

Thomas McCarey

285 Dayleview Road

Berwyn, Pennsylvania 19312

C-2015-2503724

RECEIVED

NOV 28 2015

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Rosemary Chiavetta, Secretary

Pa. Public Utilities Commission

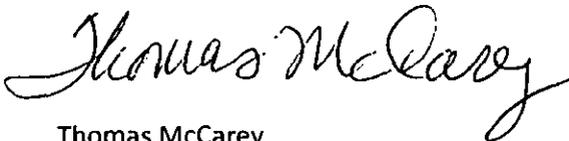
P.O. Box 3265

Harrisburg, PA 17105-3265

Dear Mrs. Chiavetta:

Enclosed are files to support my appeal. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Thomas McCarey".

Thomas McCarey

enc

**Thomas McCarey
285 Dayleview Road, Berwyn, PA 19312
610-687-7607**

November 28, 2015

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Exceptions at Commission's Office of Special Assistants (OSA) via email Nov. 28, 2015

**Rosemary Chiavetta, Secretary via US Post Office Certified Mail Return Receipt Requested
PA Public Utility Commission
P O Box 3265
Harrisburg, PA 17105-3265**

**Shawane L Lee, Esq. via US Post Office Certified Mail Return Receipt Requested
Exelon Business Services
2301 Market Street S23-1
PO Box 8699
Philadelphia, PA 19101-8699**

Dated this 28th day of November, 2015.

s/ Thomas McCarey

(Signature)

RECEIVED

NOV 28 2015

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Thomas McCarey

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:
:

v.

C-2015-2503724

PECO Energy Company

EXCEPTIONS TO INITIAL DECISION SUSTAINING PRELIMINARY
OBJECTION AND DISMISSING COMPLAINT

RECEIVED

Before
David A. Salapa
Administrative Law Judge

NOV 28 2015

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

INTRODUCTION

My name is Thomas McCarey. I am submitting this EXCEPTION to the PA Public Utility Commission's (PUC) ALJ Salapa's Discussion (p. 6) "material fact exists and that it is entitled to a judgment as a matter of law." The decision to dismiss my complaint with prejudice on the grounds that being prohibited from keeping my analog electric meter on penalty of losing electric service is unconstitutional.

DISCUSSION OF EXCEPTIONS

EXCEPTION: All legal claims herein are supported by cited case law in footnotes and as exceptions to ALJ Salapa's "Conclusion of Law" (pp.11-12).

EXCEPTION to ALJ Salapa: "Identity of causes of action" (p. 7)

Additionally, there is legal precedent [federal lawsuit], plus support of a consumer's constitutional right to not accept a forced Smart Meter in Naperville, Illinois, <http://www.chicagotribune.com/suburbs/naperville-sun/news/ct-nvs-smart-meter-suit-st-0916-20150915-story.html> .

Utility company consumer Malia Bendis was granted \$117,500 because her constitutional rights were violated regarding her refusal of a Smart Meter.

The United States Constitution guarantees a right to privacy to all citizens.¹

EXCEPTIONS to ALJ Salapa: "Identify of issues," etc. et al (p. 9)

That right to privacy is guarded with great zeal when the violation of that privacy impacts someone in his/her own home.² As the English court said in 1604, "the house of everyone is...his castle and

¹ *Griswold v. Connecticut*, 381 U.S. 479, 484-86 (1965) (Referring to that right as "Fundamental" and, in certain contexts, "older than the Bill of Rights") (finding the right to privacy in many distinct amendments to the Constitution).

² *Frisby v. Schultz*, 487 U.S. 474, 484-85 (1988).

fortress.”³ Justice Hugo Black said in a 1969 Supreme Court opinion that the home is “the last citadel of the tired, the weary and the sick [.]”⁴ Furthermore, I do not want my health to be ruined by NON-THERMAL EMFs from an AMI Smart Meter’s emissions into my dwelling. See this <http://www.disabled-world.com/disability/accessibility/homes/sensitivities.php#ixzz22STmV85B> for information regarding electromagnetic hypersensitivity.

Being free from unreasonable governmental, administrative agency and utility intrusion(s) is the basis of the constitutional right to privacy, including the right of self-determination regarding my health, its preservation, and well-being.

Indeed, “[T]he state’s interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.”⁵

The Fourth Amendment to the U.S. Constitution guarantees “[t]he right of the people to be secure in their...houses.” Generally, the government may not enter a private home without a search warrant.⁶ Even when it rightly possesses a search warrant, it may not impose a greater intrusion—a greater deprivation of privacy—than what is actually *necessary* to execute the search warrant.⁷

The guarantee of constitutional freedoms from government and their respective agencies into the home includes non-physical and non-trespassory intrusions. For example, the Supreme Court prohibited the warrantless use of thermal imaging to enable police to view *what* people are doing inside a home and *where* they are doing it.⁸ Behavior inside a person’s home is constitutionally protected information that is none of the government’s business unless a warrant is obtained or the information is given voluntarily to the government.

Ergo, the government may not use electronic devices to monitor the activities of the resident in their own home, just as an AMI Smart Meter is programmed to do. Smart Meters provide the mechanism for transmission of numerous data from appliance, etc. that would enable PECO to determine with great exactness every activity in an electric utility consumer’s home, e.g., when a person is not home and not using electricity, which could give would-be hackers and burglars valuable information to commit crimes against the consumer. Such PECO-generated surveillance activity would be an invasion of consumers’ privacy and a warrantless “search” in violation of the U.S. Constitution, plus setting consumers, including me, up for possible identity theft of information and surveillance by would be hackers and burglars (thieves).

³ *Wilson v. Layne*, 526 U.S. 603, 609 (1999) (quoting *Semayne’s case*, 5 Co.Rep. 91a, 91b, 77 Eng. Rep. 194, 195 (K.B.)).

⁴ *Gregory v. City of Chicago*, 394 U.S.111, 125 (1969) (Black, J. concurring).

⁵ *Carey v. Brown*, 447 U.S. 455, 471 (1980).

⁶ *Kyllo v. United States*, 533 U.S. 27, 31 (2001) (“with few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.”); *Wilson v. Layne*, 526 U.S. 603, 610-11 (1999).

⁷ *Ibid.* at 611-12.

⁸ *Kyllo v. United States*, 533 U.S. 27, 40 (2001).

Such electronic searches are conducted not by the government per se, but by PECO and other utilities who are mandated to install AMI Smart Meters as interpreted by the PA PUC rather than what the PA legislature passed in HB2200, which became Act 129 of 2008. But the PA PUC is a state governmental agency. The PA PUC created implementation orders for Act 129, and acted solely as an *administrative agency*, which cannot rewrite law. Furthermore, as a result, PA PUC's interpretation empowered Pennsylvania utilities to operate as monopolies and created mandates. Consequently, that action constitutes "state action" for the purposes of the PA PUC granting a denial of my case.

I consent to permit PECO to read my electric meter. That is the only way PECO can bill me for the electricity I use. That sort of *compelled* consent is reasonable, but it becomes intolerable when the information sought is not reasonably justified by the need to accurately create my electric bills. Just as an otherwise legal search of a home may not be extended beyond what is necessary to fulfill the interest that justified the search⁹, neither government nor PECO may use its utility-supplier-only "easement" to bill for electricity as a vehicle to obtain private information that may put consumers, and me in particular, in harm's way for identity theft, burglaries, or other nefarious activities endemic to technological systems and surveillance.

Such information is unnecessary for PECO to supply electricity or to create an accurate electric bill, since PECO and other utility companies have been billing accurately for many decades. Obtaining Smart Meter-generated information exceeds the implicit consent that I grant PECO, turning an innocuous collection of data into an unconstitutional search, plus a merchandising and marketing revenue stream to unknown entities, whom I have not given permission to have that information and which I grant no access to.

In *Wilson v. Layne*, 526 U.S. 603, 611-12 (1999)¹⁰ unconstitutional conditions are discussed and often referred to as coercive, because the consumer has no choice at all! Furthermore, I am told I either must give up my constitutional right to be free from warrantless searches by accepting an AMI Smart Meter or else I must lose electric service, which is a penalty on the exercise of my constitutional rights, and by deliberately forcing me to live in fear of being adversely affected by NON-THERMAL MICROWAVES emitted by AMI Smart Meters, as attested to by the American Academy of Environmental Medicine's "Recommendations Regarding Electromagnetic and Radiofrequency Exposure" <https://aaemonline.org/pdf/AAEMEMFmedicalconditions.pdf> and the United Nations / World Health Organization (WHO) / International Agency for Research on Cancer (IARC) classification of Radiofrequency Electromagnetic Fields A Possibly Carcinogenic to Humans."

PRESS RELEASE N° 208 31 May 2011

**IARC CLASSIFIES RADIOFREQUENCY ELECTROMAGNETIC FIELDS AS
POSSIBLY CARCINOGENIC TO HUMANS**

Lyon, France, May 31, 2011 -- The WHO/International Agency for Research on Cancer (IARC) has classified radiofrequency electromagnetic fields as possibly carcinogenic to humans (Group 2B), based on an increased risk for glioma, a malignant type of brain cancer¹, associated with wireless phone use.

http://www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208_E.pdf

My being forced to make a pro-Smart Meter-choice is a constitutional injury no less offensive to the U.S. and Commonwealth of Pennsylvania Constitutions than the warrantless search itself.

⁹ *Wilson v. Layne*, 516 U.S. 603, 611-12 (1999).

¹⁰ *Ibid.* at 2328; *Koontz v. St. Johns River Water Mgmt. Dist.*, 1335. Ct. 2586, 2595-96 (2013)

Furthermore, such PA PUC/PECO administrative actions infringe upon the Nuremberg Code <http://www.hhs.gov/ohrp/archive/nurcode.html> since utility companies and the PA PUC use decades-old-research rather than current up-to-date EMF/RF/microwave industry findings that document NON-THERMAL health damages from EMFs/RFs/Wi-Fi/cell phones-towers, etc.; the World Health Organization's IARC findings as cited above on page 3; and as the United Nations "Rights of Indigenous People," which says in Article 11, Section

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, *intellectual*, religious and *spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.* [McCarey emphasis added]
http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

I consider myself to be an indigenous person to the United States of America, having been born in Bryn Mawr, Pennsylvania, USA, March 11, 1950. The U.S. Constitution comes within the United Nations Declaration of the Rights of Indigenous Peoples, which I respectfully invoke.

PECO's and the PA PUC's Smart Meter surveillance additionally violates the Commonwealth of Pennsylvania Constitution, as stated below:

Security from Searches and Seizures.
 Section 8.

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.
<http://www.dug.edu/academics/gumberg-library/pa-constitution/texts-of-the-constitution/1968>

Furthermore, under Pennsylvania Code Chapter 56, Standards and Billing Practices for Residential Utility Service §56.2. Definitions states:

iii) Meter readings by an AMR shall be deemed actual readings for the purposes of this chapter. <http://www.pacode.com/secure/data/052/chapter56/chap56toc.html>

Note that AMR meters—outgoing data reporting—are addressed, not AMI Smart Meters, which are both data reporting and surveillance devices.

And to all the above, PECO's Mission Statement must be factored in because Smart Meters do NOT provide safe and reliable electric service. Smart Meters are notorious for causing house fires. See this <http://www.activistpost.com/2015/07/thousands-of-smart-meter-fires-new.html> for documentation.

PECO Mission Statement

We put our energy into our customers, the community and the environment
 At PECO, we put our energy into *providing safe and reliable electric* and natural gas service for our customers. But that's not all. We are a company that is committed to the environment and the well

being of the communities we serve. We have been operating in the Philadelphia region for more than a century, and our employees are your neighbors and our customers. [McCarey emphasis added]
<https://www.peco.com/AboutUs/WhoWeAre/Pages/default.aspx>

If the PA PUC's willful violations of the Constitutions could be justified simply by demanding that I either consent to take an AMI Smart Meter or lose electrical service, the constitutional guarantees of my liberty would be meaningless.

I am entitled to exercise my constitutional rights without coercion, penalties, or probable risk of NON-THERMAL health issues or diseases from exposure to AMI Smart Meter non-ionizing EMFs/RFs radiation.

Even though I am not a parent, I am equally concerned about the damage from microwave EMFs/RFs to the human brain, as depicted in the graphics below. Cell phone radiation absorption in human brains is shown below. AMI Smart Meters, cell phones and towers, Wi-Fi, etc. all operate using microwave technology. Studies have shown EMF/RF absorption rates in 5 year old and 10 year old children's brains, as compared with an adult's brain. Furthermore, I do not want my brain exposed to such radiation 24/7/365 in my own home, which could predispose me to any of neurological diseases such as Alzheimer's or the various forms of dementia

[https://www.alzheimers.org.uk/Facts about dementia/What is dementia/](https://www.alzheimers.org.uk/Facts%20about%20dementia/What%20is%20dementia/).



With Permission, Prof. Om P. Gandhi

Cell phone radiation affects children's brains more than adults' brains

In furtherance of Identity of Issues, I respectfully introduce an "Amicus Plea on Behalf of All Pennsylvanians," especially those who are covered and protected by the U.S. Americans with Disabilities Act.

Untold numbers of Pennsylvanians are electromagnetically sensitive and are not being considered under the U.S. Americans with Disabilities Act in the Commonwealth of Pennsylvania with regard to Smart Meters' microwave radiations and the pulses SMs send into a dwelling over the house wiring system that emits "dirty electricity" into every home, which should be illegal, as it is in violation of the PA PUC's own regulations for guaranteeing the consumer's right to safe service, plus a total disregard for seriously ill persons health problems by mandatorily enforcing Act 129 (2008) and not providing

legal opt-outs for those who need them, or fear being mandatorily made sick by law, PECO and other utilities, plus the PA PUC's implementation orders.

Therefore, out of a magnitude of concern regarding the non-thermal adverse effects of EMFs/RFs/Smart Meters, I present the following information as an "Amicus Plea on Behalf of All Pennsylvanians" to the PA PUC for humane relief.

Contrary to utility companies' deliberate misinformation perpetrated upon the states' Public Utility Commissions (PUCs), utility consumers, and the media, there is an inordinate amount of scientific data and information documenting what's called "Non-Thermal Effects of Electromagnetic Fields (EMFs)."

As background information, the data utility companies provide are over 50 years OLD and based upon early radar research, not utilizing updated current technology advances. Such deliberate misrepresentation should be considered criminal activity. The PA PUC is hereby challenged to obtain the dates of PECO's/Exelon's and other utility companies' EMF research, which they probably cannot provide, since the research they trot out is based upon old radar technology, not newly emerging EMF/RF research, which the United Nations World Health Organization is in the review process of considering as factual data.

In the testimony of Sam Parish, a Civil Engineer, on August 7, 2015 before the Rhode Island Governor's Commission on Disabilities, Parish stated on page 3:

"The electric power industry has put forth health concerns from over forty years of research on EMF management. We already know how to engineer and build infrastructure to cautiously reduce power frequency (60-Hz) EMF exposure. [Emphasis added by Parish] The Commission can lean on the industry for guidance to accommodate people with sensitivity to EMFs."

"Understand that cell phones, wireless routers and cell towers emit wireless radiation [as do Smart Meters, extraneously added for this commentary] which is a compounding form of environmental pollution. Wireless networking is not a sustainable technology for many reasons to be explained including cyber security and adverse health effects. "WiFi" has already begun to be rolled-back and removed from installations in schools and public facilities globally. Conventional wired networks are exceedingly more secure and appropriate for the majority of municipal government and public infrastructure. Light speed fiber optic technologies are maturing and increasingly available." [Emphasis added by Parish]

Furthermore, Civil Engineer Parish goes on to state:

"It is my belief that current health effects research overwhelmingly demonstrates that adverse health effects do occur from EMF exposures, and I would urge that any decisions made regarding civil infrastructure consider 'what can be done' to reduce these exposures, in the absence of clear regulations within frameworks developed under the ADA [Americans with Disabilities Act]. A 'precautionary approach' to technology emitting EMFs has already been adopted by many other governments across the US and around the world (see 'International Policy Actions on Wireless' on <http://ehtrust.org/> website), as well as reports provided by our own electric power industry." [Emphasis added by Parish]

The question for the PA PUC, PA state legislature and electric, natural gas, and water utility companies is, "Why has that not been done but, instead, a statutory enforcement for health damage from EMFs been implemented?" Meanwhile, rightfully-concerned, health-conscious, SM-refusing consumers are having their utilities turned off, while their utility bills are paid in full!

Civil Engineer Parish elaborates further on page 4:

"Concerns regarding health effects and interference with electronic equipment has [sic] formed the basis for over forty years of research on EMF field management by EPRI (Electric Power Research Institute). [...] EPRI provides services to more than 1000 energy-related organizations in 40 countries (mostly electric utility companies.) [Emphasis added by Parish]

"The EPRI funded report is referenced as follows: Electric and Magnetic Field Management Reference Book: First Edition, EPRI, Palo Alto, CA: 1999. TR-114200 (over 500 pages)."

The information below, which is taken from the above-mentioned EPRI book, is KEY for complying with the U.S. ADA and other humanitarian principles, which the PA PUC apparently may not be aware of or, hopefully not, deliberately ignoring:

"Background

*"Electromagnetic interference of one electrical advise with another electrical device has been a concern in the electrical business since its beginning. More recently power frequency fields from electrical facilities have been found to interfere with the proper operation of sensitive electronic equipment such as computer monitors, electron microscopes, and medical diagnostic and monitoring equipment. A related concern has been the possible effects of electric and magnetic fields on human health. The interactions of electromagnetic fields with the human body received careful attention during World War II when sailors warmed themselves in the beams or [sic s/b of] radar antennas and reported various health problems. Concern about health effects from exposure to power-frequency electric and magnetic fields surfaced in the 1960s with reports about illness patterns of Russian substation workers. A decade later, epidemiological studies reported correlating a surrogate for 60-Hz magnetic fields with childhood leukemia. [Emphasis added by Parish] *Those studies are still continuing with no conclusive results."**

Question: Why isn't the "Precautionary Principle" being implemented as public health enforcement?

On page 7, Parish states:

"Wireless RF energy [from Smart Meters, extraneously added for this commentary] is different from the predictable electromagnetic fields radiating from power lines. The electromagnetic energy from RF devices [Smart Meters included, and added] extends outward from source equipment beyond the immediate vicinity (within a few feet) where a 'feedback loop' from the emitting device is measurable. Like waves in the ocean, the fields propagate until they are attenuated (reduced) by building materials, structures or elements present in nature." [Emphasis added by Parish]

[...] "These scientists, whom are experts in the field of bioeffects, have been providing overwhelming evidence that microwave radiation [which Smart Meters operate on, extraneously added for this commentary] (which is increasing the fastest in environmental

exposure levels), produces a wide range of adverse biological effects on the human body including the neurological and reproductive systems." [...]

"There are no device manufacturers in the wireless technology sector that will say their product is 'safe'. The statement is always 'our product meets federal (FCC) guidelines'. These guidelines are presently [2015] 15 years out-of-date."

Consequently, Parish goes on to say on page 8:

"Similar to X-rays, wireless RF radiation [that Smart Meters produce, extraneously added for this commentary] penetrates almost all building materials except metal and shielding meshes – from which it often reflects and finds other angles of entry into spaces." [...]

"Like many other environmental pollutants not caught in-time, the backlash and cost to human health is almost unimaginable. This has already been evidenced by a growing number of people who are suffering from electromagnetic hypersensitivity globally, and the fact that World Health Organization (WHO) is currently under immense pressure to develop the framework required to recognize, diagnose and treat EHS as a legitimate condition within medical communities."

So, will consumers be forced to hold legally accountable the PA PUC for not protecting Pennsylvanians from such EMF/RF pollution and harassment by utility companies? Why is the PA PUC not doing its job to protect consumers?

On page 2 of the PA PUC's website Consumer Rights and Responsibilities

http://www.puc.state.pa.us/General/consumer_ed/pdf/Consumer_Rights_Responsibilities.pdf it clearly states "include your right to *safe* [emphasis added] and reliable service; and You have additional protections outlined in this guide if *you are seriously ill or a member of the household is seriously ill.*" [Emphasis added]

And yet, the PA PUC and PECO, in particular, totally disregard PA consumers who are EHS, multiple chemical sensitive (MCS), have pacemakers, cancer, or children with ADD, ADHD, autism, which are neurological health issues scientifically-proven to be impacted by EMFs/RFs. What right do the PA PUC and utility companies have to mandate Pennsylvanians' health be compromised and/or damaged? Is that not interfering with Pennsylvanians' constitutional rights too?

As Civil Engineer Parish says on page 9,

"The electromagnetic fields radiating from each wireless device on a network, regardless of type, contribute to overlap and compound the exposure levels of every public space the devices are installed. This is not sustainable."

"Control, security, reliability and speed are the primary benefits of hardwired networks."

"Wireless networks are simply not secured to the same extent as wired infrastructure."

[Emphasis added by Parish]

Mr. Parish's Qualifications

Sam Parish is a Civil Engineer and a 20 Year Veteran Infrastructure Rehabilitation Technology Specialist living in Cranston, Rhode Island, USA. The testimony from which this information is taken appears as online as posted testimony (with his permission to use and cite by the preparer), and can

be accessed at <http://www.stopsmartmetersbc.com/wp-content/uploads/2015/08/SPTestimonytoGovernorsCommission-1.pdf>

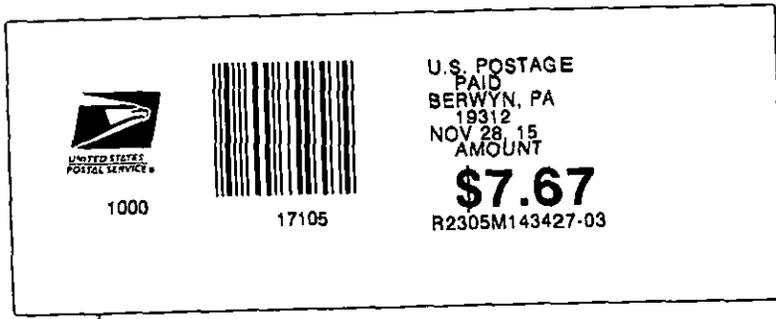
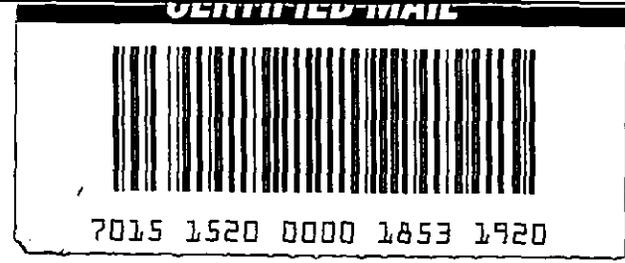
Having provided the PA PUC with irrefutable scientific information as to how EMFs/RFs/Smart Meters microwave technology harms human in my appeal to which this Amicus Plea is a part, it should be incumbent upon the PUC to re-evaluate its Smart Meter implementation orders impacting ALL utility companies, i.e., Act 129 (2008), and issue exemption status for affected or concerned consumers OR, alternatively, demand and secure Opt-Out legislation be enacted by the Pennsylvania state legislature immediately.

Respectfully submitted by,

Thomas McAreey

Date: 11/27/2015

MCCARTY
285 DAYLEVIEW RD
BERWYN, PA 19312



ROSEMARY CHIAVETTA, SECRETARY
PA. P.U.C.
P.O. BOX 3265
HARRISBURG PA 17105-3265