

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

Direct Dial: 215-841-6841

October 7, 2015

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

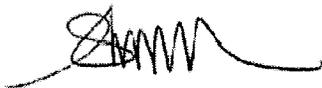
**RE: Thomas McCarey v. PECO Energy Company**  
**PUC Docket No.: C-2015-2503724**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy's Preliminary Objections* 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,



Shawane Lee  
Counsel for PECO Energy Company

SL/ab

cc: Certificate of Service

PENNSYLVANIA PUBLIC UTILITY COMMISSION

THOMAS MCCAREY  
Complainant

v.

PECO ENERGY COMPANY  
Respondent

:  
:  
:  
:  
:  
:  
:

DOCKET NO. C-2015-2503724

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NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed PRELIMINARY OBJECTION 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 PRELIMINARY OBJECTION, 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.

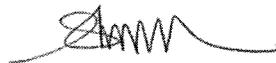
File with:

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, October 7, 2015



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Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street S-23  
Philadelphia, PA 19101-8699  
215-841-6863  
[Shawane.Lee@exeloncorp.com](mailto:Shawane.Lee@exeloncorp.com)

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>THOMAS MCCAREY</b>	:	
<b>Complainant</b>	:	
v.	:	<b>DOCKET NO. C-2015-2503724</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	
	:	

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**PRELIMINARY OBJECTION OF RESPONDENT,  
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On September 16, 2015, PECO Energy was served with a Formal Complaint filed by Thomas McCarey (hereafter “Complainant”). A copy of the Formal Complaint is attached hereto as Exhibit “1”.

2. In his formal complaint, the Complainant is objecting to the installation of a Smart Meter at his home and makes various arguments why the company should not install the meter including that the meter emits electromagnetic radiation and that he does not give his consent to have the meter installed. The Complainant additionally alleges that the company is in violation of the federal wiretapping law and claims the meter is an unlawful surveillance device. See Exhibit “1”.

3. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.

4. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).

5. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.<sup>1</sup>

6. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.<sup>2</sup>

7. A complaint must be able to recover under the law to survive a preliminary objection.<sup>3</sup>

8. All of the non-moving party's averments must be taken as true for the sake of deciding the preliminary objection.<sup>4</sup>

9. The court does not, however, need to accept, "unwarranted inferences from facts, argumentative allegations, or expressions of opinions."<sup>5</sup>

10. Section 703 of the Public Utility Code, 66 Pa. C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing of, in its opinion, a hearing is not necessary to the public interest.

11. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. *Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm'n*, 817 A.2<sup>nd</sup> 593 (Pa.Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

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<sup>1</sup> *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

<sup>2</sup> 2006 Pa. PUC Lexis 111, \*7.

<sup>3</sup> *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) ("preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover").

<sup>4</sup> *Id.* at 7-8.

<sup>5</sup> *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, \*3.

12. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

13. All of the allegations raised in the Complaint were previously raised by the Complainant in a prior former complaint and were dismissed.

14. The Complainant filed formal complaint docketed at C-2013-2354862. See Formal Complaint, C-2013-2354862, attached hereto as Exhibit “2”.

15. PECO Energy 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.

16. Complainant filed an Answer to PECO Energy’s Preliminary Objections on April 8, 2013, arguing that installation of the meter violates federal law and that he cannot be forced to install a surveillance device in his home.

17. On April 18, 2013, Administrative Law Judge Cheskis issued an Initial Decision, dismissing Complainant’s Complaint, holding inter alia that:

...the McCareys have failed to carry their burden to demonstrate that PECO has 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.”

See ALJ Cheskis Initial Decision, attached hereto as Exhibit “3”.

18. The Complainant filed Exceptions to ALJ Cheskis’ Initial Decision on May 9, 2013.

19. In his Exceptions, Complainant reiterated that he refuses the Smart Meter and alleges it is a surveillance device in violation of federal law.

20. PECO Energy filed Reply Exceptions on May 13, 2013, averring that the Complainant's policy arguments were irrelevant and did not provide a basis to overturn ALJ Cheskis' Initial Decision.

21. The Pennsylvania Public Utility Commission reviewed ALJ Cheskis' Initial Decision pursuant to 66 Pa. C.S. § 332(h).

22. September 26, 2013, the Commission issued an Opinion and Order, adopting ALJ Cheskis' Decision. See Commission Opinion and Order, attached hereto as Exhibit "4".

23. In that Decision, the Commission addressed the issues raised in the Complainant's Exceptions and determined they were without merit.

24. Consistent with ALJ Cheskis' Decision, the Commission dismissed the Complainant's Complaint against PECO Energy. See Exhibit "4".

25. The doctrine of res judicata operates to prevent re-litigation of claims already litigated on the merits. As stated by the Commission in Frank Tomazin v. Pennsylvania-American Water Company, 1997 Pa. PUC Lexis 52 (1997), "the policies underlying the doctrine of res judicata are minimizing judicial energy devoted to individual cases, establishing certainty and respect for court judgments, and protecting the party relying on the prior adjudication from vexatious litigation."

26. The doctrine of res judicata, which is also known as claim preclusion, holds that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies. Hopewell Estates, Inc. v. Kent, 435 Pa. Superior Ct. 471, 476, 646 A.2d 1192 (1994). The doctrine of res judicata applies to cases before the Commission. See, O'Toole v. Bell Telephone Co. of Pennsylvania, Inc., 77 Pa. P.U.C. 98, 104 (1992). The doctrine of res judicata reflects the refusal of the law to

tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:

- (1) Identity of issues;
- (2) Identity of causes of action;
- (3) Identity of persons and parties to the action; and
- (4) Identity of the quality and capacity of the parties suing or sued.

Day v. Volkswagenwerk Aktiengesellschaft, 318 Pa. Superior Ct. 255, 474 A.2d 1313, 1316, 1317 (1983).

27. In the present case all four elements of res judicata are met. Clearly, the parties are identical in both Complaints. The thing sued upon is identical in both Complaints. Both the current formal complaint and the formal complaint filed in 2013 at docket number C-2013-2354862 relate to the Complainant's desire to opt out of smart meter installation at his residence. The previous complaint concerns whether the Complainant is entitled to opt of smart meter installation. The previous complaint addressed the Complainant's challenges on federal law, wiretapping and privacy risks the Complainant alleges are associated with the meter. The cause of action is identical. Finally, the quality and capacity of the parties is identical in both Complaints. The Complainant is the electric customer in both Complaints, and PECO is the public utility providing service to the Complainant.

28. The Commission entered an Order dismissing the Complainant's previous Complaint as a matter of law, with prejudice, and such dismissal prevents the re-filing of the Complaint. With his new Complaint, the Complainant has ignored the Commission's clear dismissal Order and has attempted to re-file his Complaint.

29. For purposes of determining whether res judicata applies, the essential inquiry is whether the ultimate and controlling issues have been decided in a prior proceeding where the parties had an opportunity to appear and to be heard. Stevens Painton Corp. v. First State Ins. Co., 746 A.2d 649, 654 (Pa. Super. 2000) (emphasis added). The Complainant was provided the opportunity to present his complaint, which was decided by ALJ Cheskis and reviewed by the full Commission, who decided on the merits of his Complaint.

30. Because the present Complaint asserts the same factual and legal basis for relief as the dismissed 2013 Complaint regarding installation of the smart meter, the Complainant is estopped from attempting to re-assert his claims here.

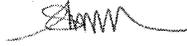
31. The doctrine of res judicata is meant to protect against just the type of re-litigation that the Complainant is attempting with his present formal Complaint. It is pointless and a waste of the Commission's time and resources to permit the new Complaint to go forward with respect to any issues raised in the Complaint concerning whether PECO has the right to install the smart meter at his home, installation of the smart meter, Act 129 or any issues surrounding the smart meter.

32. For the reasons set forth above, all of the Complainant's smart meter claims should be dismissed on the grounds of res judicata.

### **REQUEST FOR RELIEF**

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's Complaint as it pertains to the smart meter, and all issues which were raised in the 2013 Complaint at docket number C-2013-2354862.

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  
(215) 841-6841  
Fax: 215.568.3389  
Shawane.Lee@exeloncorp.com

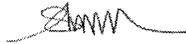
**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>THOMAS MCCAREY</b>	:	
<b>Complainant</b>	:	
v.	:	<b>DOCKET NO. C-2015-2503724</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**VERIFICATION**

I, Shawane L. 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 Pleading 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.



Date: October 7, 2015

\_\_\_\_\_  
Shawane L. Lee

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>THOMAS MCCAREY</b>	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>DOCKET NO. C-2015-2503724</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**CERTIFICATE OF SERVICE**

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Thomas McCarey  
285 Dayleview Road  
Berwyn, PA 19312

Dated at Philadelphia, Pennsylvania, October 7, 2015



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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  
(215) 841-6841  
Fax: 215.568.3389  
Shawane.Lee@exeloncorp.com

# **EXHIBIT “1”**

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an Informal complaint.

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name THOMAS MCCAREY

Street/P.O. Box 285 DAYLEVIEW ROAD Apt #

City BERWYN State PA Zip 19312

County CHESTER

Telephone Number(s) Where We Can Contact You During the Day:

(610) 687 7607 (home) (610) 687 7607 (mobile)

E-mail Address (optional):

Utility Account Number (from your bill) 69633-00206

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name RECEIVED

Street/P.O. Box SEP 8 2015

City State Zip PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

PECO

3. **Type of Utility Service**

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- ELECTRIC                       WASTEWATER/SEWER  
 GAS                                       TELEPHONE/TELECOMMUNICATIONS (local, long distance)  
 WATER                                       MOTOR CARRIER (e.g. taxi, moving company, limousine)  
 STEAM HEAT

4. **Reason for Complaint**

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain). **SEE ENCLOSED LETTER**

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. **Requested Relief**

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

SEE ENCLOSED LETTER

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. Protection From Abuse (PFA)

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

- c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

**Note:** Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

**8. Legal Representation**

If you are filing a Formal Complaint as an individual on your own behalf, you are **not** required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer **in this matter**, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name           *N/A*          

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (if known) \_\_\_\_\_

**Note:** Corporations, associations, partnerships, limited liability companies and political subdivisions are **required** to have a lawyer represent them at a hearing **and** to file any motions, answers, briefs or other legal pleadings.

9. **Verification and Signature**

**You must sign your complaint.** Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink**. If you do not sign the Formal Complaint, the PUC **will not accept it**.

**Verification:**

I THOMAS MCCARREY, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

  
(Signature of Complainant)

09/08/2015  
(Date)

**Title of authorized employee or officer** (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

**Note:** If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee. If the Formal Complaint is **not signed** by one of these individuals, the PUC **will not accept it**.

10. **Two Ways to File Your Formal Complaint**

**Electronically.** You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

**Note:** If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

**Mail.** Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, Pennsylvania 17120

**Note:** Formal Complaints sent by fax or e-mail will **not** be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

**Keep a copy of your Formal Complaint for your records.**

Thomas McCarey  
285 Dayleview Road  
Berwyn, PA 19312  
PECO Account #69633-00206

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, Pennsylvania 17120

**RECEIVED**

SEP 8 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Formal Complaint

Dear Secretary Chiavetta:

- 1) This Notice and Demand pertains and applies to PECO and its electric service provided to the address 285 Dayleview Road, Berwyn, PA 19312.
- 2) It has come to my attention that a digital electric meter, possibly a "Smart Meter" or a similar device is to be installed on my property without full disclosure to me, without my informed consent and without compliance with various laws.
- 3) I hereby revoke and deny any and all implied, expressed and/or recorded consent, if any exists, for the placement and operation of a "Smart Meter" and all other utility metering devices which emit electromagnetic radiation (herein "EMR") by either transmission or "dirty electricity", or which "monitor" or conduct surveillance, or make recordings of any events and activities within private property that I occupy, or that may be upgraded to do those things.
- 4) "Smart Meters" and digital utility meters meet the statutory definition of unlawful surveillance devices put forth as "Wiretapping" in United States Code (USC) Title 18, Part 1, Chapter 119, Sec 2511 and other State and Federal laws, and those meters are designed and intended to record personal and private events and activities within private structures and properties which constitutes violation of the United States Constitution, Bill of Rights, 4th Amendment guaranteeing all people to be "...secure in their persons, houses..."

and to be free of "search". Also, because electromagnetic radiation is known to cause cancer and other diseases and injuries, installation of any meter with either an EMR transmitter, a switching mode power supply, a transformer or similar devices on a private residence without consent of the occupants and property owner constitutes Assault under United States Code Title 18, Section 113.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas McCarey".

Thomas McCarey  
enc

**CERTIFIED MAIL**

Thomas McCarey  
285 Dayview Rd.  
Berwyn, PA 19312-1201



U.S. POSTAGE  
PAID  
BERWYN, PA  
19312  
SEP 06 15  
PA PA 7  
\$6.96  
00023153-03

7015 1520 0000 1652 9064 1000

ROSEMARY CHAVETTA, SECRETARY  
-PA. P.U.C.  
400 NORTH STREET  
HARRYSBURG, PA 17120

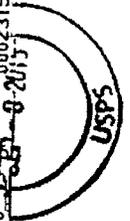
RETURN RECEIPT  
REQUESTED

**RECEIVED**

SEP 8 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

1712000211



# **EXHIBIT “2”**

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

RECEIVED

Please print in ink or type.

MAR 4 2013

1. CUSTOMER (COMPLAINANT) INFORMATION

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Your name, mailing address, county, telephone number, utility account number and service address:

Name THOMAS A. MCCABEY / MARGERY H. MCCABEY

Street/P.O. Box 285 DAYLEVIEW RD Apt #

City BERWYN State PA Zip 19312-1201

County CHESTER

Daytime Telephone Number Where We Can Contact You: (610) 644-7947

E-mail Address (optional): tom\_mccabe7@yahoo.com

Utility Account Number 69633-00206  
(from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name N.A.

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

PECO ENERGY / EXELON

RECEIVED

FEB 11 2013

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

TELEPHONE  
(local, long distance)

(e.g., taxi, moving company, limousine)

4. COMPLAINT (check one)

A. In general, what is your complaint?

I want to oppose the company's proposed rate increase.

There are incorrect charges on my bill.

There is a reliability, safety or quality problem with my utility service.

I received a notice that my utility service is being terminated.

I would like a payment agreement.

Other (explain).

B. State the facts of your complaint.

*Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.*

SEE ATTACHED

RECEIVED

MAR 4 2013

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

10  
[http://www.electricalplanet.com/documents/public\\_health](http://www.electricalplanet.com/documents/public_health) -

Sheet - sum.pdf

Make copies for PUC

5. RELIEF

How do you want your complaint to be resolved? Use additional paper if you need more space.

SEE ATTACHED

RECEIVED

MAR 4 2013

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**6. PROTECTION FROM ABUSE**

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility **AND** your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

**7. PRIOR UTILITY CONTACT**

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)



NO



If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

**RECEIVED**

MAR 4 2013

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**8. LEGAL REPRESENTATION (IF ANY)**

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (If Known) \_\_\_\_\_

**9. VERIFICATION AND SIGNATURE**

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I, THOMAS A. MCCAREY, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Thomas A. McCarey  
(Signature)

02/11/2013  
(Date)

\_\_\_\_\_  
Title of authorized employee or officer

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**10. FILING**

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 <sup>nd</sup> Floor Harrisburg, Pennsylvania 17120
---	--

Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

**Keep a copy of your complaint for your records.**

Thomas A. McCarey/Margery H. McCarey  
285 Dayleview Road  
Berwyn, Pennsylvania 19312-1201  
Chester County  
(610) 644-7947  
[tom\\_mccarey@yahoo.com](mailto:tom_mccarey@yahoo.com)  
PECO Account #69633-00206  
PECO Energy  
Utility Type: Electric  
Dear Commissioners:

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

I do not want a "smart meter" electric meter on my property.

There is an illusion that installing a wireless smart grid is more cost effective than wiring smart meters. In Connecticut:  
' **"The pilot results [of installing "smart meters"] showed no beneficial impact on total energy usage," Attorney General George Jepsen said. "And, the savings that were seen in the pilot were limited to certain types of customers and would be far outweighed by the cost of installing the new meter systems," he said.** ' The results will be the same in Pennsylvania.

It is far more energy efficient to transmit data over fiberoptic cables, or even copper wires than to transmit it wirelessly, according to a Swiss study wireless transmission takes 3 times as much energy. It is essential that the PUC and others pushing transmitting meters see this information. <http://www.lowtechmagazine.com/2009/06/embodied-energy-of-digital-technology.html#more>

The wireless goal is to blanket the state, and it creates a complexity of problems with literally everything the wireless frequencies touch. These RF EMFs go through walls, roofs, people, infrastructure, everything in ecosystems and will bring unrealized consequences including liabilities. The meter program is well intended but will not address Pennsylvania's energy problems. Pennsylvania building exposure to solar EMFs will cause the buildings to generate extreme heat and the utilities are responding to the symptoms with massive energy waste reacting to the symptoms.

Pennsylvania is dealing with their building solar exposure with paints, finishes or shade and will immediately knock massive energy waste off the challenged electrical grids without re-inventing the wheel. Air conditioning is really refrigeration being used because the building has become a source of extreme heat, and the "smart meter" radiation will make the situation much worse.

I do not appreciate faceless, nameless bureaucrats imposing a compromise to my

health without even asking me. There has been a virtual media blackout on the dangers of "smart meters."

It is very important for the Pennsylvania Public Utility Commission (PUC) to understand that even though safety standards on wireless exposure are based on decades of scientific literature, science was missing linking the frequencies to adverse health effects.

The FCC and other international governing bodies adopted the Specific Absorption Rate (SAR) for limits of human exposure. The SAR test didn't consider the smart meter routers, relays, collectors, antennas or that humans are bio electric.

As a result of the missing science in the SAR test, the PUC only addressed the smart meter as an end use device and state in their safety sheet that a short distance from the meter keeps you safe. The average coverage area of the smart meter router is 5 sq. miles and one collector 125 sq. miles. If you are in the coverage area, a short distance from the meter is irrelevant.

To revise safety standards a draft bill was introduced by a U.S. Member of Congress to update the Specific Absorption Rate. As soon as they add the errors or omissions in the SAR test, the frequencies will be illegal as applied.

Wireless "smart" meters emit radio-frequency microwave radiation (called "RF"), similar to that used by cell phones and wifi routers. The transmissions from "smart" meters go on day and night, and are not directly related to the amount or time of household usage. This frequency is part of the range of frequencies recently placed in the category "possible human carcinogen" by the World Health Organization (May 2011).

Public health professionals and scientists have been concerned about human exposure to this type of low-level radiation for some time now. But a "smart" meter is an RF emitter that I have no control over. There is no "off" switch, nor can I move it to a different location in my home. Recent information confirms suspicions that at least 90% of the RF emitted by the "smart" meters is NOT transmitting electrical usage data, but is part of the "mesh network" talking to itself, and includes a lot of redundant "chatter" between my meter and other meters. This is for the convenience of PECO, and its effects on me (and other living things) apparently were not even considered when they were designing the mesh network.

Funding and deployment of the "smart grid gold rush" has vastly outstripped the federal government's ability to develop meaningful privacy and security standards and regulations within one of the nation's most critical infrastructures. The Federal mandate was only to offer each individual residents the option of having a "smart"

meter. Where is the letter from PECO asking me if I want a "smart meter?" PECO's easement clause allows them access to their equipment, for meter-reading and maintenance. But I call into question whether installation of the "smart" meter—which includes **telecommunications equipment** and marks an unprecedented change in metering, blanketing my home in a class 2B carcinogen—actually qualifies as "maintenance"!

I expect to keep my analog electric meter for the foreseeable future. I further expect the PUC to inform and protect the people of Pennsylvania. Thank you.

Sincerely yours,



Thomas A. McCarey

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Thomas A. McCarey  
285 Dayleview Road  
Berwyn, Pennsylvania 19312

To:  
PECO  
Pennsylvania Public Utility Commission  
Tredyffrin Township Supervisors  
Chester County Commissioners  
Warren Kampf  
Andrew Dinniman  
Governor Corbett

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SECRETARY'S BUREAU

**NOTICE OF NO CONSENT TO TRESPASS AND SURVEILLANCE, NOTICE OF LIABILITY**

Be advised, you and all other parties are hereby denied consent for installation and use of any and all "Smart Meters" or any other surveillance and activity monitoring device, or devices, at the above property. Installation and use of any surveillance and activity monitoring device that sends and receives communications technology is hereby refused and prohibited. Informed consent is legally required for installation of any surveillance device and any device that will collect and transmit private and personal data to undisclosed and unauthorized parties for undisclosed and unauthorized purposes. Authorization for sharing of personal and private information may only be given by the originator and subject of that information. That authorization is hereby denied and refused with regard to the above property and all its occupants. "Smart Meters" violate the law and cause endangerment to residents by the following factors:

1. They individually identify electrical devices inside the home and record when they are operated causing invasion of privacy.
2. They monitor household activity and occupancy in violation of rights and domestic security.
3. They transmit wireless signals which may be intercepted by unauthorized and unknown parties. Those signals can be used to monitor behavior and occupancy and they can be used by criminals to aid criminal activity against the occupants.
4. Data about occupant's daily habits and activities are collected, recorded and stored in permanent databases which are accessed by parties not authorized or invited to know and share that private data by those whose activities were recorded.
5. Those with access to the smart meter databases can review a permanent history of household activities complete with calendar and time-of-day metrics to gain a highly invasive and detailed view of the lives of the occupants.
6. Those databases may be shared with, or fall into the hands of criminals, blackmailers, corrupt law enforcement, private hackers of wireless transmissions, power company employees, and other unidentified parties who may act against the interests of the occupants under metered surveillance.

- 7: "Smart Meters" are, by definition, surveillance devices which violate Federal and State wiretapping laws by recording and storing databases of private and personal activities and behaviors without the consent or knowledge of those people who are monitored.
- 8: It is possible for example, with analysis of certain "Smart Meter" data, for unauthorized and distant parties to determine medical conditions, sexual activities, and physical locations of persons within the home, vacancy patterns and personal information and habits of the occupants.
9. Your company has not adequately disclosed the particular recording and transmission capabilities of the smart meter, or the extent of the data that will be recorded, stored and shared, or the purposes to which the data will and will not be put.
10. Electromagnetic and Radio Frequency energy contamination from smart meters exceeds allowable safe and healthful limits for domestic environments as determined by the EPA and other scientific programs.
11. Smart meters can be hacked and will be hacked. The small CPU in these meters cannot protect itself as good as a home PC can, and home PCs are well known for being compromised. By deploying these in the millions with the same exact software and hardware they become a huge target and will endanger the community if an attacker can switch the power on and off from remote in mass. This makes these Smart Meters dangerous and a liability to the ratepayers who would have to ultimately pay for any damage.
12. Smart meters are not protected from EMP attacks, large EMPs or localized EMPs as simple as a kid with a battery and a coil (Electro Magnetic Pulse).
13. Disabling the receiver will not prevent other forms of "hacks". For example a malicious attacker could confuse the internal CPU, reset it, change random memory locations, change the KWH reading, force a power disconnect, or completely disable a smart meter with a simple coil of wire and a small battery. This can't happen with a mechanical meter. It is well known that a wide EMP can take out car computers; smart meters will now make that possible on the city wide electric infrastructure.
14. A thief or burglar could use the same EMP or hacking methods to turn off the house power even if the electrical switch box is locked.
15. Encryption of data is irrelevant due to well known "Tempest" attacks; see [en.wikipedia.org/wiki/TEMPEST](http://en.wikipedia.org/wiki/TEMPEST) where an attacker monitors internal electrical switching signals of a CPU or other internal components from a distance. Governments have developed standards covering this. Compromising emanations are defined as unintentional intelligence-bearing signals which, if intercepted and analyzed, may disclose the information transmitted, received, handled, or otherwise processed by any information-processing equipment, like in Smart Meters. This would violate customers' privacy and any privacy policy the power company has at this time.
16. Turning off the RF transmitter is irrelevant due to the well-known "Tempest" attacks, the RF wireless transmitter is not needed in these attacks and disabling the RF transmitter completely negates any advantages of these Smart Meters or their costs anyway.
17. Data about an occupant's daily habits and activities are collected, recorded and stored in permanent databases which can be accessed by parties not authorized or invited to know and share that private data by those whose activities were recorded. This can be done by cyber-attacks or disgruntled employees and has been done before where the attacked company may not know of the intrusion for months.

18. The power company has not adequately disclosed the encryption or security methods to the public. The source code to any data encryption must be open source and peer reviewed by the security community at large in order to be as secure as is currently possible. Security by obscurity is no security at all.

19. Previously it was "fair" that the power company had to go to a lot of trouble to adjust the mechanical meter to read more than it should since they had to come out to do it manually. People can't modify the mechanical meter because it's locked up; the power company probably won't do it because it's just too costly, and so that was "fair enough". Now with the smart meters they can change it anytime they wish by remote and with little risk that the customer will know. Why should customers trust a company that only has profits and stock price in mind? With possible modification of computer code or measurement values / ratios from remote, who will overlook them? Who will ever know? This is an unfair practice and a liability to the ratepayers.

20. The power company has misled the public and the Public Utility Commission by leaving out publicly available facts and information regarding smart meters. There are many downsides to this new technology that the power company has not presented to the general public or the Public Utility Commission. Information is slanted and doesn't address the negative issues fully.

21. Smart meter installation is not mandatory. The Public Utilities Commission only gave permission to install the meters. There is no forced mandate. The PUC has no such delegated authority from the People to make a forced mandate. If they did make a forced mandate, it's clearly null and void on its face. The Energy Policy Act of 2005 really only covers Federal areas within the limited jurisdiction of the CONSTITUTIONALLY LIMITED United States Government, even if it did apply, it also only mandates that a power company "offer" smart meters to the public, upon customer request. Any suggestion by the power company to customers that smart meters are mandatory is a false statement, fraudulent, and false commercial speech which is punishable by law and also opens the power company to liability via lawsuit.

22. The power company has no delegated authority from the People to install a security risking, privacy invading, health threatening, hackable, unfair billing, or wide power grid security threatening device on anyone's property.

23. Smart meters by default are not programmed to "run backwards", like the current mechanical meters do now. Making it harder for people to go "green" with solar panels or wind turbines using a low cost Grid Tie Inverter. The PUC has shown the intent over and over of encouraging the public to go "green", the power company's website and public disclosures show intent in this direction. The PUC allows the power company to charge an extra fee for "green projects". Smart meters go against the PUC's intent and the public interest by making it more difficult for people to install small solar or "green power" installations and gain KWH "credits" in power that they can use at a later time.

24. It is well known to electronic and computer engineers that a high voltage spike, such as a nearby lightning strike, or EMP can change memory bits in normal memory or EEPROM memory (Electrically Programmable Memory that is non-volatile) by adding extra electrons to the small memory cells. This can change internal smart meter settings like the KWH calibration data or other settings that may change the rate of power charged without the customer or power company ever knowing about it. This can't happen with a mechanical meter.

25. Installation of a smart meter will lower this property's value due to all the stated

issues and controversy. This could subject ALL the ratepayers to higher rates due to lawsuit claims for value lost. The power company has no delegated authority from the People to use its easement or install equipment in a way that will lower property values or make a property less desirable to a buyer.

I demand an immediate stop to the installation of all Smart Meters until all issues are resolved, the Smart Meters to be removed at customers request with no extra charge, an opt-in only for customers who are properly and fully informed and that must have this technology for their own specific need. This is in the public's best interest.

I demand an immediate investigation into these issues by the Public Utilities Commission.

I demand that the Public Utilities Commission immediately order the power company to fully inform all customers of ALL the known facts, including complaints and downsides of this technology within 30 days.

I reserve the right to amend this notice and complaint at any time, this is not a complete list of concerns since this technology is new and new information is being found every day. Concerns listed here are not in any particular order.

I forbid, refuse and deny consent of any installation and use of any monitoring, eavesdropping, and surveillance devices on my property, my place of residence and my place of occupancy. That applies to and includes "Smart Meters" and surveillance and activity monitoring devices of any and all kinds. Any attempt to install any such device directed at me, other occupants, my property or residence will constitute trespass, stalking, wiretapping and unlawful surveillance and endangerment of health and safety, all prohibited and punishable by law through criminal and civil complaints. All persons, government agencies and private organizations responsible for installing or operating monitoring devices directed at or recording my activities, which I have not specifically authorized in writing, will be fully liable for any violations, intrusions, harm or negative consequences caused or made possible by those devices whether those negative consequences are justified by "law" or not..

This is legal notice. After this delivery the liabilities listed above may not be denied or avoided by parties named and implied in this notice. Civil Servant immunities and protections do not apply to the installation of smart meters due to the criminal violations they represent.

Notice to principal is notice to agent and notice to agent is notice to principal. All rights reserved.

Sincerely yours,



Thomas A. McCarey

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

STATE OF CONNECTICUT ~ OFFICE OF THE ATTORNEY GENERAL ATTORNEY  
GENERAL GEORGE JEPSEN

JEPSEN URGES STATE REGULATORS TO REJECT  
CL&P'S PLAN TO REPLACE ELECTRIC METERS

*For Immediate Release* TUESDAY FEB. 8, 2011

HARTFORD – Connecticut Light & Power Co.'s plan to replace existing electric meters with advanced technology would be very expensive and would not save enough electricity for its 1.2 million customers to justify the expense, Attorney General George Jepsen said Tuesday.

Jepsen made the comments in a brief filed Tuesday with the state Department of Public Utility Control, which is reviewing CL&P's request to replace all existing meters with "advanced meter infrastructure." The company also asked regulators to guarantee that the company will be allowed to recover its full cost of installation before the department actually evaluates what the costs actually were and whether those costs were reasonable.

"CL&P's proposal would force the company's ratepayers to spend at least \$500 million on new meters that are likely to provide few benefits in return," Jepsen said. He urged the regulators to "continue to evaluate emerging meter system technologies as well as other conservation programs" and only approve installation of the advanced meters when they are cost effective.

To evaluate the technical capabilities and reliability of the advanced metering system, state regulators previously approved a limited study of 10,000 meters. Between June 1 and Aug. 31, 2009, CL&P tested the meters on 1,251 residential and 1,186 small commercial and industrial customers, who volunteered and were paid for their participation in the study. The company reported its results to the DPUC on Feb. 25, 2010.

"The pilot results showed no beneficial impact on total energy usage," Jepsen said. "And, the savings that were seen in the pilot were limited to certain types of customers and would be far outweighed by the cost of installing the new meter systems," he said. Also, the existing meters, installed between 1994 and 2005, have a useful life of 20 years and replacing them early would incur additional costs for customers, Jepsen said. Assistant Attorneys General Michael C. Wertheimer and John S. Wright are representing Jepsen before the DPUC.

###

CONTACT: *Susan E. Kinsman, [susan.kinsman@ct.gov](mailto:susan.kinsman@ct.gov); 860-808-5324; 860-478-9581 (cell)*

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

## Public Health Threatened By Rapidly Increasing Exposure To High Frequency Electromagnetic Radiation

### The Issues:

#### 1) Radically increasing everyday exposure to radiofrequency radiation, including the very high frequency radiowaves known as microwaves.

- The increased exposure comes from two unrelated sources.
  - One: transmitted radiofrequency radiation from devices such as WiFi, cellphones, wireless baby monitors, DECT cordless phones, and cell towers, none of which were present in the 1970's and are unavoidable today.
  - Two: high frequencies, or electrical pollution, into the radiofrequency range present on building wiring from poorly engineered electronics and energy efficient lighting which only began widespread use in the late 1970's.

#### 2) Lack of adequate safety standards.

- EPA does not protect the public health.(1,2) There is no true safety standard due to political pressure from an industry group in the 1990's.
  - Radiofrequency radiation threatens human health and our bee, bat and bird populations and the EPA does nothing. (3,4,5,6,7,8,9,10,11,12,13,14,15,16,17)
- There are no comprehensive conservative safety standards designed to safeguard the public health during the continuous exposures to radiofrequency radiation experienced in daily life. (1,2)
  - Our current FCC "safety" standards are designed solely to protect a 6 ft 185 lb man from tissue heating during a short (6 minute) exposure.
  - Our current FCC "safety" standards are not designed to protect even a 6 ft man from biological effects during a continuous exposure.
  - None of the transmitter technology has been subjected to rigorous health studies as is required for drugs, in spite of its use resulting in involuntary exposure for an uninformed non-consenting population.
  - Nor has any post-marketing public health surveillance been implemented.
- There are NO safety standards to safeguard the public health from exposure to high frequencies on building wiring, resulting in widespread availability of dangerous consumer products including:
  - Compact fluorescent light bulbs and other fluorescent lights with electronic ballasts.
  - Dimmer switches, variable speed motors, etc.
  - Inverters, including those on wind turbines and solar systems.
- Safe electrical devices could be engineered if the proper standards were in place.

#### 3) Everyday exposures to radiofrequency radiation threaten our public health.

- Since the 1970's many disease rates have skyrocketed, including rates of Alzheimer's Disease, multiple sclerosis, asthma, diabetes, and autism. Studies show a relationship to radiofrequency exposures.(6,11,12,13,14)
- Overexposure to radiofrequency radiation can cause radiofrequency sickness (aka radiowave or microwave sickness) in susceptible people. It has very real and disabling health effects.(3,4,5)

- Information about radiofrequency sickness can be found at [www.electricalpollution.com](http://www.electricalpollution.com).
- **Exposure to radiofrequency radiation has very real and threatening health effects in the long-term for a majority of the population.**
  - More information can be found at [www.bioinitiative.org](http://www.bioinitiative.org), a report by leading researchers.
  - Detrimental biological effects, distinct from tissue heating effects, have been extensively documented in studies at a range of different frequencies and at levels far below the current United States safety standard and provide a mechanistic basis for health effects (6)
  - A recent Swedish public health study suggests a link between the decline in public health and cellphones.(7)
- **High frequency signals on power lines also cause illness. See [www.electricalpollution.com](http://www.electricalpollution.com).**
  - *Milham and Morgan found a dose-response relationship between high frequencies present on building wiring and cancer.(9)* Recent analysis of historical epidemiological data indicates a relationship to cancer, diabetes, heart disease, and suicide.(10)
  - Removing high frequencies on building wiring has improved MS symptoms, blood sugar levels, asthma, sleep quality, teacher health, headaches, ADD, and numerous other health problems.(11,12,13)
  - Technical papers provide a solid electrical and biomolecular basis for these effects. (18,19)
    - Transients and communications signals on wires induce much stronger current density levels in the human body than does the powerline 60Hz signal.
    - *The induced currents disturb normal intercellular communications, causing harmful long-term and short-term effects.*
  - Technical information necessary to properly measure the electrical pollution levels on building wiring can be found on the Technical page at [www.electricalpollution.com](http://www.electricalpollution.com).
    - A simple meter is also available that can provide accurate measurements in most situations.

#### **4) Our civil rights trampled**

- **For the last 13 years, sensitive people like ourselves have had no protection in public places, essentially restricting us to our homes, even forcing us to move from them in a quest for a safe haven, and preventing us from using public libraries, public schools, and attending public events. Those concerned about long-term health effects have also had no recourse.**
- **The 1996 Telecommunications Act preempts the right to free speech and has stopped all consideration of the safety and environmental consequences of exposure to transmitted radiofrequency radiation, including the pulsed microwave radiation used in modern communications, in siting transmitting towers and in the court of law. Therefore, the silence outside of and inside of court is not a measure of the safety of the technology, but rather the tightness of the gag.** Ecology House is a perfect example of how this law has unfairly restricted the right to free speech time after time, resulting in involuntary exposure to a dangerous pollutant for millions. [http://www.marinnj.com/marinnews/ci\\_12880530](http://www.marinnj.com/marinnews/ci_12880530)
- **Increasing involuntary exposure.** Transmitting utility meters will soon be installed on all homes nationwide and wireless broadband will be everywhere, in spite of the risks.
  - Most transmitting meters and wireless broadband transmit continuously.
  - This will cause great disability for the increasing population of individuals with radiofrequency sickness. The long-term threat to the public health is nationwide.
    - Utilities refuse to offer meaningful alternatives to having a transmitting meter for those with radiofrequency sickness.

- And utilities refuse to remove transmitting meters for those being made ill.
  - And communities are not protecting those with radiofrequency sickness from wireless broadband.
- **There is no more basic civil right than the right to health and safety in our homes. Without that, what is there?**

### The Solutions

- **Briefing of congressional committees with jurisdiction** by Norbert Hankin of the Radiation Division of the EPA on the history of the development of current US radiofrequency radiation safety policy that has resulted in the inadequacy of current safety standards to protect public health of the general population during continuous exposures.
- **Hearing on the public health threat posed to the general public by exposure to transmitted radiofrequency radiation and high frequency electrical pollution on all electrical wiring.**
  - Consult The EMR Policy Institute (802-426-3035) to ensure that all relevant researchers are invited to testify.
- **Require fiber optic and other wired infrastructure for the "National Broadband Plan for Our Future."**
- **Reverse Section 704 of the 1996 Telecommunications Act [found at 47 U.S.C. Section 332 Subsection (7)(B)]** which has deprived citizens of their First Amendment Rights by preventing discussion of health and environmental threats posed by wireless technologies.
- **Reverse the ban on incandescent light bulbs until safe alternatives exist.** (New Zealand has already done this.)
- **Reform procedures at the EPA to limit industry influence.**
- **Require the EPA to write a conservative standard to establish safe levels of exposure for the general population during the continuous daily exposures we now experience.**
  - See NAS report: **Identification of Research Needs Relating to Potential Biological or Adverse Health Effects of Wireless Communication (2008) pp.13-18.**
  - The non-ionizing radiation standard should be protective from the non-thermal effects of exposure to radiofrequency radiation, both transmitted and on building wiring.
  - Radiation emitting and electrically polluting devices should require rigorous health testing prior to approval.
  - Rigorous surveillance must be required to document whether the new standard is sufficiently protective.
  - Continuously transmitting devices should be banned. (The Israeli Environmental Ministry has done this, citing the precautionary principle.)
  - Compliance with the new safety standard should be required for all consumer products and all other governmental agencies.
- **Require the Children's Health Study to include assessment of both transmitted radiofrequency radiation exposure levels and electrical pollution levels in its study design.**
- **Ban cellphone use, including texting, while driving.**

- Collection and tracking of data from cellphone providers should be required as part of accident reports, including whether the phone was on, off, texting, or calling.
- **Require a warning label on cellphones and cordless phones.**
  - It should state "Due to significantly increased health risks pregnant women and children under 21 should strictly limit use. Others should use sparingly." (8,14,15)
- **Require the Surgeon General to educate the public about wireless radiation exposure health risks, e.g. the increased cancer risk for children, the risks to unborn children – (ADHD, heart abnormalities) and the increased risks for adults – (brain tumors, other health risks such as neurodegenerative diseases, compromise of immune function, negative effects on sleep and cognitive function). (3,4,5,6,7,8,9,10,11,12,13,14,15)**

### Congress Must Act Now

**Dangerously high exposures to high frequencies, both transmitted and on building wiring, are contributing to deteriorating public health, causing healthcare costs to skyrocket.**

**Remember, X-rays were once regarded as harmless and used as entertainment at garden parties and to size children's shoes.**

#### References:

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285 Dayleview Road  
Berwyn, Pennsylvania 19312

Shawane L. Lee  
Assistant General Council  
Exelon BSC  
2301 Market Street/S23-1  
Philadelphia, Pennsylvania 19103

Re: Your letter of 02/26/2013

Dear Mrs. Lee:

Thank you for your letter. My attorney, J. Michael Considine, Jr., may have spoken to you about my concerns.

Act 129 is in violation of the federal rules for "smart meters." There is no federal security mandate for "smart meters," according to George W. Arnold the national coordinator for smart-grid interoperability at the National Institute of Standards and Technology. This agency of the U.S. Department of Commerce is said not to be involved in regulations but is only tasked with promoting standards among industries. While both the 2005 and 2007 faux energy bills were codified into public laws, NO part of them creates a federal law pertaining to individual consumers or dictating that the public must be forced to comply with provisions of SMART Grid.

Contrary to the bleating of manufacturers and utility talking heads, who claim there is no "opt out", the fact is I, the consumer must be offered the meter, or request a meter and "OPT IN". I can not be forced to comply with an unrevealed contract between private corporations, and to which I was never a party and had no knowledge of.

But legalities are just an annoyance to Pennsylvania politicians, aren't they?

Be assured that no smart meter will ever be installed on my property. Thank you.

Sincerely,

Thomas A. McCarey

RECEIVED

MAR 4 2013

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

**YOU ARE HEREBY PUT ON NOTICE THAT NEITHER PECO, NOR ANY OF ITS EMPLOYEES, AGENTS OR CONTRACTORS, HAS PERMISSION TO INSTALL, OR ATTEMPT TO INSTALL, ANY "SMARTMETER™" AT THE FOLLOWING ADDRESS:**

**285 Dayleview Road, Berwyn, PA 19312**

Any attempt to install a SmartMeter at said location shall be deemed actionable under relevant state and federal laws, and in violation of the Constitutions of the Commonwealth of Pennsylvania and the United States of America. Please be aware that under federal law, "If

two or more persons conspire to injure, oppress, threaten or intimidate any citizen in free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States, or because of his having exercised the same, or if two or more persons go on the premises of another with the intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured - they shall be fined not more than \$10,000 or imprisoned not more than ten years or both."

Please be advised that the land use fee for the above address is hereby declared to be \$5,000.00 per person per day, or any portion thereof. Installation of a SmartMeter™ at the aforesaid location will result in the initiation of a claim for damages for trespass, wrongful burdening of a utility easement, invasion of privacy and violation of other constitutionally protected rights, intentional infliction of emotional distress, and for such other personal injuries and torts as the facts may warrant. Please be aware that activity at this location may be under surveillance. Kindly advise the undersigned of the name, address, policy number and phone number of PECO's insurer or surety.

Please accept delivery of this letter by certified mail as a good faith effort by the undersigned to exhaust all applicable administrative remedies and claims procedures that may be a precondition to legal action in relation to the installation, or attempted installation, of SmartMeters.

Thomas A. McCarey

285 DAYLEVIEW ROAD  
BERWYN PA 19312



7011 3500 0000 7295 6736

U.S. POSTAGE  
PERMIT NO. 1211  
PHILADELPHIA, PA



\$7.00

17120



RETURN RECEIPT  
REQUESTED

RECEIVED

MAR 4 2013

PA PUBLIC UTILITIES  
SECRETARY'S OFFICE

ROSEMARY CHIAVETTA  
PUC COMMISSION  
COMMONWEALTH KEYSTONE BLDG.  
400 NORTH STREET  
2ND FLOOR  
HSBG PA 17120

RETURN RECEIPT  
REQUESTED



MAR 4 2013 6:19:36 AM

TO: CHIAVETTA, R. PUC (CHIAVETTA)  
Agency: PUC  
Floor:  
External Carrier: CERTIFIED



70113500000072956736



# **EXHIBIT “3”**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

April 29, 2013

C-2013-2354862

Thomas A. McCarey and Margery H. McCarey  
v.  
PECO Energy Company

TO ALL PARTIES:

Enclosed is a copy of the Initial Decision of the Office of Administrative Law Judge.

If you do not agree with any part of this decision, you may send written comments (called **Exceptions**) to the Commission. Your signed Exceptions to the decision, if any, must be: 1) filed with the Secretary of the Commission, and 2) mailed or hand-delivered to each party of record, **within twenty (20) days** of the date of this letter.

To file Exceptions with the Secretary of the Commission, you must mail or hand-deliver them as follows:

If using U.S. Postal Service:

Secretary  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

If using Overnight or Hand Delivery Service:

Secretary  
Pa. Public Utility Commission  
400 North Street  
Commonwealth Keystone Building, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Or, instead of mailing or hand-delivering your Exceptions, you may electronically file them with the Secretary of the Commission. To do so, you need to establish an account on the Commission's eFiling system, which may be accessed at <http://www.puc.state.pa.us/efiling/default.aspx>. Please note that Exceptions sent to the Commission by fax or e-mail will **not** be accepted for filing.

In addition to filing your Exceptions with the Secretary of the Commission, a courtesy copy of your Exceptions should be e-mailed to the Commission's Office of Special Assistants (OSA) at [pa-OSA@pa.gov](mailto:pa-OSA@pa.gov). If the document is too large to e-mail, please mail or hand-deliver a copy on CD-ROM or DVD (or other data storage media), in Microsoft Word 2010 format or other compatible format to either address noted above.

**Replies to Exceptions**, if any, must be filed with the Secretary of the Commission and served on each party of record and the Commission's OSA, in the manner described above. **They are due within ten (10) days of the date when Exceptions are due.**

It is your responsibility to serve all the parties with your Exceptions and Replies to Exceptions. Failure to do so may render your filing unacceptable. A certificate of service (see format in 52 Pa. Code §1.58) shall be attached to the filed Exceptions or Replies to Exceptions.

Exceptions and Replies to Exceptions shall follow 52 Pa. Code §§5.533 and 5.535 particularly the 40-page limit for Exceptions and the 25-page limit for Replies to Exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Initial Decision shall include the page number(s) of the cited section of the decision.

If no Exceptions are received, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

Rosemary Chivetta  
Secretary

JF  
Enclosures  
Certified Mail  
Receipt Requested

PECO ENERGY  
EXHIBIT **3**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas A. McCarey and Margery H. McCarey	:	
	:	
v.	:	C-2013-2354862
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Joel H. Cheskis  
Administrative Law Judge

**HISTORY OF THE PROCEEDING**

On February 11, 2013, Thomas A. McCarey and Margery H. McCarey filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against PECO Energy Company (PECO) at Docket Number C-2013-2354862. In their Complaint, the McCarey's included a 14-page, single-spaced, typed attachment explaining that they do not want a smart meter installed on their property.<sup>1</sup> The attachment included significant detail regarding twenty-five separate reasons why the McCarey's believe that smart meters are bad and why they do not want one on their property. The McCarey's included, among other things, a "Notice of No Consent to Trespass and Surveillance," stating "be advised, you and all other parties are hereby denied consent for installation and use of any and all 'Smart Meters' or any other surveillance and activity monitoring device, or devices, at the above property."

On April 1, 2013, PECO filed a Preliminary Objection in response to the McCarey's Complaint. The Preliminary Objection included a Notice to Plead. In its Preliminary

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<sup>1</sup> A "smart meter" is an electric meter that records consumption of electric energy in increments of an hour or less and communicates that information at least daily back to the utility for monitoring and billing purposes.

Objection, PECO argued that the McCarey's Complaint should be dismissed because it is legally insufficient. PECO argued that there are no genuine issues of material fact and that PECO is entitled to judgment as a matter of law with respect to all allegations in the Complaint. In support of its argument, PECO provided extensive legal discussion and background detailing requirements that PECO must install smart meters for all its customers. PECO concluded its Preliminary Objection by stating that "as the law currently stands, pursuant to Act 129 and the Commission's Implementation Order, customers do not have the ability to 'opt out' of smart meter installation." PECO added that there is therefore no legal basis for the McCarey's Complaint and that the Complaint should be dismissed as a matter of law.

The McCarey's Answer to PECO's Preliminary Objection was due no later than April 15, 2013. 52 Pa. Code §§ 5.101(f)(1), 1.12(a), 1.56(a)(1) and (b). The McCarey's did not file an Answer to PECO's Preliminary Objection.

By Motion Judge Assignment Notice dated April 2, 2013, the parties were informed that I was assigned as the Presiding Officer in this matter and responsible for resolving any issues which may arise during the preliminary phase of this proceeding. PECO's Preliminary Objection is procedurally ready to be ruled upon. For the reasons discussed below, PECO's Preliminary Objection will be granted and the McCarey's Complaint will be dismissed.

#### FINDINGS OF FACT

1. The Complainants in this case are Thomas A. McCarey and Margery H. McCarey.
2. The Respondent in this case is PECO Energy Company.
3. The Service Address is 285 Dayleview Road, Berwyn, PA 19312.
4. On February 11, 2013, the McCarey's filed a formal Complaint with the Commission detailing numerous reasons why they believe that smart meters are bad and stating that they do not want a smart meter installed on their property.

5. On April 1, 2013, PECO filed a Preliminary Objection in response to the McCarey's formal Complaint arguing that the Complaint should be dismissed because it is legally insufficient.

6. The McCarey's did not file an Answer to PECO's Preliminary Objection.

### DISCUSSION

The Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Chapters 1, 3 and 5, provide for the filing of Preliminary Objections. 52 Pa. Code § 5.101. Commission Preliminary Objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (Equitable). PECO filed a Preliminary Objection arguing that the McCarey's Complaint is legally insufficient and should be dismissed. The Commission's Rules provide, in relevant part:

- (a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:
- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
  - (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
  - (3) Insufficient specificity of a pleading.
  - (4) Legal insufficiency of a pleading.
  - (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
  - (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

52 Pa. Code § 5.101(a)(1)-(6).

For purposes of disposing of the Preliminary Objection, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A. 2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to the McCarey's and should dismiss the complaint only if it appears that the McCarey's would not be entitled to relief under any circumstances as a matter of law. Equitable, *supra*; *see also*, Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 486 Pa. 536, 406 A.2d 1020 (1979).

In addition, the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b).

PECO's Preliminary Objection will be granted. Even when accepting as true all well pleaded materials facts, and every reasonable inference from those facts, the McCarey's Complaint does not raise a violation of the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff and, therefore, the Complaint should be dismissed.

To begin, Section 2807 of the Public Utility Code provides:

**(f) Smart meter technology and time of use rates.—**

\* \* \* \*

(2) Electric distribution companies *shall* furnish smart meter technology as follows:

- (i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.
- (ii) In new building construction.
- (iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa. C.S. §2807(f)(2)(emphasis added). The use of the word “shall” in the statute indicates the General Assembly’s direction that all customers will receive a smart meter. Furthermore, there is no provision in the statute that allows customers to “opt out” of smart meter installation, as the McCarey’s desire.

Nor do the Commission’s Orders implementing this provision of Act 129 or PECO’s specific implementation plan allow customers to “opt out” of smart meter installation. PECO relies, in part, on the following language from the Commission’s Implementation Order to support its argument that the McCarey’s cannot opt out of the smart meter installation:

The Commission believes that it was the intent of the General Assembly to require all covered [Electric Distribution Companies] to deploy smart meters system-wide when it included a requirement for smart meter deployment ‘in accordance with a depreciation schedule not to exceed 15 years.’

Preliminary Objection at 5, *quoting, Smart Meter Procurement and Installation Implementation Order*, Docket No. M-2009-2092655 (entered June 24, 2009). PECO adds that “the Commission’s Order does not have a provision for customers to ‘opt out’ of the smart meter installation.” Id. at 6.

Whereas the statute provides that PECO “shall” install these meters and there is no provision in the statute or the Commission’s Implementation Order that allows a customer to opt out of the smart meter installation, coupled with the ability of the Commission to dismiss a complaint without a hearing if it is in the public interest, I find that the McCarey’s are unable to demonstrate that PECO has violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff. As the party with the burden of proof in this proceeding, *see*, 66 Pa. C.S. § 332(a), the McCarey’s Complaint must therefore be dismissed.

This position is further supported by the introduction in the General Assembly of a bill that would allow customers to opt out of the smart meter installation if passed. *See*, House

Bill 2188 (introduced on February 8, 2012). Unless and until such legislation is passed, however, or some other provision is put in place that specifically allows customers to opt out of smart meter installation, PECO has not violated any provision of the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff by prohibiting the McCarey's from opting out.

As PECO referenced in its Preliminary Objection, this precise issue has recently been addressed by the Commission in Maria Povacz v. PECO Energy Company, Docket Number C-2012-2317178, Opinion and Order (entered January 24, 2013) (Povacz). In Povacz, the complainant averred that she did not give permission for the company to install a smart meter and requested that she be allowed to "opt out" from the smart meter installation program. In dismissing the complainant's Exceptions to the Initial Decision that granted the company's Preliminary Objections in that case, the Commission relied on both Section 2807(f)(2) of the Public Utility Code as well as PECO's Smart Meter Installation Plan to reject the argument that the installation of smart meters violated the Public Utility Code, a Commission regulation or Order. The Commission noted:

Additionally, as noted by the ALJ, Section 2807(f)(2) of the Code, *supra*, is controlling here, and the use of the word "shall" in the statute indicates the General Assembly's direction that all customers will receive a smart meter. The Complainant's smart meter was installed by PECO in accordance with a plan approved by this Commission. Therefore, installation of the smart meter was consistent with, rather than a violation of, the Code, a Commission regulation or Order.

Id. at 10 (citations omitted). The Commission added: "Furthermore, there is no provision in the Code, the Commission's regulations or Orders that allows a PECO customer to 'opt out' of smart meter installation, as the Complainant desires to do." Id. The Commission's determination in Povacz applies equally to require dismissal of the McCarey's Complaint in this case.

In Povacz, the Commission also addressed why granting preliminary objections in that case was correct even though the complainant was unrepresented, noting that, in the normal

course, the Commission would not dismiss a complaint filed by an unrepresented complainant without first providing a hearing during which the complainant could further explain the factual basis for the complaint. Id. at 9, *citing*, Carlock v. United Telephone Company of Pennsylvania, Docket No. F-00163617, Order (entered July 14, 1993) (Carlock). The Commission's decision in Carlock was subsequently clarified to allow ALJ's the discretion to dispose of the pleadings in a proceeding provided that the action is neither arbitrary nor capricious, and that it is in accordance with the law. John A. Graham Jr. v. Philadelphia Suburban Water Company and Bell Atlantic-Pennsylvania, Inc., Docket No. C-00957557, Opinion and Order (entered June 12, 1996). In Povac, the Commission noted that there are some cases where a hearing would not enable the complainant to better explain his position or provide additional facts such as to alter inevitable conclusions and, in those cases, a hearing need not be held. Povac at 9.

Such is the case with the Complaint filed by the McCarey's in this case where it is clear that, even when viewing the Complaint in the light most favorable to the McCarey's, and accepting as true all well pleaded material facts, as well as every reasonable inference from those facts, the McCarey's would not be entitled to relief under any circumstances as a matter of law. PECO's Preliminary Objection should therefore be granted, and the McCarey's Complaint dismissed, without a hearing.

In conclusion, the McCarey's have failed to carry their burden to demonstrate that PECO has 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. PECO's Preliminary Objection will be granted. The McCarey's Complaint will therefore be dismissed.

#### CONCLUSIONS OF LAW

1. Commission Preliminary Objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

2. Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following: (i) lack of Commission jurisdiction or improper service of the pleading initiating the proceeding; (ii) failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter; (iii) insufficient specificity of a pleading; (iv) legal insufficiency of a pleading; (v) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action; and (vi) pendency of a prior proceeding or agreement for alternative dispute resolution. 52 Pa. Code § 5.101(a)(1)-(6).

3. For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A. 2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988).

4. For purposes of disposing of preliminary objections, the Commission must view the complaint in this case in the light most favorable to the nonmoving party and should dismiss the complaint only if it appears that the nonmoving party would not be entitled to relief under any circumstances as a matter of law. Equitable, supra; *see also*, Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 486 Pa. 536, 406 A.2d 1020 (1979).

5. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b).

6. Electric distribution companies shall furnish smart meter technology as follows: (i) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; (ii) in new building construction; and (iii) in accordance with a depreciation schedule not to exceed 15 years. 66 Pa. C.S. §2807(f)(2).

7. The Commission believes that it was the intent of the General Assembly to require all covered Electric Distribution Companies to deploy smart meters system-wide when it included a requirement for smart meter deployment 'in accordance with a depreciation schedule not to exceed 15 years.' Smart Meter Procurement and Installation Implementation Order, Docket No. M-2009-2092655 (entered June 24, 2009); Maria Povacz v. PECO Energy Company, Docket Number C-2012-2317178, Opinion and Order (entered January 24, 2013).

8. Except as may otherwise be provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a).

9. Although normally the Commission would not dismiss a complaint filed by an unrepresented complainant without first providing a hearing during which the complainant could further explain the factual basis for the complaint, Carlock v. United Telephone Company of Pennsylvania, Docket No. F-00163617, Order (entered July 14, 1993), ALJ's have the discretion to dispose of the pleadings in a proceeding provided that the action is neither arbitrary nor capricious, and that it is in accordance with the law. John A. Graham Jr. v. Philadelphia Suburban Water Company and Bell Atlantic-Pennsylvania, Inc., Docket No. C-00957557, Opinion and Order (entered June 12, 1996).

10. The McCarey's Complaint against PECO should be dismissed with prejudice.

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PECO Energy Company on April 1, 2013 at Docket Number C-2013-2354862 is hereby granted.



# **EXHIBIT “4”**

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held September 26, 2013

**Commissioners Present:**

Robert F. Powelson, Chairman  
John F. Coleman, Jr., Vice Chairman  
Wayne E. Gardner  
James H. Cawley  
Pamela A. Witmer

Thomas A. McCarey and  
Margery H. McCarey

C-2013-2354862

v.

PECO Energy Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions (Exceptions) of Thomas A. McCarey and Margery H. McCarey (Complainants) filed on May 6, 2013, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Joel H. Cheskis, which was issued on April 29, 2013, in the above-captioned proceedings. Replies to Exceptions were filed by PECO Energy Company (PECO) on May 13, 2013. For the reasons stated below, we will deny the Exceptions, adopt the Initial Decision and dismiss the Complaint.

## **History of the Proceeding**

On February 11, 2013, the Complainants filed the instant Formal Complaint against PECO. The Complainants included a 14-page, single-spaced, typed attachment explaining that they do not want a smart meter installed on their property.<sup>1</sup> The attachment included significant detail regarding twenty-five separate reasons why the Complainants believe that smart meters are bad and why they do not want one on their property. The Complainants included, among other things, a “Notice of No Consent to Trespass and Surveillance,” stating “be advised, you and all other parties are hereby denied consent for installation and use of any and all ‘Smart Meters’ or any other surveillance and activity monitoring device, or devices, at the above property.” On March 28, 2013, the Complaint was served on PECO by Secretarial Letter.

On April 1, 2013, PECO filed a Preliminary Objection in response to the Complaint. In its Preliminary Objection, PECO argued that the Complaint should be dismissed because it is legally insufficient. PECO argued that there are no genuine issues of material fact and that PECO is entitled to judgment as a matter of law with respect to all allegations in the Complaint. In support of its argument, PECO provided extensive legal discussion and background detailing requirements that PECO must install smart meters for all its customers. PECO concluded its Preliminary Objection by stating that “as the law currently stands, pursuant to Act 129 and the Commission’s Implementation Order, customers do not have the ability to ‘opt out’ of smart meter installation.” PECO added that there is therefore no legal basis for the Complaint and that the Complaint should be dismissed as a matter of law.

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<sup>1</sup> A “smart meter” is an electric meter that records consumption of electric energy in increments of an hour or less and communicates that information at least daily back to the utility for monitoring and billing purposes.

The Preliminary Objection included a Notice to Plead. The Complainant's Answer to PECO's Preliminary Objection was due no later than April 15, 2013. 52 Pa. Code §§ 5.101(f)(1), 1.12(a), 1.56(a)(1) and (b). The Complainants did not file an Answer to PECO's Preliminary Objection.

On April 29, 2013, the Initial Decision of ALJ Cheskis was issued in this proceeding. The ALJ determined that the Complainants "would not be entitled to relief under any circumstances as a matter of law." I.D. at 7. Accordingly, he granted PECO's Preliminary Objection and dismissed the Complaint with prejudice. *Id.* at 9. On May 6, 2013, the Complainants filed their Exceptions arguing that the ALJ erred by dismissing their Complaint.<sup>2</sup> On May 13, 2013, PECO filed Reply Exceptions.

### Discussion

Section 5.101 of the Commission's Regulations, 52 Pa. Code § 5.101, sets forth the grounds for granting preliminary objections. That section provides as follows:

#### § 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

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<sup>2</sup> The Complainants attached a document purporting to address health risks from the use of smart meters to their Exceptions. Subsequent to the filing of their Exceptions, the Complainants filed "Additional Information to Exceptions" on May 10, 2013, and a "Special Report Regarding Exceptions" on June 26, 2013. A party cannot introduce new evidence at the exceptions stage of the proceeding. *Pa. PUC v. Philadelphia Gas and Water Company Water Division*, 1988 Pa. PUC LEXIS 511. We may, however, take judicial notice of published articles and reports. Consequently, the unpublished documents submitted by the Complainants were not considered in our disposition of the Complainant's Exceptions.

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

52 Pa. Code § 5.101(a).

Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dep't of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979). The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commonwealth of Pa.*, 507 Pa. 360, 490 A.2d 402 (1985). The preliminary objection may be granted only if the moving party prevails as a matter of law. *Rok v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1987). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dep't of Auditor General, et al. v. State Employees' Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

ALJ Cheskis made six Findings of Fact and reached ten Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); also see, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

#### **ALJ's Initial Decision**

The ALJ discussed the Commission's rules pertaining to Preliminary Objections as set forth above. I.D. at 3-4. He also correctly set forth the standards to be followed regarding accepting all well-pleaded facts of the nonmoving party and viewing the Complaint in the light most favorable to the Complainants. *Id.* at 4. The ALJ observed that PECO's Preliminary Objection should only be granted "if it appears that the McCarey's would not be entitled to relief under any circumstances as a matter of law." *Id.*

The ALJ discussed PECO's Preliminary Objection, noting that the Objection argued that the Complaint was legally insufficient. PECO argued that Section 2807(f)(2) of the Public Utility Code (Code), 66 Pa. C.S. § 2807(f)(2), mandated that PECO furnish smart meters to its customers. That Section provides, in pertinent part:

(f) Smart meter technology and time of use rates.—

\* \* \* \*

(2) Electric distribution companies *shall* furnish smart meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

(Emphasis added).

The ALJ agreed with PECO that the foregoing statute mandated the provision of smart meters to all customers. The ALJ also observed that there is no provision in the statute that would permit a customer to “opt-out” of smart meter installation as requested by the Complainants. I.D. at 5.

The ALJ also found that this Commission’s Orders which implemented the smart meter provision of Act 129 and approved PECO’s own implementation plan do not provide that customers can opt out of smart meter installation. The ALJ quoted this Commission’s statement in the *Smart Meter Procurement and Installation Implementation Order*, Docket No. M-2009-2092655 (Order entered June 24, 2009) (*Smart Meter Procurement Order*):

The Commission believes that it was the intent of the General Assembly to require all covered [Electric Distribution Companies] to deploy smart meters system-wide when it included a requirement for smart meter deployment “in

accordance with a depreciation schedule not to exceed 15 years.”

I.D. at 5, quoting *Smart Meter Procurement Order* at 14.

The ALJ further found that this precise issue has been addressed by the Commission before. I.D. at 6. In *Maria Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 (Order entered January 24, 2013) (*Povacz*), the Complainant argued that she did not give permission for the installation of a smart meter and requested that she be allowed to opt out of the program. PECO filed Preliminary Objections, citing Section 2807(f)(2) of the Code and the *Smart Meter Procurement Order*. This Commission granted PECO’s Preliminary Objection and dismissed that Complaint stating:

Additionally, as noted by the ALJ, Section 2807(f)(2) of the Code, *supra*, is controlling here, and the use of the word “shall” in the statute indicates the General Assembly’s direction that all customers will receive a smart meter. The Complainant’s smart meter was installed by PECO in accordance with a plan approved by this Commission. Therefore, installation of the smart meter was consistent with, rather than a violation of, the Code, a Commission regulation or Order.

*Id.* at 10 (citations omitted). The ALJ also noted that the Commission stated in *Povacz* that there was no provision for a customer to opt out of PECO’s smart meter installation program. *Id.*

The ALJ discussed this Commission’s policy announced in *Carlock v. United Telephone Company of Pennsylvania*, Docket No. F-00163617 (Order entered July 14, 1993) (*Carlock*). In *Carlock*, the Commission held that, in the ordinary course, the Commission would not dismiss a complaint filed by a *pro se* complainant without

first providing a hearing during which the complainant could explain the factual basis for his complaint. The Commission subsequently clarified *Carlock* and held that ALJs had the discretion to dispose of the pleadings in a proceeding provided the action was neither arbitrary nor capricious, and that it was in accordance with the law. *John Graham, Jr. v. Philadelphia Suburban Water Company and Bell Atlantic-Pennsylvania*, Docket No. C-00957557 (Order entered June 12, 1996). The ALJ also found that, in *Povacz*, the Commission held “that there are some cases where a hearing would not enable the complainant to better explain his position or provide additional facts such as alter inevitable conclusions and, in those cases, a hearing need not be held.” I.D. at 7, citing *Povacz* at 9.

The ALJ held that the Commission’s holding in *Povacz* controlled this proceeding, both as to PECO’s Preliminary Objections and the dismissal of a *pro se* complaint without a hearing. The ALJ stated:

Such is the case with the Complaint filed by the McCarey’s in this case where it is clear that, even when viewing the Complaint in the light most favorable to the McCarey’s, and accepting as true all well pleaded material facts, as well as every reasonable inference from those facts, the McCarey’s would not be entitled to relief under any circumstances as a matter of law. PECO’s Preliminary Objection should therefore be granted, and the McCarey’s Complaint dismissed, without a hearing.

I.D. at 7.

### **Exceptions, Replies and Disposition**

The Complainants’ first Exception argues that the ALJ erred when he found that the Complainants had failed to respond to PECO’s Preliminary Objection. The Complainants aver that they sent an Answer to PECO’s counsel because that is who sent

them PECO's Preliminary Objections. PECO responds that its Preliminary Objection contained a "Notice to Plead" which gave notice to the Complainants that a response to the Preliminary Objection must be filed with the Commission. R.Exc. at 2.

We will deny this Exception. The record clearly reflects that the Complainants did not file a response to the Preliminary Objection with this Commission, as required by our Regulations. 52 Pa. Code §§ 5.101(f) and 1.4. The ALJ committed no error.

The Complainants' next Exception argues that they will refuse a smart meter until 2017, at which point their analog meter will be fifteen years old. According to the Complainants, that places them in compliance with Section 2807(f)(2) of the Code, 66 Pa. C.S. § 2807(f)(2). We will deny this Exception. Contrary to the Complainant's assertion, Section 2807(f)(2) provides the time within which PECO must complete its system-wide deployment of smart meters. *See, Smart Meter Procurement Order* at 15. It is not intended to provide a customer with the ability to postpone that customer's installation of a smart meter according to a depreciation schedule. Section 2807(f)(2)(i) does provide that a customer may request installation of a smart meter, but that is intended to provide customers with the opportunity to obtain a smart meter in advance of the electric distribution company's schedule for system-wide deployment. *Id.* at 10.

The Complainants next argue that Act 129 "is contrary to the Federal Mandate." They further assert that PECO must obtain their permission to install a smart meter, again referencing a federal mandate. PECO replies that the Complainants have failed to show how PECO has violated any portion of the Code, Commission Regulations or Orders. PECO states that, absent any allegation that they have acted in violation of any of those authorities, the Complaint is legally insufficient and must be dismissed. R.Exc. *passim*.

We will deny this Exception. In their Complaint and their Exceptions, the Complainants refer to a federal mandate, but do not identify what the mandate is or in what manner various federal pronouncements on smart grid applications conflict with either Act 129 or our *Smart Meter Procurement Order*. To the contrary, our research reveals a wide array of federal programs designed to support and advance the development and deployment of smart grid technology. However, none of the federal actions serve to restrict in any way the deployment of smart meters.

The Complainants' fourth Exception asserts that our holdings in *Povacz* are inapplicable to their situation. The Complainants state that, unlike the complainant in *Povacz*, they are not seeking to opt out of the advanced meter deployment. Rather, the Complainants argue they are refusing permission for PECO to install a smart meter. The Complainants are engaged in semantics. We find that the circumstances in *Povacz* are on all fours with the Complainants' Complaint. There is simply no provision in the Code, Act 129 or our Orders on smart meter deployment which provide for the Complainants to opt out or refuse permission to PECO to update its meters in accordance with Act 129 and our directives. Our holdings in *Povacz* do control this case. This Exception is denied.

The Complainants' final two Exceptions assert that wireless smart meter technology increase the likelihood of cancer and other health risks associated with microwave broadcast signals. The Complainants also complain that PECO's smart meter technology does not meet the Federal Communications Commission's guidelines for safe levels of radiation exposure. PECO responds that the Complainants do not assert any error in the ALJ's Initial Decision; rather, the Complainants are attempting to make basic policy arguments already decided by the General Assembly and this Commission. PECO reiterates its position that the Complainants have failed to identify any act on the part of PECO which violates the Code, including Act 129, this Commission's Regulations or our Orders. R.Exc. 2-3. We agree and will deny this Exception.

**Conclusion**

Based upon the foregoing discussion, we shall deny the Complainants' Exceptions and adopt the Initial Decision consistent with the foregoing discussion; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions of Thomas A. McCarey and Margery H. McCarey are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Joel H. Cheskis is adopted, consistent with this Opinion and Order.
3. That the Complaint filed at Docket No. C-2013-2354862 by Thomas A. McCarey and Margery H. McCarey is dismissed with prejudice.
4. That the record in this proceeding be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: September 26, 2013

ORDER ENTERED: September 26, 2013