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November 20, 2014

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

**RE: Gerald H. Smith, DDS v. PECO Energy Company**  
**PUC Docket No.: C-2014-2443198**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Reply Exceptions* 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,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a long, sweeping underline.

Shawane Lee  
Counsel for PECO Energy Company

cc: Gerald H. Smith, DDS (via First Class Mail)

s/LO

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>GERALD H. SMITH, DDS</b>	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>DOCKET NO. C-2014-2443198</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

**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: November 20, 2014**

## REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Gerald H. Smith, DDS (“Complainant”) in the above-referenced matter on November 15, 2014. On September 3, 2014, Complainant filed a formal complaint against PECO Energy. In his formal complaint, Complainant objects to the installation of an AMI electric “smart meter” at his residence and requests to “opt out” of the meter installation. Complainant alleges that he does not want the smart meter at his property because he believes it causes health issues and the meters are surveillance devices that violate his Fourth Amendment rights. He also alleges that PECO Energy violated the company’s easement rights by installing the meter on his premises and he wants the meter removed.

Respondent, PECO Energy filed an Answer with New Matter on October 3, 2014, 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 New Matter on October 20, 2014, requesting that PECO Energy provide long term studies showing the effects of the smart meter and argued that the company had not provided any biological studies on the safety of the meter. The Complainant additionally challenged the safety of the meter and claimed that he had experienced “sparking” of the meter that caused damage to his meter board. On October 24, 2014, PECO Energy filed a Response to the Complainant’s Response to PECO Energy’s New Matter.

On October 24, 2014, Administrative Law Judge David A. Salapa (“ALJ Salapa”) issued an Initial Decision, dismissing Complainant’s Complaint, holding inter alia that:

The Commission has continued to hold installation of smart meters and imposition of smart meter charges on customer's bills by dismissing complaints opposing installation of smart meters and imposition of smart meter charges on the basis of legal insufficiency.

Since the Complainant's complaint does not set forth any violation of a Commission regulation, statute or order, it is legally insufficient.

Gerald H. Smith, DDS v. PECO Energy, C-2014-2443198 (Order entered, Oct. 24, 2014).

In his Exceptions, Complainant argues that the smart meter caused damage to his meter board and that PECO's counsel made false statements regarding the date the smart meter was installed at his residence. However, the Complainant's Exception in this regard should be dismissed because the Complainant never specifically pled any reliability, safety, or quality problem with his Smart meter in his formal complaint. The Complainant never complained about damage to his smart meter or meter board but waited to raise this issue *after* PECO filed an answer. The Complainant never amended his complaint to raise these specific allegations. In his formal complaint he only disputed the meter installation, the alleged health effects, testing, studies and his health and safety concerns. Further, the installation date of the meter is of no import to the allegations in the formal complaint. Regardless of when the meter was installed, the Complainant still has no right under the law to "opt out" of the meter installation.

52 Pa. Code § 5.22. Content of formal complaint states the following regarding the content of a formal complaint:

(a) A formal complaint must set forth the following:

(1) The name, mailing address, telephone number, telefacsimile number and electronic mailing address, if applicable, of the complainant.

(2) If the complainant is represented by an attorney, the name, mailing address, telephone number, telefacsimile number and Pennsylvania Supreme Court identification number of the attorney and, if available, the electronic mailing address.

(3) The name, mailing address and certificate or license number of the respondent complained against, if known, and the nature and character of its business.

(4) The interest of the complainant in the subject matter—for example, customer, competitor, and the like.

(5) A clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation.

(6) A clear and concise statement of the relief sought.

In this case, the Complainant alleged in his formal complaint “a clear and concise statement” regarding his objection to the installation of the smart meter at his home. He specifically and clearly articulated his argument against “Governor Rendell’s 2008 law” and how the law was in violation of his 4<sup>th</sup> Amendment rights and the Pennsylvania State Constitution. The Complainant articulated his objection to “dirty electricity” created by the meter and how it has caused him fatigue and difficulty concentrating. He objected to the installation of the meter because he felt it was not safe. In his request for relief, the Complainant never once stated that PECO should reimburse him for any alleged damage to a meter board. He never attached any receipts or other documentation. He made a “clear and concise statement” simply requesting that the PUC:

Order PECO to remove the “Smart meter” and replace it with the original analog unit. Also request removal of any other EMF emitting device on [his] property placed by a utility company.

The Complainant never mentioned a request for reimbursement for alleged damage to his meter board and never raised an issue with the meter causing damage to his property. Accordingly, with the pleadings before him, ALJ Salapa correctly ruled that the Complainant’s formal complaint objecting to the installation of the Smart meter was “legally insufficient.”

In his Exceptions, Complainant has provided no legal justification to support the allegations in his formal complaint, regarding opting out of smart meter installation. The basis of his argument is an issue he never raised in his formal complaint. 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 an argument that was never raised in the actual formal complaint. Nothing in the Complainant's Exceptions warrants 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 he 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 Salapa in the Initial Decision, it is clear from the pleadings that “The Respondent has not violated any statute, regulation or order which the Commission has jurisdiction to administer by installing the smart meter at the Complainant’s residence. Rather, the Respondent is complying with relevant statutes, regulations and orders.” Consistent with 66 Pa.C.S. §2807(f)(2), ALJ Salapa determined that there is no “opt out” provision, giving the Complainant a right to “opt out” of meter installation. ALJ Salapa’s 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 Salapa’s 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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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>GERALD H. SMITH, DDS</b>	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>DOCKET NO. C-2014-2443198</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

**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 20, 2014

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Shawane L. Lee

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>GERALD H. SMITH, DDS</b>	:	
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	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

**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).

**Gerald H. Smith, DDS  
3569 Cranberry Drive  
Huntingdon Valley, PA 19006**

Dated at Philadelphia, Pennsylvania, November 20, 2014



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