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An Exelon Company

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August 6, 2015

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

RE: Steven and Diane Van Schoyck v. PECO Energy Company
PUC Docket No.: C-2015-2478239

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Reply Exceptions of PECO Energy Company* 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 Stephen and Diane Van Schoyck (“Complainants”) in the above-referenced matter on July 22, 2015. On April 14, 2015, Complainants filed a formal complaint against PECO Energy. In their formal complaint, Complainants object to the installation of an AMI electric “Smart Meter” at their residence and request to “opt out” of the meter installation. Complainants allege they do not want the smart meter at their property because they believe the meter has health and safety risks.

Respondent, PECO Energy filed an Answer with New Matter on May 6, 2015, denying the allegations in the Complaint. PECO Energy also filed a Preliminary Objection to Complainants’ 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 May 11, 2015, Complainants submitted a response to PECO Energy’s New Matter and Preliminary Objection.

On June 19, 2015, Administrative Law Judge Steven K. Haas (“ALJ Haas”) issued an Initial Decision, dismissing Complainants’ Complaint, holding inter alia:

The Van Schoycks have failed to meet their burden of demonstrating that PECO violated the Public Utility Code, a Commission order or regulation or a Commission-approved Company tariff provision. PECO’s installation of a smart meter at the Van Schoycks’ residence was in compliance with current Pennsylvania law, which required the action undertaken by the company.

See Stephen and Diane Van Schoyck v. PECO Energy Company, C-2015-2478239, (Order entered, June 19, 2015).

In their Exceptions, Complainants state that the smart meter is a radiation-emitting device that wiretaps “without proper and legal search warrants.” The Complainants additionally allege that The Federal Energy Act of 2005 states that smart meters are not to be mandated or forced on

customers. The Complainants agree “there is no opt of these meters in the state of PA” but they believe this should be illegal. The Complainants additionally allege that State Representative Bob Godshall is not allowing legislation that would permit customers to opt out because his son works for PECO. The issues the Complainants raise in their Exceptions are not pertinent to (1) whether they have 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 their property.

The Complainants argue in their Exceptions regarding the health affects of the smart meter and claim that since their meter was installed they have suffered from electro-sensitivity, causing them sleeping problems, chest tightness and other symptoms. The Complainants’ argument regarding whether the Commission should consider the health concerns surrounding the AMI meter still does not challenge ALJ Haas’ 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, the Commission has previously rejected arguments regarding any medical implications caused by smart meters as reasons for opting out of smart meter installation. See, *Paul v. PECO Energy*, Docket No. C-2015-2475355 (Initial Decision issued July 1, 2015), *Gavin v. PECO Energy*, Docket No. C-2012-2325258 (Final Order entered Jan. 24, 2013), *Thomas v. PECO Energy*, Docket No. C-2012-2336225 (Final Order entered Dec. 31, 2013).

None of the Complainants’ arguments challenges the key question of law – whether Act 129 or any other legislation permits the Complainants to refuse the smart meter installation. In their Exceptions, Complainants have provided no legal justification to support their allegations, regarding opting out of smart meter installation. Complainants’ 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. Complainants do 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 health and policy arguments, are without any merit. Nothing in the Complainants' Exceptions warrants a reversal of ALJ Haas' 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 Complainants were served with a copy of PECO's Preliminary Objections with a Notice to Plead and were 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 Haas 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 Haas determined there is no “opt out” provision, giving the Complainants a right to “opt out” of meter installation. As ALJ Cheskis correctly concluded:

PECO’s preliminary objection will be sustained. As explained below, even accepting as true all well pleaded material facts in the complaint, and every reasonable inference deducible from those facts, the complaint does not allege any violations of the Public Utility Code, Commission orders or regulations, or a Commission-approved company tariff. Under current Pennsylvania law, PECO is required to install smart meters and customers are not permitted to refuse the installation.

ALJ Haas’ 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 Complainants’ formal complaint states a case against PECO Energy and as a matter of law the Complainants have 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 Haas’ 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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