PECO
An Exelon Company

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July 1, 2015

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

RE: Susan Kreider v. PECO Energy Company
PUC Docket No.: C-2015-2469655

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is ***PECO Energy Company's Motion in Limine*** 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,

Shawane Lee
Counsel for PECO Energy Company

cc: Certificate of Service

SL/alb

PENNSYLVANIA PUBLIC UTILITY COMMISSION

SUSAN KREIDER	:	
Complainant	:	
v.	:	**DOCKET NO. C-2015-2469655**
	:	
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 Motion in Limine 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, July 1, 2015

Shawane L. Lee
Counsel for PECO Energy Company
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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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RESPONDENT, PECO ENERGY COMPANY'S MOTION IN LIMINE

Respondent, PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.103, respectfully requests that this Honorable Commission limit the issues to be developed at hearing to those pertaining to billing and the ability of PECO Energy to accept Complainant's meter readings pursuant to ALJ Salapa's April 8, 2015 Order.

1. On or about February 5, 2015, Complainant filed a Formal Complaint against Respondent, PECO Energy Company, disputing unspecified charges for service provided to 169 West Queen Lane.

2. The Complainant alleged that PECO would not accept meter readings from an analog meter she had an electrician install after she removed an AMI meter installed by PECO.

3. The Complainant's formal complaint also requested the ability to keep the analog meter and to "opt out" of the use of a smart meter stating health issues as the reason for the request.

4. On March 10, 2015, Respondent filed an Answer and New Matter denying that Complainant had been improperly billed and denying the request to "opt out".

5. PECO simultaneously filed a Preliminary Objection to Complainant's complaint, requesting dismissal of the Complainant's request to "opt out" of AMI meter installation for health reasons pursuant to Act 129.

6. In PECO's Preliminary Objection, the company cited 66 Pa. C.S. § 2807(f), which requires PECO to install smart meters and does not provide customers with an opportunity to "opt out" of AMI meter installation. New Matter § 2, 3, 4.

7. PECO averred in the company's Preliminary Objection that the Pennsylvania Public Utility Commission ("Commission") ordered PECO through the Smart Meter Procurement and Installation Implementation Order, entered on June 24, 2009, at Docket No. M-2009-2092655 to install meters for all PECO customers.

8. PECO additionally averred there were several House Bills introduced to give customers (such as the Complainant) the ability to "opt out" of AMI meter installation, including health reasons; however, none of the bills were scheduled for a vote by the General Assembly.

9. Accordingly, the ability to opt out of smart meter installation (whatever the reason, health or otherwise) is not currently permissible under the law.

10. On March 27, 2015, the case was assigned to David A. Salapa as the Administrative Law Judge ("ALJ Salapa").

11. On April 8, 2015, ALJ Salapa issued an Order, stating that PECO properly complied with relevant statutes, regulations and orders by attempting to install a smart meter at Complainant's residence and by threatening termination for lack of access to the meter.

12. ALJ Salapa's Order further stated that the Commission approved PECO's smart meter procurement and installation plan and that the Commission has previously addressed complaints opposing smart meter installation and charges.

13. ALJ Salapa's Order specified that the "allegations in the complaint at Docket No. C-2015-2469655 concerning smart meter installation are dismissed for legal insufficiency." Order § 2.

14. ALJ Salapa's Order specifically limited the scope of the remaining allegations in Complainant's formal complaint that would proceed to hearing.

15. Specifically, ALJ Salapa ordered that the issues to proceed to hearing are "the portion of the complaint of Susan Kreider at Docket No. C-2015-2469655 ***alleging incorrect charges and the failure of PECO Energy Company to accept her meter readings*** shall be scheduled for a hearing before an administrative law judge."

16. On June 3, 2015, Administrative Law Judge Darlene D. Heep issued a Prehearing Order, stating in part, that the issue to proceed to hearing would be ***"whether PECO provided or is providing unreasonable service given Complainant's allegations of 'deleterious health symptoms' caused by the Smart Meter."***

17. PECO motions this Honorable Commission to exclude testimony and evidence regarding the Smart Meter; health symptoms allegedly caused by the Smart Meter; radiation issues; claims of discrimination based on disability; or any other allegation concerning health and the Smart Meter.

18. This matter has already been decided by the Commission in ALJ Salapa's Order.

19. Additionally, there is a line of precedent, which specifically states that Complainant's are not permitted to "opt out" of Smart Meter installation for health reasons. See Renney Thomas v. PECO Energy, C-2012-2336225 (Final Order entered, Dec. 31, 2013) and Theresa Gavin v. PECO Energy, C-2012-2325258 (Final Order entered, Jan. 24, 2013), which specifically addresses whether a PECO customer can "opt out" of meter installation due to health concerns.

20. Permitting any testimony or evidence concerning the Smart Meter and whether PECO is acting unreasonably by not permitting the Complainant to "opt out" or to give her other alternatives due to her health condition contradicts the law that is in place.

21. Forcing PECO to defend against these allegations is prejudicial as PECO is constrained by Act 129 and is required to follow the law set in place by the legislature and the rules and Implementation Order set by the Commission.

22. Evidence or testimony regarding the Smart Meter; health effects of the meter; alternatives to "opting out" for health reasons; discrimination for disability or other based on the Smart Meter; should be precluded from discussion in the scheduled hearing because they were dismissed in ALJ Salapa's Order and have already been decided as a matter of law.

WHEREFORE, PECO Energy Company respectfully requests that this Honorable Commission limit the dispute in the scheduled hearing to billing and the lack of acceptance of Complainant's meter readings from the AMR meter she installed.

Respectfully submitted,

Shawane L. Lee
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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.

Dated at Philadelphia, Pennsylvania, July 1, 2015.

Shawane L. Lee
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CERTIFICATE OF SERVICE

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

Susan Kreider
169 W Queen Lane
Philadelphia, PA 19144

Dated at Philadelphia, Pennsylvania, July 1, 2015.

Shawane L. Lee
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