



An Exelon Company

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December 14, 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 *Reply Exceptions of PECO Energy Company* with regard to the matter referenced above.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a long horizontal flourish extending to the right.

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 Thomas McCarey (“Complainant”) in the above-referenced matter on December 1, 2015. On September 8, 2015, Complainant filed a formal complaint against PECO Energy at docket number C-2015-2503724. In his formal complaint, Complainant objects to the installation of the smart meter in his home and requests to opt out of meter installation. Respondent, PECO Energy filed an Answer and New Matter on October 7, 2015, stating that the Complainant had filed the same formal complaint requesting to opt out of smart meter installation at docket number C-2013-2354862.

The formal complaint at docket number C-2013-2354862 stated the same facts as the current formal complaint. In both complaints, Complainant avers that he does not want the smart meter installed at his home. The Complainant makes various arguments why PECO 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.

For the first complaint, Administrative Law Judge Cheskis issued an Initial Decision on April 18, 2013, at docket number C-2013-2354862, dismissing Complainant’s Complaint on PECO’s Preliminary Objection, 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.”

ALJ Cheskis determined that PECO is required to install the meter pursuant to Act 129 and there is no legislation permitting the Complainant to “opt out” of meter installation.

The Complainant filed exceptions to ALJ Cheskis' Initial Decision. The Pennsylvania Public Utility Commission reviewed ALJ Cheskis' Initial Decision pursuant to 66 Pa. C.S. § 332(h). On September 26, 2013, the Commission issued an Opinion and Order, adopting ALJ Cheskis' Decision. In that Decision, the Commission addressed the issues raised in the Complainant's Exceptions and determined they were without merit.

Because the Complainant filed the current nearly identical complaint at docket number C-2015-2503724, PECO Energy filed a Preliminary Objection, arguing that the Complainant's Complaint should be dismissed pursuant to the doctrine of res judicata. On November 9, 2015, Administrative Law Judge David A. Salapa issued an Initial Decision, dismissing the Complaint based on the doctrine of res judicata. ALJ Salapa held:

The issues in the proceeding docketed at C-2013-2354862 and the complaint in this proceeding are identical. The issue in both proceedings is the Complainant's refusal to allow the Respondent to install a smart meter at his residence. In both proceedings, the Complainant contends that he should be allowed to opt out of having a smart meter installed at his residence.

The causes of action are identical since both are complaints before the Commission involving service to the same address and installation of a smart meter at the same address. Similarly, the parties are identical and the quality and capacity of the parties suing or sued are identical. Since all four of these conditions are met, res judicata applies to bar the complaint in this proceeding.

The Commission should sustain the Initial Decision of ALJ Salapa. The Complainant's exceptions clearly demonstrate that he is attempting to re-litigate the smart meter "opt out" complaint he filed at docket number C-2013-2354862. Like the formal complaint filed under that docket number, the Complainant's exceptions dispute the fact that PECO Energy is

threatening to terminate his service for his refusal to permit installation of the smart meter. The Complainant's exceptions state that the smart meters are surveillance devices and PECO has no constitutional right to install them in his home. Similarly, the Complainant's exceptions are disputing the same exact issues raised again in the second formal complaint filed under docket number C-2015-2503724. As ALJ Salapa correctly stated in his Initial Decision:

Since the pleadings in this case show there is no issue as to a material fact, a hearing is unnecessary. The Respondent is entitled to judgment as a matter of law.

The record clearly demonstrates that the issue of smart meter refusal and PECO's ability to terminate the Complainant's service for refusal to install the meter has been properly decided and dismissed as a matter of law under dockets C-2013-2354862 and C-2015-2503724. As both ALJ Cheskis and ALJ Salapa have determined, PECO must install the smart meter pursuant to Act 129 and there is no legislative provision permitting the Complainant to "opt out" of meter installation. Through his exceptions, the Complainant cannot now attempt to re-litigate this issue. ALJ Salapa correctly concluded that the Complainant's case should be dismissed pursuant to the doctrine of res judicata. Accordingly, ALJ Salapa's decision to dismiss the Complainant's case against PECO Energy 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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