therefore be dismissed.

This position is further supported by the introduction in the General Assembly of a bill that would allow customers to opt out of the smart meter installation if passed. *See*, House Bill 2188 (introduced on February 8, 2012). Unless and until such legislation is passed, however, or some other provision is put in place that specifically allows customers to opt out of smart meter installation, PECO has not violated any provision of the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff by prohibiting Ms. Povacz from opting out.

To the extent that Ms. Povacz desires the ability to opt out of the smart meter installation, she should advocate for such ability before the General Assembly. In the alternative, and in light of the Commission's Orders implementing Act 129, Ms. Povacz could also file a Petition for Rescission or Amendment under Section 703(g) of the Public Utility Code to advocate before the Commission that customers be allowed to opt out of smart meter installation.² Such efforts would be the appropriate avenues at this juncture to raise the issue raised in her Complaint. The formal Complaint process against one Electric Distribution Company, PECO, is not the appropriate avenue for this issue to be addressed.

² Section 703(g) of the Public Utility Code provides: "**(g) Rescission and amendment of order.**-- The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as herein provided for original orders." 66 Pa. C.S. § 703(g).

In conclusion, Ms. Povacz has failed to carry her burden to demonstrate that PECO has violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff when prohibiting Ms. Povacz from opting out of smart meter installation. PECO's Preliminary Objection will be granted. Ms. Povacz's Complaint will therefore be dismissed.

CONCLUSIONS OF LAW

1. Commission Preliminary Objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (Equitable).

2. Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following: (i) lack of Commission jurisdiction or improper service of the pleading initiating the proceeding; (ii) failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter; (iii) insufficient specificity of a pleading; (iv) legal insufficiency of a pleading; (v) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action; and (vi) pendency of a prior proceeding or agreement for alternative dispute resolution. 52 Pa. Code § 5.101(a)(1)-(6).

3. For purposes of disposing of Preliminary Objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A. 2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988).

4. For purposes of disposing of Preliminary Objections, the Commission must view the complaint in this case in the light most favorable to the nonmoving party and

should dismiss the complaint only if it appears that the nonmoving party would not be entitled to relief under any circumstances as a matter of law. Equitable, supra; see also, Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 486 Pa. 536, 406 A.2d 1020 (1979).

5. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b).

6. Electric distribution companies shall furnish smart meter technology as follows: (i) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; (ii) in new building construction; and (iii) in accordance with a depreciation schedule not to exceed 15 years. 66 Pa. C.S. §2807(f)(2).

7. The Commission believes that it was the intent of the General Assembly to require all covered Electric Distribution Companies to deploy smart meters system-wide when it included a requirement for smart meter deployment ‘in accordance with a depreciation schedule not to exceed 15 years.’ Smart Meter Procurement and Installation Implementation Order, Docket No. M-2009-2092655 (entered June 24, 2009).

8. Except as may otherwise be provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a).

9. Ms. Povacz’s Complaint against PECO should be dismissed with prejudice.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PECO Energy Company dated August 22, 2012 at Docket Number C-2012-2317176 is granted.

2. That the formal Complaint filed by Maria Povacz against PECO Energy Company dated July 13, 2012 at Docket Number C-2012-2317176 is dismissed.

3. That this matter be marked closed.

Date: September 28, 2012

Joel H. Cheskis
Administrative Law Judge