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April 6, 2015

VIA Federal Express

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

**RE: Art Larson v. PECO Energy Company
PUC Docket No. C-2014-2451754**

Dear Secretary Chiavetta:

Enclosed is a copy of PECO Energy's Reply Exceptions in this matter, which was e-filed today.

The Reply Exceptions were due on March 30, 2015. Due to an administrative oversight, the Reply Exceptions were not filed. Accordingly, PECO Energy is now filing the Reply Exceptions along with this letter.

Therefore, please accept PECO Energy's late-filed Reply Exceptions *nunc pro tunc* as being filed timely. Please accept my sincerest apology for this error.

If you have any questions regarding PECO Energy's Reply Exceptions or this request, please contact me at (215) 841-6841.

Respectfully,

A handwritten signature in black ink, appearing to read "Shawane L. Lee".

Shawane L. Lee
Assistant General Counsel

Encl.

REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Art Larson (“Complainant”) in the above-referenced matter on March 9, 2015. On November 3, 2014, Complainant filed a formal complaint against PECO Energy with the Pennsylvania Public Utility Commission (“Commission”). In his formal complaint, Complainant notes the utility is threatening to shut off his service. More specifically, he states, “Stop threats to shut off Utilities Bills are paid due to disallow them to install smart meter.” PECO was served with this complaint on November 6, 2014.

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 the Complaint on November 12, 2014, 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 New Matter by the required date.

On or about November 14, 2014, Complainant filed an amended formal complaint, which was served on PECO November 17, 2014. In the complaint, he again requests “stop threats to shut off Utilities Bills are paid.” He acknowledged that the shutoff notices are being sent to him in response to his objection to AMI electric “Smart Meter” installation in his home. He proceeded to explain his specific safety concerns with the type of smart meters being installed, and provided 16 attached documents to this amended complaint. On November 19, 2014, PECO energy filed another Answer and New Matter to Complainant’s amended complaint, reiterating the main points in the initial Answer and New Matter, more specifically that there is no opt-out provision of Act 129.

On February 18, 2015, Administrative Law Judge Marta Guhl issued an Initial Decision, dismissing Complainant's Complaint, holding inter alia that

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...I find that Mr. Larson is unable to demonstrate that PECO has violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff.

See Art Larson v. PECO Energy Company, C-2014-2451754, (Order entered, February 18, 2015).

On March 9, 2015, Complainant submitted six Exceptions in his case. The first exception alleges that "[t]he PUC Ruling ignored all concerns for Product Safety and hence these products are no ACT-129 Compliant." In support of this exception, Complainant attached an article addressing safety issues that have arisen due to the use of particular brands of smart meters. These allegations, even if true, are not pertinent to (1) whether he 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 his property.

Exception two states that because the ALJ determined a hearing wasn't appropriate, he was denied a "voice" to share his safety concerns. Complainant's case was dismissed by a preliminary objection filed by PECO because PECO was able to meet its burden—it was able to show that the case should be dismissed as it appeared that Complainant would not be entitled to relief under any circumstances as a matter of law. Furthermore, Section 703(b) of the Public Utility Code allows the Commission to dismiss a complaint without a hearing if the Commission determines a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b). In the Initial Decision, Judge Guhl determined that the "Complaint [did] not raise a violation of the Public

Utility Code, any Commission Order or regulation or any Commission-approved Company tariff and, therefore, his Complaint [would] be dismissed.” Accordingly, a hearing was not warranted in this matter.

Exception three and four both argue that Complainant was “misinformed.” Exception three states he was told by PECO Counsel that Landis+Gyr SmartMeters were safe, but an apartment fire in 2014 allegedly proved otherwise. Exception four states he was lead to believe that the reimbursement process for property damage was “easy,” but his neighbors experience with PECO said otherwise. Neither of these points challenge the key question of law – whether Act 129 or any other legislation permits the Complainant to refuse smart meter installation.

Exception five argues that PECO’s smart meters aren’t compliant with ACT-129, relying on his paraphrased interpretation of ACT-129 language. Specifically Complaint states, “ACT-129 cites that for PECO customers who wish to install Solar Power into their properties, they are required to provide Smart Meters that a single bi-directional meter for interfacing to alternate power sources such as Solar Energy,” supported by an attached article. PECO’s Smart Meter Installation deployment plan was approved by the PUC, negating any concerns regarding smart meter compliance with Act-129. Finally, exception six does not address smart meter concerns at all, but instead addresses Complaint’s theory of public correction and integrity with respect to ACT-129.

Complainant has raised six exceptions to his case, but not one challenges ALJ Guhl’s ruling that there is no “opt out” provision in Act 129 or any Implementation Order; and therefore, 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, raising either irrelevant points or raising policy arguments, are without any merit. Nothing in the Complainant's Exceptions warrants a reversal of ALJ Guhl'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 Guhl 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." Consistent with 66 Pa.C.S. §2807(f)(2), ALJ Guhl determined that there is no "opt out" provision, giving the Complainant a right to "opt out" of meter installation. As ALJ Guhl 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 Mr. Larson 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), Mr. Larson's Complaint must therefore be dismissed.

ALJ Guhl'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 Guhl'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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