



An Exelon Company

Legal Department  
2301 Market Street / S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Direct Dial: 215.841.6841

August 3, 2015

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

**RE: Mary Paul v. PECO Energy Company**  
**PUC Docket No.: C-2015-2475355**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Exceptions* 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 long, sweeping underline.

Shawane Lee  
Counsel for PECO Energy Company

cc: Certificate of Service

SL/ab



## REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Mary Paul (“Complainant”) in the above-referenced matter on July 21, 2015. On April 1, 2015, Complainant filed a formal complaint against PECO Energy. In her formal complaint, Complainant objects to the installation of an AMI electric “Smart Meter” at her residence and requests to “opt out” of the meter installation. Complainant alleges she does not want the smart meter installed at her property because she believes the meters have health and safety risks.

Respondent, PECO Energy filed an Answer with New Matter on April 27, 2015, denying the allegations in the Complaint. PECO Energy also filed a Preliminary Objection to Complainant’s Complaint, 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. On June 23, 2015, Complainant submitted a response to PECO Energy’s New Matter and Preliminary Objection.

On June 23, 2015, Administrative Law Judge Joel H. Cheskis issued an Initial Decision, dismissing Complainant’s Complaint, holding inter alia that Complainant

...Ms. Paul is unable to demonstrate that PECO has violated the Public Utility Code, any Commission Order or regulation or any Commission-approved tariff. As the party with the burden of proof in this proceeding, Ms. Paul’s Complaint must therefore be dismissed. 66 Pa.C.S. § 332(a). Doing so is consistent with recent Commission precedent on this issue. *See. e.g., Maria Povacz v. PECO Energy*, Docket No. C-2012-2317176 (Order entered January 24, 2013); *Theresa Gavin v. PECO Energy*, Docket No. C-2012-2325258 (Initial Decision dated Nov. 26, 2012; Final Order entered January 24, 2013) (Gavin). Such precedent clearly articulates the Commission’s position that customers cannot refuse to have a smart meter installed at their home.

See Mary Paul v. PECO Energy Company, C-2015-2475355, (Order entered, June 23, 2015).

In her Exceptions, Complainant states that “the subject of smart meters causing harm to people and to their property is known”. The Complainant states the high-density pulsed RF levels emitted from the meter every couple of minutes is dangerous. The Complainant

additionally alleges that the meters cause fires and are blowing up houses and this is happening all over the country. The issues the Complainant raises in her Exceptions are not pertinent to (1) whether she 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 her property.

The Complainant argues in her Exceptions regarding the health affects of the smart meter and to support her argument, attaches correspondence from Sharon Weinstein, a Registered Nurse, from the group “Integrative Health Forum” who discusses Smart Meters and the need to be educated on energy fields the body’s stressors to the environment. The Complainant’s argument regarding whether the Commission should consider the health concerns surrounding the AMI meter still does not challenge ALJ Cheskis’ ruling that there is no “opt out” provision in Act 129 or any Implementation Order; and therefore, is an irrelevant basis to overturn his decision. Further, regarding the alleged health effects of the meter: ALJ Cheskis astutely reasoned:

Ms. Paul provided extensive discussion regarding electrohypersensitivity (EHS), a medical condition that causes her a physical reaction to electronic devices and that she believes warrants her denying installation of a smart meter at her property. The Commission has previously rejected arguments regarding any medical implications caused by smart meters as reasons for opting out of smart meter installation. *See e.g. Gavin, supra.*

The Complainant also argues that Act 129 does not mandate the installation of the smart meter and this fact is recorded in the House and Senate Journals. The Complainant addresses the definition of the smart meter under 66 Pa. C.S. § 2807(f) and states that it defines metering technology as recording electricity usage on an hourly basis. The Complainant states that PECO’s calls to her and her neighbors, advising of the smart meter, misinformed that the meter

was safe. However, none of these arguments challenges the key question of law – whether Act 129 or any other legislation permits the Complainant to refuse the smart meter installation. In her Exceptions, Complainant has provided no legal justification to support her allegations, regarding opting out of smart meter installation. 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 provide no grounds for overturning the Initial Decision whatsoever, and consist solely of policy arguments. The Exceptions, raising either irrelevant points or raising safety, health and policy arguments, are without any merit. Nothing in the Complainant’s Exceptions warrants a reversal of ALJ Cheskis’ 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 Cheskis 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 with regard to its smart meter installation policies and procedures. Consistent with 66 Pa.C.S. §2807(f)(2), ALJ determined that there is no “opt out” provision, giving the Complainant a right to “opt out” of meter installation. As ALJ Cheskis correctly concluded:

Even when accepting as true all well pleaded material facts in the complaint, as well as every reasonable inference from those facts, it is clear that the complaint should be dismissed because Ms. Paul would not be entitled to relief under any circumstances as a matter of law because PECO is required by law to install smart meters throughout its service territory. A hearing is not necessary and PECO's Preliminary Objection will be granted. Ms. Paul's Complaint will therefore be dismissed.

ALJ Cheskis' 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 Cheskis' 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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Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
Direct Dial: 215.841.6841  
Fax: 215.568.3389



