

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF COMPLAINANT, ANTONIO ROMEO, TO THE INITIAL
DECISION GRANTING PRELIMINARY OBJECTIONS**

Complainant, Antonio Romeo, hereby files his Exceptions to the Initial Decision of Administrative Law Judge, Elizabeth H. Barnes, Granting the Preliminary Objections of PECO Energy Company (“PECO”), as follows:

1. On Page 6 of the Initial Decision, as a supposed basis for granting PECO’s Preliminary Objections, Judge Barnes states the following: “The Commission simply does not have the authority, absent a directive in the form of legislation, to prohibit the Respondent from installing a smart meter where a customer does not want one. Similarly, the Respondent would be in violation of law if it did not install a smart meter at the Complainant’s residence.” Just like PECO, Judge Barnes ignores and/or misapprehends Complainant’s main argument: that federal law preempts the supposed state law basis that PECO is relying on in its attempt to force installation of the smart meter. Thus, Judge Barnes is incorrect that “The Commission simply does not have the authority” to stop PECO from forcing installation of the smart meter – rather, federal law **compels** the Commission to direct PECO to cease and desist in its attempts to force installation of the smart meter. This is a point that was clearly not addressed at all by Judge Barnes

in her Initial Decision, and her recommendation should be rejected for that reason alone.

2. Throughout the Initial Decision, Judge Barnes mischaracterizes Complainant as merely seeking to “opt out” of the installation of the smart meter. This is nothing but an attempt to undermine the validity of Complainant’s arguments. To the contrary, Complainant is asking the Commission to recognize that PECO’s acts are being taken in violation of federal law, which is binding on the state of Pennsylvania and the PUC. See Supremacy Clause, Art. VI, Cl. 2 of the U.S. Constitution (“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”). The PUC does not get to pick and choose which federal laws to apply; if a federal law applies and preempts a state law on an issue, the PUC is compelled to stop action inconsistent with that federal law from occurring. Judge Barnes did not address this issue at all in her Initial Decision. At the very least, the preemption question must be given due consideration, not ignored.
3. Judge Barnes correctly states that “[a]ny doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections,” but she did not faithfully apply this standard in recommending that Complainant’s Complaint be dismissed without a hearing. (Initial Decision, Pg. 5.) Had Judge Barnes faithfully applied the standards cited in the Initial Decision, there is only one reasonable result: denial of PECO’s Preliminary Objections. This is because there is no reasonable way of

saying that “the law says with certainty, based on well-pleading factual averments . . . that no recovery or relief is possible.” (Initial Decision, Pg. 5.) To the contrary, federal law clearly shows that **Complainant** is entitled to recovery since PECO’s attempt to force installation of the smart meter is preempted by, i.e. in violation of, federal law. Neither PECO nor the Commission may take action in violation of federal law, the “supreme law of the land” under the Supremacy Clause of the U.S. Constitution.

4. Notably, Judge Barnes did not cite a single decision of any court anywhere in the country holding, as a matter of law, that the federal law at issue here (the Energy Policy Act of 2005) does not preempt state laws providing for forced installation of smart meters. This fact alone demonstrates that this is an open question that needs to be litigated, not summarily tossed aside without any analysis or consideration in the context of Preliminary Objections.
5. As far as Complainant can tell, none of the decisions cited on Page 7 of the Initial Decision addressed the main argument that Complainant raised in this matter (and that PECO and Judge Barnes ignored) – that the Energy Policy Act of 2005, a federal law, preempts the state law basis on which PECO is relying to force installation of a smart meter. The cases cited by Judge Barnes therefore do not provide a basis for denying Complainant relief.
6. In the Introduction of Judge Barnes’ Initial Decision, Judge Barnes refers to Complainant as a “she.” (Initial Decision, Pg. 1.) Complainant is a male, and the error is indicative of the “copy-and-paste” approach taken to resolving PECO’s Preliminary Objections. Moreover, the Initial Decision is dated June 4, 2015, the same day on which Complainant filed and served his Answer to PECO’s New Matter. (Initial

Decision, Pg. 9.) In light of this — and the fact that Judge Barnes entirely failed to consider Complainant’s main federal preemption argument — Complainant respectfully submits that the entire validity of the Initial Decision of Judge Barnes is called into question.

7. As it is clear that Judge Barnes failed to address Complainant’s main argument, her Initial Decision must be rejected.

WHEREFORE, Complainant, Antonio Romeo, respectfully requests that the Public Utility Commission reject Judge Barnes’ Initial Decision Granting the Preliminary Objections of PECO, and allow this matter to proceed so that Complainant may be heard on the merits.

Dated: July 20, 2015

Respectfully submitted,



Antonio Romeo
Complainant

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CERTIFICATE OF SERVICE

I, Antonino Romeo, hereby certify that I have served the foregoing Exceptions to the Initial Decision of Administrative Law Judge, Elizabeth H. Barnes, Granting the Preliminary Objections of PECO Energy Company this 20th day of July, 2015 via the Commission's electronic filing system upon the following:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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Shawane L. Lee, Esq.
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