



An Exelon Company

Direct Dial: 215.841.6841

March 20, 2015

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

**RE: Louise Francis v. PECO Energy Company**  
**PUC Docket No.: C-2014-2451351**

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: Certificate of Service

s/LO



## REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Louise Francis (“Complainant”) in the above-referenced matter on March 17, 2015. On October 30, 2014, Complainant filed a formal complaint against PECO Energy. In her formal complaint, Complainant objects to the installation of an AMI electric “Smart Meter” at her residence and requests to “opt out” of the meter installation. Complainant alleges she does not want the smart meter installed at her property because she believes the meters have health and safety risks.

Respondent, PECO Energy filed an Answer with New Matter on November 12, 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 did not respond to PECO Energy’s Preliminary Objection.

On February 13, 2015, Administrative Law Judge Christopher P. Pell issued an Initial Decision, dismissing Complainant’s Complaint, holding inter alia that Complainant

...the complainant has not set forth in her complaint any act done by PECO in this instance that violates a Commission regulation, statute or order. PECO is authorized to install smart meters and impose a charge on its customer to develop and implement a smart meter procurement and installation plan that will lead to the installation of smart meters throughout its service territory. Moreover, Commission regulations allow PECO to notify a customer that it will terminate their service if the customer will not permit access to a meter for the purpose of replacement.

See Louise Francis. v. PECO Energy Company, C-2014-2451351, (Order entered, February 13, 2015).

In her Exceptions, Complainant states she is not asking to “opt out” of meter installation; but rather, she is requesting not to have her AMR meter replaced at this time. The Complainant argues that Act 129 does not authorize sanctions against customers who disagree with “the

utility's artificial schedule for the installation of smart meters.” The Complainant also argues that customers have reported symptoms of headaches and cardiac symptoms. She claims that the PUC “sided with PECO” and has given “100% of the weight in their decision to boilerplate propaganda supplied by PECO.” The issues the Complainant raises in her Exceptions, even if true, are not pertinent to (1) whether she has 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 her property. Specifically, the Complainant argues in her Exceptions regarding the health affects of the smart meter and attaches articles regarding a California ban on Smart Meters; “Public Health Implications of Wireless Technologies” and “Radiofrequency/Microwave Radiation Biological Effects and Satey Standards” to support her argument. The Complainant’s argument regarding whether the Commission should consider the health concerns surrounding the AMI meter still does not challenge ALJ Pell’s 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 that the Pennsylvania Public Utility Commission is not balancing the needs of consumers but routinely taking the side of PECO. The Complainant challenges ALJ Pell’s Initial Decision because she alleges it is “full of legalese language that is not consumer friendly.” 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 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 the law. Complainant does 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 ALJ Pell'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 with a Notice to Plead and was 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 Pell 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 Pell correctly concluded:

Viewing the Complaint in this case in the light most favorable to the complainant, the complainant does not want a smart meter installed at her residence. The complainant wants to opt out of having a smart meter installed at her residence. Moreover, the complainant wants the Commission to order PECO to cease any attempts to terminate her service for her refusal to allow PECO to install a smart meter. Accepting the facts alleged in the Complaint as true for purposes of disposing of PECO’s preliminary objection, PECO contends that the Complainant fails to allege that the respondent has violated the Public Utility Code, Commission regulations or orders. PECO concludes that the complaint is legally insufficient. I agree.

ALJ Pell’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 Energy’s preliminary objections without holding a hearing. Accordingly, ALJ Pell’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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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



