



An Exelon Company

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November 3, 2015

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

**RE: Alexander Solowij v. PECO Energy Company**  
**PUC Docket No.: F-2015-2491428**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Reply Exceptions* with regard to the matter referenced above.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a stylized flourish at the end.

Shawane Lee  
Counsel for PECO Energy Company

cc: Certificate of Service

SL/ab



## REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Alexander Solowij (“Complainant”) in the above-referenced matter on October 19, 2015. On July 6, 2015, Complainant filed a formal complaint against PECO Energy. In his formal complaint, Complainant objects to the installation of an AMI electric “Smart Meter” at his residence and the termination of his electric service for not giving PECO access to install the meter. Complainant alleges he does not want the smart meter installed at his property and claims the termination of his service affected his health and his wife’s health.

Respondent, PECO Energy filed an Answer on July 28, 2015, denying the allegations in the Complaint. PECO Energy also filed a Preliminary Objection to Complainant’s formal 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. PECO additionally averred that the company’s tariff permits PECO to terminate a customer’s electric service if access to the meter is refused. Complainant did not respond to PECO Energy’s Preliminary Objection.

On September 21, 2015, Administrative Law Judge David A. Salapa issued an Initial Decision, dismissing Complainant’s Complaint, holding inter alia:

Because Act 129 of 2008 and the Commission’s orders authorize the Respondent to develop and implement a smart meter procurement and installation plan...and do not allow a customer to opt out of having a smart meter installed, the Complainant has not set forth in his complaint any act done by the Respondent that violates a Commission regulation, statute or order.

See Alexander Solowij v. PECO Energy Company, F-2015-2491428, (Order entered, September 21 2015).

In his Exceptions, Complainant reiterates the allegations he raised in his formal complaint and states that he “does not agree with many parts of the Initial Decision”.

Complainant attaches an explanation of Act 129 of 2008 issued by the Public Utility Commission, which states that “each EDC must file plans to replace all of its meters over the next 15 years (or sooner upon an individual customer’s request and payment of cost, and on all new construction).” Complainant argues in his Exceptions that he never requested a Smart Meter to be installed and that PECO Energy committed an act of banditry by terminating his service.

The issues Complainant raises in his Exceptions are not pertinent to (1) whether he has the ability to refuse meter installation pursuant to state law; and (2) whether PECO Energy violated The Public Utility Code, Commission Order or Commission-approved tariff by following the Act 129 provision to install a meter at his property; and whether the company properly terminated the Complainant’s service pursuant to Section 10.5 and Section 18.3 of PECO Energy’s tariff and Commission regulations. Complainant’s argument does not challenge ALJ Salapa’s ruling that there is no “opt out” provision in Act 129 or any Implementation Order; and therefore, is an irrelevant basis to overturn his decision.

Complainant also argues that PECO Energy’s termination of his electric service damaged his health and the health of his wife. In his formal complaint, Complainant did not allege that the Smart Meter caused damage to his health; but rather, the resulting service termination for Complainant’s refusal to have the meter installed. Pursuant to Section 18.3 of PECO Energy’s Commission approved tariff, the company has the right to terminate service if access to the meter is refused. In Louise Francis v. PECO Energy Company, Docket No. C-2014-2451351 (Opinion and Order entered Aug. 20, 2015), the Commission adopted Administrative Law Judge Christopher P. Pell’s Initial Decision, which dismissed Complainant, Louise Francis’ Smart Meter termination dispute on PECO Energy’s Preliminary Objections. In that case, the

Commission agreed with ALJ Pell “that Commission Regulations allow PECO to notify a customer that it will terminate service if the customer refuses access to a meter for purposes of replacement.” See i.d.

In his Exceptions, Complainant has provided no legal justification to support his decision to refuse the Smart Meter or to challenge the service termination. The Exceptions do not allege any misstatement of facts or misapplication of the law. Complainant does not provide any argument regarding why the Initial Decision was incorrect or improper. The Exceptions provide no grounds for overturning the Initial Decision whatsoever, and consist of the same allegations he made in his formal complaint. The Exceptions, restating the initial allegations made in the formal complaint, are without merit. Nothing in Complainant’s Exceptions warrants a reversal of ALJ Salapa’s decision.

The Commission’s Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. 52 Pa. Code Section 5.101. Pursuant to 52 Pa. Code §5.101(a)(4), a formal complaint may be dismissed without a hearing for legal insufficiency. The Complainant was served with a copy of PECO’s Preliminary Objections with a Notice to Plead and was given an opportunity to respond. Where a question presented to the Commission is one of law, there is no necessity to hold a hearing. White Oak Borough Authority v. Pennsylvania Public Utility Commission, 183 A.2d. 502, 175 Pa.Super. 114. The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. Dee-Dee Cab, Inc. v. Pa. Public Utility Comm., 817 A.2d 593, petition for allowance of appeal denied, 836 A.2d 123 (Pa. Commw. 2003); Lehigh Valley Power Committee v. Pa. Public Utility Comm., 563 A.2d

548 (Pa. Commw. 1989); Edan Transportation Corp. v. Pa. Public Utility Comm., 623 A.2d 6 (Pa. Commw. 1993).

Here, as noted by ALJ Salapa in the Initial Decision, it is clear from the pleadings that PECO “has not violated any statute, regulation or order which the Commission has jurisdiction to administer by installing the smart meter at the Complainant’s residence. Rather, the Respondent is complying with relevant statutes, regulations and orders.” As ALJ Salapa correctly concluded:

Accepting the facts alleged in the complaint as true for purposes of disposing of its preliminary objection, the Respondent contends that the complaint fails to allege that the Respondent has violated the Public Utility Code, Commission regulations or orders. The Respondent concludes that the complaint is legally insufficient. I agree.

ALJ Salapa’s Initial Decision correctly applied the standard for resolving preliminary objections and assumed for decisional purposes that the factual allegations of the Complaint are true. None of the facts asserted in Complainant’s formal complaint states a case against PECO Energy. As a matter of law Complainant has no ability to “opt out” of meter installation and nothing in his complaint sets forth a legal basis challenging the service termination. As such, it was proper and appropriate to dismiss the Complaint based on PECO Energy’s preliminary objections without holding a hearing. Accordingly, ALJ Salapa’s Initial Decision should be upheld.

For the reasons set forth above, PECO respectfully requests that the Commission deny the Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,



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