



Exelon Business Services Company

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May 13, 2013

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

RE: Thomas A. McCarey and Margery H. McCarey v. PECO Energy Company
PUC Docket No.: C-2013-2354862

Dear Ms. Chiavetta:

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

—	Answer
—	Answer & New Matter
—	Motion
—	Motion for Judgment on the Pleadings
—	Motion for Continuance
—	Preliminary Objection
—	Exceptions
<u>X</u>	Reply Exceptions
—	Main Brief
—	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,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a stylized flourish at the end.

Shawane Lee
Counsel for PECO Energy Company
SL/lo

cc: Thomas A. McCarey and Margery H. McCarey

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**THOMAS A. MCCAREY
MARGERY H. MCCAREY**

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket Nos. C-2013-2354862

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

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

DATE: May 13, 2013

REPLY EXCEPTIONS

PECO Energy Company ("PECO Energy") hereby replies to the Exceptions filed by Thomas A. McCarey and Margery H. McCarey ("Complainant") in the above-referenced matter on May 6, 2013. On March 4, 2013, Complainants filed a formal complaint against PECO Energy. In their formal complaint, Complainants object to the installation of an AMI electric "Smart Meter" at their residence and request to "opt out" of the meter installation. Complainants allege they do not want the smart meter installed at their property because they believe that the meters are surveillance devices and have health risks.

Respondent, PECO Energy filed an Answer with New Matter on April 1, 2013, 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. Complainants responded to PECO Energy's Preliminary Objections on April 8, 2013, arguing that installation of the meter violates a federal mandate and the General Assembly, Pennsylvania Public Utility Commission ("PUC") and PECO Energy have no right to force Complainants to accept a surveillance device. See Complainant's Response to PECO Energy's Preliminary Objections, attached hereto as Exhibit "1". The Complainants did not file their response to PECO Energy's Preliminary Objections with the PUC in compliance with 52 Pa. Code § 5.61(a)(2). This is despite the fact the Complainants were put on notice through the following Notice to Plead that a response should be filed with the PUC: "All pleadings, such as a Reply to Preliminary Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company".

On April 18, 2013, Administrative Law Judge Cheskis issued an Initial Decision, dismissing Complainants' Complaint, holding inter alia that Complainant

...the McCareys have failed to carry their burden to demonstrate that PECO has violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff with regard to its smart meter installation policies and procedures.

See Thomas A. McCarey, et.al. v. PECO Energy Company, C-2013-2344862, (Order entered, April 18, 2013).

The Commission should sustain the Initial Decision of ALJ Cheskis. Complainants do not allege that ALJ Cheskis made an error of law or abused his discretion in any manner. Instead, Complainants except to the decision issued by ALJ Cheskis because they simply disagree 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 their Exceptions, Complainants state they are not asking to "opt out" of meter installation; but rather, they are refusing to give PECO Energy permission to install a surveillance device at their property. The Complainants also argue that smart meters increase the likelihood of cancer and other maladies and the meters do not meet FCC guidelines for safe levels of exposure to radiation. The issues the Complainants raise in their Exceptions, even if true, are not pertinent to (1) whether they have the ability to refuse 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 their property. Specifically, the Complainants argue in their Exceptions regarding the health affects of the smart meter and attach a study by the University of Albany to support their argument. The Complainants' 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 Complainants also argue that the Pennsylvania General Assembly intent is contrary to the Federal Mandate and that the legislation does not empower PECO Energy or the PUC to permit installation of a surveillance device at their property. However, none of these arguments challenges the key question of law – whether Act 129 or any other legislation permits the Complainants to refuse the smart meter installation. In their Exceptions, Complainants have provided no legal justification to support their allegations, regarding opting out of smart meter installation. Complainants' Exceptions do not present any grounds for overturning the Initial Decision. The Exceptions do not allege any misstatement of facts or misapplication of the law. Complainants 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 policy arguments. The Exceptions, raising either irrelevant points or raising health 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 Complainants

were served with a copy of PECO's Preliminary Objections with a Notice to Plead and were given an 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 "the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff with regard to its smart meter installation policies and procedures." 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 the McCarey's are 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 Complainants' formal complaint states a case against PECO

Energy and as a matter of law the Complainants have no ability to "opt out" of meter installation. As such, it was proper and appropriate to dismiss the Complaint based on PECO Energy'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,



Shawane L. Lee
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**THOMAS A. MCCAREY
MARGERY H. MCCAREY**

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket Nos. C-2013-2354862

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: May 13, 2013

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**THOMAS A. MCCAREY
MARGERY H. MCCAREY**

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket Nos. C-2013-2354862

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).

**Thomas A. McCarey
Margery H. McCarey
285 Dayleview Road
Berwyn, PA 19312**

Dated at Philadelphia, Pennsylvania, May 13, 2013



**Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841;
Fax: 215.568.3389**

EXHIBIT “1”



April 8, 2013

Thomas A. McCarey
Margery H. McCarey
285 Dayleview Road
Berwyn, Pennsylvania 19312

Shawane L. Lee
Legal Department
2301 Market Street/S23-1
Philadelphia, Pennsylvania 19103

RE: Thomas A. McCarey and Margery H. McCarey v. PECO Energy Company
PUC Docket No.: C-2013-2354862

RE: Response to Preliminary Objection

Dear Mrs. Lee:

Reference your page 3, Number 7; page 4, numbers 16, 17, 18, 20; page 6, number 21; page 7, numbers 27, 29, 31, 32, 33; page 8, numbers 34, 35, 37: I am not requesting an "opt-out." I am refusing installation of a "smart meter" because Act 129 violates the Federal Mandate to ask ratepayers if they want a "smart meter" before installing same. Reference your page 8, number 36: You have no basis for asking that my refusal of a "smart meter" be dismissed due to the fact that Act 129 violates the Federal Mandate, as stated above.

I further contend that neither the General Assembly, nor the PUC, nor PECO have the right to force on me and my property a surveillance device. e.g.: 2807 (f) (3) Electric distribution companies shall, with customer consent, make available direct meter access and electronic access to customer meter data to third parties, including electric generation suppliers and providers of conservation and load management services.

Since 2807 (f) (2) (iii) states, "In accordance with a depreciation schedule not to exceed 15 years." I further refuse installation of a "smart meter" until 2017, because my present analog meter was installed in 2002.

There was and is insufficient notice of the entire "Smart Grid/Smart Meter" program, with a virtual state wide media blackout. I

PECO ENERGY
EXHIBIT 1

attribute this to a bad faith effort by the General Assembly and the PUC.

Reference your page 7, number 33; page 8, number 34: HB 899, HB 902, and HB 906 are currently stalled in Representative Godshall's committee, and, when signed into law, will restore the "smart meter" program to the original intent of the Federal Mandate that ratepayers be asked if they want a "smart meter" before installation of same. The forced installation of "smart meters" should be put on hold pending the final disposition of these bills.

Finally, reference your page 6, number 23: for the Chairman of the PUC to advocate for a program with such a wide ranging effect on every single person in Pennsylvania, nothing short of a complete change of how we all live day to day, is beyond belief. The Chairman's and Board's behavior stands the Mission Statement of the PUC on its head. The "smart meter" debacle is the result of a deal between the General Assembly, the PUC, and the electric utilities, with the ratepayers left to swing in the wind.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas A. McCarey". The signature is fluid and cursive, with the first name "Thomas" and last name "McCarey" clearly distinguishable.

Thomas A. McCarey