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An Exelon Company

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

Direct Dial: 215.841.6841

August 10, 2015

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

RE: Antonio Romeo v. PECO Energy Company
PUC Docket No.: C-2015-2479260

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 stylized flourish at the end.

Shawane Lee
Counsel for PECO Energy Company

cc: Certificate of Service

SL/ab

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ANTONIO ROMEO
COMPLAINANT**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

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Docket No. C-2015-2479260

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

**Shawane L. Lee, Esquire
2301 Market Street
Philadelphia, PA 19103
215.841.6841
Shawane.Lee@exeloncorp.com
Counsel for PECO Energy Company**

DATE: August 10, 2015

REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Antonio Romeo (“Complainant”) in the above-referenced matter on July 20, 2015. Complainant filed a formal complaint against PECO Energy objecting to the installation of an AMI electric “Smart Meter” at his residence and requested to “opt out” of the meter installation. Complainant alleged he did not want the smart meter at his property because he believes the meter has health and safety risks and installation of the meter is in violation of federal law.

Respondent, PECO Energy filed an Answer with New Matter on May 13, 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 May 23, 2015, Complainant submitted a response to PECO Energy’s New Matter and Preliminary Objection.

On June 4, 2015, Administrative Law Elizabeth H. Barnes (“ALJ Barnes”) issued an Initial Decision, dismissing Complainant’s Complaint, holding inter alia:

Viewing the Complaint in the instant case in the light most favorable to the Complainant, the Complainant asks that the Commission preclude PECO from terminating his service or from installing a smart meter on his service property. Complainant requests that the Commission consider the health implications of smart meters as well as the legal implications of the Energy Act of 2005, a federal act. The Complainant contends that smart meters are a health and safety risk. Accepting these facts as alleged as true for the purpose of disposing of preliminary objections, Respondent avers that the Complaint fails to allege that Respondent has violated the Public Utility Code, Commission regulations or orders. The Respondent contends that the complaint is legally insufficient. I agree.

See Antonio Romeo v. PECO Energy Company, C-2015-2478239, (Order entered, June 4, 2015).

In his Exceptions, Complainant states that his complaint should not be dismissed because federal law preempts state law. Specifically, Complainant alleges that the Federal Energy Act of 2005 is controlling regarding his right to refuse a smart meter. The Complainant states that PECO Energy and the Public Utility Commission are ignoring federal law, which preempts state laws “providing for forced installation of smart meters”. The issues the Complainant raises in his Exceptions are not pertinent to (1) whether he 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 their property.

The Complainant’s federal preemption argument does not challenge the key question of law – whether Act 129 or any other legislation permits the Complainants to refuse the smart meter installation. In his Exceptions, Complainant has provided no legal justification to support his allegations, regarding opting out of smart meter installation. In effect, the federal preemption argument does not apply here because there is no conflict between the Federal Energy Act of 2005 and Pennsylvania’s Act 129 of 2008. Under the Supremacy Clause, any state law that conflicts with a federal law is preempted. *Gibbons v. Ogden*, 22 U.S. 1 (1824). Conflict arises when it is impossible to comply with both the state and federal regulations, or when the state law interposes an obstacle to the achievement of Congress's discernible objectives. *Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992). A conflict exists if a party cannot comply with both state law and federal law (for example, if state law forbids something that federal law requires). *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963). In this case, there is no conflict between the Federal Energy Act of 2005 and Pennsylvania’s Act 129 and the requirement of all Pennsylvania electric customers to have a smart meter installed. There

is nothing in Act 129 which makes it impossible to comply with the Federal Energy Act. Accordingly, the Complainant's preemption argument is irrelevant and does not present any grounds for overturning the Initial Decision. Further, 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 a federal preemption argument, which is inapplicable in this case. The Exceptions, raising federal preemption is without any merit. Nothing in the Complainant's Exceptions warrants a reversal of ALJ Barnes' 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 Barnes 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 Barnes determined there is no “opt out” provision, giving the Complainant a right to “opt out” of meter installation. As ALJ Barnes correctly concluded:

Although the Complainant is genuine in his concerns, the Commission’s decisions cited above are controlling. Because Act 129 of 2008 and the Commission’s orders direct the Respondent to develop and implement a smart meter procurement and installation plan and because there is no opt out provision either in the Act or the Commission’s orders, the Complaint is dismissed for legal insufficiency.

ALJ Barnes’ 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 Barnes’ 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,



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

