



An Exelon Company

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May 13, 2015

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

RE: Antonio Romeo v. PECO Energy Company
PUC Docket No.: C-2015-2479260

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Preliminary Objection of Respondent* 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 stylized flourish at the end.

Shawane Lee
Counsel for PECO Energy Company

SL/ab

cc: Certificate of Service

PENNSYLVANIA PUBLIC UTILITY COMMISSION

ANTONIO ROMEO :
 Complainant :
 v. : **DOCKET NO. C-2015-2479260**
 : :
PECO ENERGY COMPANY :
 Respondent :
 :

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objections of PECO Energy Company within 20 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

File with:
Rosemarie Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:
Shawane L. Lee, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, May 13, 2015



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6863
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANTONIO ROMEO	:	
Complainant	:	
v.	:	DOCKET NO. C-2015-2479260
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On April 28, 2015, PECO Energy was served with a formal complaint filed by Antonio Romeo. (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1”.

2. In his Complaint, the Complainant alleges, in pertinent part:

On or about March 16, 2015, I received a notice from PECO about changing my current meter to a smart meter.

On or about April 22, 2015, I received a termination of service notice (“Termination Notice”) from PECO. See Appendix B. The Termination Notice states that my electric service will be shut off on or after May 5, 2015 because “You did not give us access to our meter any your equipment.”

Certain neighbors of mine who have electric service through PECO do not have smart meters installed, and PECO has not attempted to force the installation of smart meters on their properties.

PECO's attempts to force the installation of a smart meter on my property are in violation of federal law.

There have been numerous well-documented fire, radiation, privacy, and other serious health and safety concerns with respect to smart meters around the country and specifically in Northeast Philadelphia, where my family and I live.

See Exhibit "1".

3. In his request for relief, the Complainant states:

I respectfully request that the PUC order PECO to cease and desist in its attempts (a) to shut off my electrical service, and (b) to install a smart meter on my property; A stay pursuant to 52 Pa. Code § 56.91(b)(4)(v), such that my electric service will not be terminated during the pendency of the formal complaint process; All appropriate discovery; A hearing; and All other just and proper relief.

See Exhibit "1".

4. In essence, the Complainant is requesting to "opt out" of smart meter installation at his home because of privacy, health and safety concerns and refuses to have the meter installed. The Complainant disputes his pending service termination for failure to give PECO access to install the meter.

5. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.

6. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).

7. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure. Equitable Small Transportation Intervenor. v. Equitable Gas Co., 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

8. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible. Roc v. Flaherty, 527 A.2d 211 (Pa. Cmwlth 1985).

9. A complaint must be able to recover under the law to survive a preliminary objection. Milliner v. Enck, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) (“preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover”).

10. All of the non-moving party’s averments must be taken as true for the sake of deciding the preliminary objection. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (Pa. 1985).

11. The court does not, however, need to accept, “unwarranted inferences from facts, argumentative allegations, or expressions of opinions.” Feingold v. McNulty, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

12. Section 703 of the Public Utility Code, 66 Pa. C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary to the public interest.

13. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm’n, 817 A.2nd 593 (Pa.Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

14. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

I. Legal Insufficiency – Prior Commission Approval of Smart Meter Installation

15. The Complainant has requested that he be permitted to “opt out” of smart meter installation at his residence because of health, privacy and safety concerns. PECO Energy’s Smart Meter installation plan was approved by the Pennsylvania Utility Commission on May 6, 2010, as a part of the Smart Meter Technology Procurement and Installation Plan, (“Smart Meter/Smart Grid Plan”) at docket number M-2009-2123944.

16. By way of background, Governor Edward Rendell signed Act 129 of 2008 into law on October 15, 2008. The Act took effect 30 days thereafter on November 14, 2008, and amended Section 2807 of the Public Utility Code. Among other things, the Act specifically directed that electric distribution companies (such as PECO Energy) with more than 100,000 customers file smart meter technology procurement and installation plans with the Commission for approval. See 66 Pa. C.S. § 2807(f). The statute does not provide customers with an option to “opt out” of smart meter installation.

17. On June 18, 2009, the Commission adopted a Smart Meter Procurement and Installation Implementation Order (“Implementation Order”) to establish the standards each plan must meet and to provide guidance on the procedures to be followed for submittal, review and approval of all aspects of each smart meter plan. See Smart Meter Procurement and Installation Implementation Order, entered on June 24, 2009, at Docket No. M-2009-2092655.

18. Specifically, the Commission’s Implementation Order states:

Act 129 requires EDCs to furnish smart meter technology (1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request, (2) in new building construction, and (3) in accordance with a depreciation schedule not to exceed 15 years. 66 Pa.C.S. § 2807(f)(2).

The Commission believes that it was the intent of the General Assembly to require all covered EDCs 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.”

**THEREFORE,
IT IS ORDERED:**

1. That the Commission establishes specific smart meter technology minimum capabilities and procedures for submittal, review and approval of all aspects of each smart meter plan to include cost recovery.

2. That electric distribution companies with greater than 100,000 customers adhere to the guidelines for smart meter technology procurement and installation identified in this Implementation Order.

3. That the Director of Operations convene a stakeholder meeting no later than July 17, 2009, to discuss issues related to the costs and benefits associated with the Commission imposed smart meter capability requirements.

4. That all electric distribution companies that are required to file a smart meter technology procurement and installation plan file such a plan consistent with the directives contained in this order by August 14, 2009.

See id.

19. The Commission’s Order does not have a provision for customers to “opt out” of the smart meter installation.

20. Through its Implementation Order and policies, the Commission has approved the smart meter implementation process required by Act 129.

21. Indeed, Pennsylvania PUC Chairman, Robert F. Powelson stated:

Act 129 of 2008 has really paved the way for the rollout of smart meters, also referred to as Advanced Metering Infrastructure (AMI), and the implementation of Act 129 continues to benefit Pennsylvania customers. As I see it, smart meter technology is a “win-win” situation for the Commonwealth – both electricity customers and electricity providers alike reap the benefits of advanced meters.

See PaPUC Chairman Powelson on Smart Meters and Pennsylvania's Energy Future at <http://www.smartgridlegalnews.com/interviews/papuc-chairman-powelson-on-smart-meters-and-pennsylvanias-energy-future/>

22. On August 14, 2009, PECO Energy filed with the Commission its Petition of PECO Energy Company for Approval of its Smart Meter/Smart Grid Plan.

23. Amongst other things, PECO Energy's Petition requested that the Commission approve the deployment of up to 600,000 smart meters. See PECO Energy's Smart Meter/Smart Grid Petition.

24. As a part of PECO Energy's meter deployment plan, the company committed to deploy 600,000 meters by March 2013, upon receiving American Recovery and Reinvestment Act funding from the Department of Energy. See id.

25. PECO Energy's Implementation plan does not give customers the option to "opt out" of smart meter installation.

26. By Order entered May 6, 2010 at Docket No. M-2009-2123944, the Commission approved PECO Energy's Smart Meter/Smart Grid Plan.

27. The Commission's Order approving PECO Energy's plan does not provide an "opt out" provision.

28. In conjunction with the Commission's Implementation Order; the Commission-approved Smart Meter/Smart Grid Plan and continuing compliance with Act 129, PECO Energy has deployed over 194,000 Advanced Metering Infrastructure ("AMI") meters in customer's homes and businesses.

29. Act 129, the Commission's Implementation Order; and PECO Energy's Commission-approved Smart Meter/Smart Grid Plan do not provide customers the ability to "opt out" of having a smart meter installed in their homes or businesses. See 66 Pa. C.S. § 2807(f). See

also Smart Meter Procurement and Installation Implementation Order, at Docket No. M-2009-2092655. See PECO Energy's Smart Meter/Smart Grid Plan at docket number M-2009-2123944.

30. The absence of an "opt out" provision in the existing statute; Implementation Order; and Smart Meter/Smart Grid Plan is underscored by a recent bill introduced at the General Assembly.

31. House Bill 394, which was introduced on February 9, 2015, seeks to change the existing law by adding a "opt out" provision. Specifically, House Bill 394 reads as follows:

Section 1. Section 2807(f)(2)(iii) of Title 66 of the Pennsylvania Consolidated Statutes is amended to read:

§ 2807. Duties of electric distribution companies.

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

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

(iii) In accordance with a depreciation schedule not to exceed 15 years. Customers may opt out of receiving smart meter technology under this subparagraph by notifying, in writing, the electric distribution company. The following shall apply:

A) The electric distribution company shall provide an opt-out form to consumers upon request and may provide a method for consumers to opt out electronically through the electric distribution company's Internet website.

32. House Bill 394 attempts to address individual customer concerns about the smart meter (such as the Complainant's concerns) by allowing individual customers to "opt out" of receiving smart meter technology on the mandatory schedule established by Act 129.

33. The "opt out" provision; however, has not been scheduled for a vote by the General Assembly, and the ability to opt out of smart meter installation is not currently permissible under the law.

34. Accordingly, the Complainants' formal complaint, requesting the ability to "opt out" of smart meter installation should be dismissed as a matter of law.

35. Administrative Law Judge Joel H. Cheskis reached a similar conclusion in the matter Maria Povacz v. PECO Energy, Docket No. C-2012-2317176 (Order entered September 28, 2012). In that case, the Complainant, Maria Povacz requested to "opt out" of installation of the smart meter at her residence. Id.

36. ALJ Cheskis issued an Initial Decision wherein he determined:

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.....The formal Complaint process against one Electric Distribution Company, PECO, is not the appropriate avenue for this issue to be addressed.

Id.

37. On January 24, 2013, the Commission issued a Final Order, adopting ALJ Cheskis' Initial Decision. In the Order, the Commission specifically addressed whether a PECO customer could "opt out" of meter installation at their property as follows:

There is no provision in the Code, the Commission's Regulations or Orders that allows a PECO customer to "opt out" of smart meter installation, as the Complainant desires to do. Accordingly, unless and until House Bill 2188, supra, passes the General Assembly, 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 Code, any Commission Order or Regulation or any Commission-approved Company tariff by prohibiting the Complainant from opting out.

See Maria Povacz v. PECO Energy, Docket No. C-2012-2317176 (Order adopted January 24, 2013).

38. The PUC precedent for formal complaints filed against PECO Energy in similar cases, requesting smart meter "opt out" have been dismissed on Preliminary Objection as a matter of law. See e.g. Theresa Gavin v. PECO Energy, Docket No. C-2012-2325258 (Order

entered January 24, 2013); Jeff Morgan v. PECO Energy, Docket No. C-2013-2356606 (Final Order entered July 23, 2013); Thomas McCarey v. PECO Energy, Docket No. C-2013-2354862 (Final Order entered September 26, 2013); Renney Thomas v. PECO Energy, Docket No. C-2012-2336225 (Final Order entered December 31, 2013); Ellen Donnelly v. PECO Energy, Docket No. F-2013-2330663 (Final Order Entered March 18, 2014); Gerald H. Smith v. PECO, Docket No. C-2014-2443198 (Opinion and Order entered April 23, 2015).

39. Like the formal complaints filed in the Maria Povacz, Theresa Gavin and Jeff Morgan, Thomas McCarey, Renney Thomas, Ellen Donnelly and Gerald H. Smith matters, objecting to the installation of the smart meter and requesting an “opt out”, this case should be dismissed as a matter of law.

40. The Complainant’s formal complaint alleges that he does not want the meter installed because of privacy, health and safety concerns.

41. Assuming that everything the Complainant alleges in his Complaint is true, PECO Energy is operating under the basis of Act 129 and the specific direction given to the company by the legislature and the Commission through the Commission’s Implementation Order.

42. The Complainant’s Complaint, objecting to the installation of a smart meter at his residence, does not allege a violation of any order, law or tariff that can be the basis of any finding against PECO Energy.

43. Further, as the law currently stands, pursuant to Act 129 and the Commission’s Implementation Order, customers do not have the ability to “opt out” of smart meter installation.

44. Because PECO Energy’s smart meters are being deployed in compliance with the Commission-approved Smart Meter/Smart Grid Plan, and the law does not provide for the

Complainant to “opt out” of smart meter installation, there is no legal basis for the Complainant’s Complaint.

45. Further, PECO has the right to terminate a customer’s service for failure to permit access to install the Smart Meter.

46. Pursuant to Section 10.5, PECO Energy has a right to access the premises of a customer at all reasonable times for the purpose of installing, removing or changing any or all equipment belonging to the company. See Section 10.5 of PECO Electric Service Tariff.

47. Section 18.3 of PECO Energy’s tariff, permits the company to terminate a customer for cause if access to the meter is refused. See Section 18.3 of PECO Electric Service Tariff.

48. PECO Energy’s Commission approved tariff is prima facie reasonable and has the full force and effect of law. 66 Pa.C.S. § 316; *Kossmann v. PA PUC*, 694 A.2d 1147 (Pa Cmwlrt 1997); *Brockway Glass Co. v. PA. PUC*, 437 A.2d 1067 (Pa. Cmwlrt 1981).

49. In this case, the Complainant is refusing the installation of the Smart Meter; therefore, he is subject to termination consistent with Section 10.5 and 18.3 of PECO’s tariff.

50. Therefore, the Complainant is not entitled to relief under the law.

51. For the reasons set forth above, the Complainant’s Complaint should be dismissed as a matter of law.

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant’s formal complaint, and all issues which were raised in the Complaint.

Respectfully submitted,



Shawane L. Lee
Counsel for PECO Energy Company
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P.O. Box 8699
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(215) 841-6841
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Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANTONIO ROMEO
Complainant

v.

PECO ENERGY COMPANY
Respondent

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DOCKET NO. C-2015-2479260

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, 2015

Shawane L. Lee

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ANTONIO ROMEO
Complainant
v.

DOCKET NO. C-2015-2479260

PECO ENERGY COMPANY
Respondent

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CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

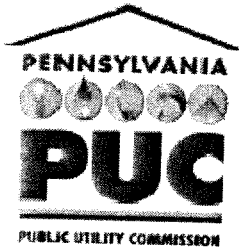
Antonio Romeo
9517 Alton Street
Philadelphia, PA 19115

May 13, 2015



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
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EXHIBIT 1



PENNSYLVANIA
PUBLIC UTILITY COMMISSION

CONSUMERINFO UTILITY&INDUSTRY FILING&RESOURCES ABOUTPUC CONTACTUS

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Your filing has been electronically received. Upon review of the filing for conformance with the Commission's filing requirements, a notice will be issued acknowledging such compliance and assigning a Docket Number. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

Print this page for your records. The date filed on will be the current day if the filing occurs on a business day before or at 4:30 PM Harrisburg, PA time. It will be the next business day if the filing occurs after 4:30 PM Harrisburg, PA time or on weekends or holidays.

If your filing exceeds 250 pages, you are required to submit one paper copy of the filing within 3 business days of submitting the electronic filing. This paper copy can be mailed to: Secretary, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120 . Please print a copy of this page and attach it to the paper copy of your filing as the first page.

eFiling Confirmation	
Docket Number:	C-2015-2479260
Description:	Antonio Romeo - PECO Energy Company Answer to Formal Complaint
Transmission Date:	5/13/2015 9:07:29 AM
Filed On:	5/13/2015 9:07:29 AM
eFiling Confirmation Number:	1591742

Uploaded File List

File Name	Document Class	Document Type
Antonio Romeo - Answer to Formal Complaint.pdf	Communication	Answer to Formal Complaint

PECO ENERGY
EXHIBIT **2**



An Exelon Company

Legal Department
2301 Market Street / S23-1
P.O. Box 8699
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Direct Dial: 215-841-6841

May 13, 2015

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

RE: Antonio Romeo v. PECO Energy Company
PUC Docket No.: C-2015-2479260

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Answer to the Formal Complaint* 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 stylized flourish at the end.

Shawane Lee
Counsel for PECO Energy Company

SL/ab

cc: *Scheduling Recommendation: NOT CALL OF THE DOCKET*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANTONIO ROMEO
Complainant

v.

PECO ENERGY COMPANY
Respondent

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DOCKET NO. C-2015-2479260

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed NEW MATTER of PECO Energy Company within 20 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to NEW MATTER, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

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

With a copy to:
Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, May 13, 2015



Shawane L. Lee
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANTONIO ROMEO
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DOCKET NO. C-2015-2479260

ANSWER OF RESPONDENT,
PECO ENERGY COMPANY

On April 28, 2015, PECO Energy Company ("PECO Energy") was served with a formal complaint filed by Antonio Romeo (hereafter "Complainant"). Pursuant to 52 Pa. Code § 5.61, PECO Energy responds to the Complaint and states:

1. Admitted
2. Admitted.
3. Admitted.
4. Denied. Unless specifically admitted herein, PECO Energy denies all material allegations of fact and conclusions of law in the Complaint.

In his Complaint, Complainant is opposing installation of PECO Energy's smart meter. The Complainant objects to the smart meter because of privacy, health and safety concerns. The Complainant alleges that PECO Energy is threatening to terminate his service because he refuses to have the meter installed. PECO Energy's records reveal the following:

The Complainant has electric service at 9517 Alton Street, Philadelphia, PA 19115. On April 8, 2012, PECO sent correspondence to the Complainant advising of the meter installation. On May 2, 2012, PECO sent correspondence to the Complainant, advising that the company

needed to install the meter. On June 2, 2012, the Complainant refused to have the meter installed when the technician went to the premises. On June 5, 2013, PECO Energy spoke to the Complainant and he refused the smart meter, stating that PECO was not coming into the house. The Complainant contacted the company and advised that she refused to have the meter installed. On June 10, 2013, PECO Energy sent correspondence to the Complainant, attempting to address some of his smart meter concerns. See Correspondence, dated 6/10/13, attached hereto as Exhibit "1". On March 30, 2015, the Complainant called and stated that he does not want the meter and that he is going to fight for his rights not to get the meter and does not want to be controlled by the government. On April 21, 2015, PECO Energy sent a ten-day termination notice to the Complainant, advising that his service will be terminated for failure to give access to install the meter.

PECO Energy avers that the company is required to install AMI meters for the company's electric distribution customers subject to the requirements of Act 129. Consistent with complying with this law, PECO must install AMI meters for all current AMR customers by the end of 2014. In order to comply with Act 129 and deployment plans filed with the Pennsylvania Public Utility Commission, PECO is terminating service to customers who, after repeated requests, do not give the company access to install the meter.

PECO has the right to terminate a customer's service for failure to permit access to install the Smart Meter. Pursuant to Section 10.5, PECO Energy has a right to access the premises of a customer at all reasonable times for the purpose of installing, removing or changing any or all equipment belonging to the company. See Section 10.5 of PECO Electric Service Tariff. Section 18.3 of PECO Energy's tariff, permits the company to terminate a customer for cause if access to the meter is refused. See Section 18.3 of PECO Electric Service Tariff. PECO

Energy's Commission approved tariff is prima facie reasonable and has the full force and effect of law. 66 Pa.C.S. § 316; *Kossmann v. PA PUC*, 694 A.2d 1147 (Pa Cmwlft 1997); *Brockway Glass Co. v. PA. PUC*, 437 A.2d 1067 (Pa. Cmwlft 1981). In this case, the Complainant is refusing the installation of the Smart Meter; therefore, he is subject to termination consistent with Section 10.5 and 18.3 of PECO's tariff.

The Complainant's Complaint should be dismissed as a matter of law as set forth in the company's New Matter and accompanying Preliminary Objection.

5. Denied.
6. Admitted.
7. Admitted.
8. Energy neither admits nor denies the allegations in paragraph 8. PECO is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, such allegation is deemed denied.
9. Paragraph 9 is a Verification and Signature to which no response is required.
10. Paragraph 10 contains information regarding Filing, to which no response is required.

NEW MATTER OF RESPONDENT, PECO ENERGY COMPANY

PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.62(b), further responds to the Complaint and states:

1. The Complainant has requested that he be permitted to "opt out" of the smart meter installation at her residence.

2. PECO Energy's Smart Meter installation plan was approved by the Pennsylvania Utility Commission on May 6, 2010, as a part of the Smart Meter Technology Procurement and Installation Plan, ("Smart Meter/Smart Grid Plan") at docket number M-2009-2123944.
3. By way of background, Governor Edward Rendell signed Act 129 of 2008 into law on October 15, 2008. The Act took effect 30 days thereafter on November 14, 2008, and amended Section 2807 of the Public Utility Code. Among other things, the Act specifically directed that electric distribution companies (such as PECO Energy) with more than 100,000 customers file smart meter technology procurement and installation plans with the Commission for approval. See 66 Pa. C.S. § 2807(f).
4. The statute does not provide customers with an option to "opt out" of smart meter installation.
5. On June 18, 2009, the Commission adopted a Smart Meter Procurement and Installation Implementation Order ("Implementation Order") to establish the standards each plan must meet and to provide guidance on the procedures to be followed for submittal, review and approval of all aspects of each smart meter plan. See Smart Meter Procurement and Installation Implementation Order, entered on June 24, 2009, at Docket No. M-2009-2092655.
6. The Commission's Order does not have a provision for customers to "opt out" of the smart meter installation.
7. On August 14, 2009, PECO Energy filed with the Commission its Petition of PECO Energy Company for Approval of its Smart Meter/Smart Grid Plan.
8. By Order entered May 6, 2010 at Docket No. M-2009-2123944, the Commission approved PECO Energy's Smart Meter/Smart Grid Plan.

9. The Commission's Order approving PECO Energy's plan does not provide an "opt out" provision.

10. In conjunction with the Commission's Implementation Order; the Commission-approved Smart Meter/Smart Grid Plan and continuing compliance with Act 129, PECO Energy has deployed over 194,000 Advanced Metering Infrastructure ("AMI") meters in customer's homes and businesses.

11. Act 129, the Commission's Implementation Order; and PECO Energy's Commission-approved Smart Meter/Smart Grid Plan do not provide customers the ability to "opt out" of having a smart meter installed in their homes or businesses. See 66 Pa. C.S. § 2807(f). See also Smart Meter Procurement and Installation Implementation Order, at Docket No. M-2009-2092655. See PECO Energy's Smart Meter/Smart Grid Plan at docket number M-2009-2123944.

12. The absence of an "opt out" provision in the existing statute; Implementation Order; and Smart Meter/Smart Grid Plan is underscored by a recent bill introduced at the General Assembly.

13. House Bill 394, which was introduced on February 9, 2015, seeks to change the existing law by adding a "opt out" provision. Specifically, House Bill 394 reads as follows:

Section 1. Section 2807(f)(2)(iii) of Title 66 of the Pennsylvania Consolidated Statutes is amended to read:

§ 2807. Duties of electric distribution companies.

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

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

(iii) In accordance with a depreciation schedule not to exceed 15 years. Customers may opt out of receiving smart meter technology under this subparagraph by notifying, in writing, the electric distribution company. The following shall apply:

A) The electric distribution company shall provide an opt-out form to consumers upon request and may provide a method for consumers to opt out electronically through the electric distribution company's Internet website.

14. House Bill 394 attempts to address individual customer concerns about the smart meter (such as the Complainant's concerns) by allowing individual customers to "opt out" of receiving smart meter technology on the mandatory schedule established by Act 129.

15. The "opt out" provision; however, has not been scheduled for a vote by the General Assembly, and the ability to opt out of smart meter installation is not currently permissible under the law.

16. Accordingly, the Complainant's formal complaint, requesting the ability to "opt out" of smart meter installation should be dismissed as a matter of law.

17. The Complainant's Complaint does not allege that PECO Energy has improperly installed the meter in any way contrary or inconsistent with the Commission-approved Smart Meter/Smart Grid Plan.

18. The Complainant simply alleges that he does not want the meter installed.

19. Assuming that everything the Complainant alleges in his Complaint is true, PECO Energy is operating under the basis of Act 129 and the specific direction given to the company by the legislature and the Commission through the Commission's Implementation Order.

20. Further, as the law currently stands, pursuant to Act 129 and the Commission's Implementation Order, customers do not have the ability to "opt out" of smart meter installation.


21. Because PECO Energy's smart meters are being deployed in compliance with the Commission-approved Smart Meter/Smart Grid Plan, and the law does not provide for the

Complainant to “opt out” of smart meter installation, there is no legal basis for the Complainant’s Complaint.

22. For the reasons set forth above, the Complainant’s Complaint should be dismissed as a matter of law.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant Complaint.

Respectfully Submitted,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
shawane.lee@exeloncorp.com

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ANTONIO ROMEO
Complainant
v.

PECO ENERGY COMPANY
Respondent

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DOCKET NO. C-2015-2479260

VERIFICATION

I, Shawane 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, 2015

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANTONIO ROMEO
Complainant
v.

PECO ENERGY COMPANY
Respondent

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DOCKET NO. C-2015-2479260

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Antonio Romeo
9517 Alton Street
Philadelphia, PA 19115

Dated at Philadelphia, Pennsylvania, May 13, 2015



Shawane L. Lee
Counsel for PECO Energy Company
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(215) 841-6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

EXHIBIT "1"

June 10, 2013

Antonio Romeo
9517 Alston Street
Philadelphia, PA 19115

Dear Mr. Romeo:

This will confirm your concerns you have expressed to PECO regarding having an AMI meter installed on your home.

Following overheating issues with some of our newly installed Sensus meters last year, we took unprecedented action to suspend the installation of meters to additional customers while work was completed to prevent similar situations from occurring in the future. PECO completed its own internal investigation, worked with independent experts for additional scientific analysis and testing, and aggressively worked with vendor Sensus to develop meter enhancements for their meter.

Although the enhancements – now available on this model Sensus meter – did show some improvements, PECO worked with the National Electric Energy Testing, Research & Applications Center (part of Georgia Tech), Exponent (an engineering and scientific consulting firm headquartered in California) and Underwriters Laboratory (a leading testing and certification company) for independent testing and analysis. The firms found that the L+G meter was the best solution for our customers at this time.

We have taken unprecedented steps to safely test our meters. We are confident in the independent, scientific testing results by NEETRAC, Exponent and UL. We will continue to test and monitor our meters to ensure they meet the highest safety standards. Safety remains our top priority and we appreciate your cooperation.

All Pennsylvania utilities are required to install new metering technology for customers as part of Pennsylvania's 2008 Act 129 or face possible service termination. We look forward to continuing to work with our customers to successfully meet this requirement.

Should you have any further questions regarding this project or any other aspect of your PECO service, please do not hesitate to contact me. I can be reached daily at (215) 841-6044.

Sincerely,

Linda Lamberson
PECO Meter Installation Team

PECO ENERGY
CREDIT 7