



An Exelon Company

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July 28, 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 Petition for Interlocutory Review* 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

cc: Certificate of Service

SL/lo

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 § 5.302(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Petition for Review of PECO Energy Company within 10 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to the Petition for Review, 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 28, 2015



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

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Pursuant to Section 5.302 of the Pennsylvania Public Utility Commission (Commission) regulations, 52 Pa. Code § 5.302, PECO Energy Company (hereinafter PECO) requests that the Commission grant review of and answer the following questions in the affirmative:

- 1) Should Administrative Law Judge Darlene Davis Heep’s June 3, 2015 Pre-Hearing Order and July 23, 2015 Order denying PECO’s Motion in Limine allowing Complainant’s claims of health effects and disability arising from the smart meter be revised because the Orders are inconsistent with the Commission’s previous orders, regulations and case law?
- 2) Should the question of whether PECO has provided or is providing unreasonable service given Complainant’s allegations of “deleterious health symptoms” caused by the Smart Meter be excluded from the hearing as well as any evidence, testimony or discussion to support this claim?

In support of this request, PECO submits as follows:

On March 2, 2015, PECO Energy was served with a formal Complaint filed by Complainant, Susan Kreider, who alleged that, due to her concerns about possible concerns about health effects, she had had her smart meter removed by an electrician and replaced by an analog meter. As relief, she requested that “I want to be permitted to keep an analog meter either until 2023 or, better yet, allow opt out as per legislation being introduced week of February 9, 2015 by State Representative Mike Reese.” On March 10, 2015, PECO filed an Answer and New Matter and, separately, a Preliminary Objection.

On March 27, 2015, the above matter was assigned to Administrative Law Judge David A. Salapa to rule on PECO’s Preliminary Objection to dismiss the Complainant’s smart meter claims

and her request to “opt out” of meter installation because of health reasons. ALJ Salapa issued an order on April 8, 2015, ruling 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 of services for lack of access to the meter. The ruling 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. ALJ Salapa’s Order specified that the claims “concerning smart meter installation are dismissed for legal insufficiency” and that the issue was excluded from further consideration.

On May 26, 2015, the Complainant requested that the telephonic hearing scheduled before ALJ Salapa be changed to an In Person Hearing to take place in Philadelphia. ALJ Salapa granted the Complainant’s request. The case was reassigned to ALJ Heep and the case scheduled for a hearing on Wednesday, July 29, 2015.

On June 3, 2015, notwithstanding ALJ Salapa’s Order, as well as numerous Commission decisions, ALJ Heep issued a Prehearing Order, stating 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” and PECO’s threat to terminate the Complainant’s service for refusing the meter.

On July 1, 2015, PECO filed a Motion In Limine requesting that any evidence or testimony concerning the smart meter, health effects regarding the smart meter, or disability claims to “opt out” of smart meter installation be excluded. PECO emphasized that, pursuant to ALJ Salapa’s April 8, 2015 Order, the dispute must be limited to billing and the lack of acceptance of Complainant’s meter readings from the AMR meter she installed. On July 23, 2015, ALJ Heep issued an Order denying the Motion in Limine, in part, and allowing the previously disallowed discussions of “deleterious health symptoms” caused by the smart meter. ALJ Heep also determined that PECO’s threat to

terminate Complainant's service for refusing the smart meter would also be permitted to be addressed at hearing.

PECO submits that interlocutory review of these material questions is necessary to prevent smart meter health effect and disability claims from proceeding to hearing, as well as to prevent similar complaints from being heard throughout the pendency of this proceeding. The Complaint cannot possibly be sustained; there can be no finding that PECO is acting unreasonably by not offering the Complainant the option not to have the meter installed in light of her disability, because meter installation is mandatory pursuant to Act 129, the Commission's Implementation Order, and 66 Pa.C.S. §2807(f)(2). PECO would be substantially prejudiced by having to defend against these claims as the company is constrained by Act 129 and is required to follow the law set in place by the legislature and the Commission's Smart Meter Procurement and Installation Implementation Order. To allow litigation of these issues would simply be a waste of the resources of both the Commission and the parties.

Further, resolving these issues now will expedite the conduct of this proceeding. The ALJs' conflicting Orders may create confusion as to the permissible scope of the proceeding and result in a flood gate of similar smart meter health cases being litigated against PECO. Such a process does not promote judicial economy, especially in this instance where Act 129, the Commission's regulations and Implementation Orders, and case law do not support ALJ Heep's ruling.

WHEREFORE, PECO respectfully requests that the Commission undertake interlocutory review of ALJ Heep's June 3, 2015 Pre-Hearing Order and July 23, 2015 Order denying PECO's Motion in Limine and answer the material questions in the affirmative.

Dated: July 28, 2015

Respectfully submitted,
PECO ENERGY COMPANY



By: _____
Romulo L. Diaz, Jr.
Shawane L. Lee
Counsel for PECO Energy Company

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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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 Petition for Interlocutory Review 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 28, 2015.



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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 Petition for Interlocutory Review in the above matter upon all interested parties by hand delivering a copy to:

Susan Kreider
169 W Queen Lane
Philadelphia, PA 19144
Via Hand Delivery

Administrative Law Judge Darlene Davis Heep
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107
Via Email

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

Dated at Philadelphia, Pennsylvania, July 28, 2015.



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