

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Charles M. Tucker	:	
Barbara Tucker	:	
	:	Docket No. C-2015-2515592
v.	:	
	:	
PECO Energy Company	:	

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**REPLY OF COMPLAINANTS  
TO THE ANSWER & NEW MATTER OF  
PECO ENERGYS COMPANY**

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Pursuant to Section 5.63 of the Commission’s regulations, 52 Pa. Code §5.63, Complainants Charles M. Tucker and Barbara Tucker (“Tuckers” or “Complainants”), hereby submit their Reply to the Answer and New Matter of Respondent PECO Energy Company (“PECO” or “Respondent”) to the Complaint of the Tuckers in the above-referenced proceeding. In support of their Reply, Complainants respectfully submit the following.

**I. INTRODUCTION**

On or about November 21, 2015, Complainants filed a Formal Complaint with the Commission alleging, among other things, that PECO threatened to terminate electric service to Complainants’ premises as a result of the Tuckers’ request to PECO that the Company refrain from installing a smart meter that would negatively affect Mrs. Tucker’s poor health. The Complainants request in their Complaint that the Commission order PECO to not install a smart meter in their home. The Complaint was served on PECO on December 1, 2015, and on December 14, 2015, Respondent filed an Answer to the Complaint that included New Matter pursuant to Section 5.62(b) of the Commission’s regulations. 52 Pa. Code § 5.62(b). PECO’s Answer denies all the substantive allegations in the Complaint. Respondent’s New Matter, in

essence, argues that PECO is compelled by Act 129 and the Commission's Orders to install smart meters in every customer's premises and there are no "opt-outs" to this requirement. PECO asks that the Commission dismiss the Complaint in this matter. For the reasons set forth below, Complainants respectfully request that the Commission sustain the Complaint and allow this matter to proceed to hearing. In the alternative, Complainants request that the case be referred to the Mediation Unit for possible resolution.

## **II. REPLY TO NEW MATTER**

1. Denied as stated. Complainants request that PECO refrain from installing a smart meter that Mrs. Tucker cannot have for reasons of her poor health. *See*, Complaint at ¶ 4. By way of further answer, the instant Complaint is not an "opt-out" Complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants' premises that is harmful to Complainants' health.

2. Admitted. By way of further answer, nothing in the Commission's approval of PECO's smart meter plan authorized or compelled PECO to create an unsafe condition that is harmful to a customer's health.

3. Admitted. By way of further answer, nothing in Act 129 authorized or compelled PECO to create an unsafe condition that is harmful to a customer's health.

4. Admitted. By way of further answer, this is not an "opt-out" Complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants' premises that is harmful to Complainants' health.

5. Admitted. By way of further answer, nothing in the Commission's Implementation Order authorized or compelled PECO to create an unsafe condition that is harmful to a customer's health.

6. Admitted. By way of further answer, this is not an “opt-out” Complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health.

7. Admitted. By way of further answer, and based upon information and belief, nothing in PECO’s Petition for Approval of its Smart Meter Plan authorized or compelled PECO to create an unsafe condition that is harmful to a customer’s health.

8. Admitted. By way of further answer, nothing in the Commission’s Order of May 6, 2010 approving PECO’s Smart Meter Plan authorized or compelled PECO to create an unsafe condition that is harmful to a customer’s health.

9. Admitted. By way of further answer, this is not an “opt-out” Complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health.

10. Denied. Complainants’ lack sufficient information to ascertain the veracity of PECO’s allegations in paragraph 10, and therefore, the allegations are denied. Strict proof of PECO’s claims are demanded at the time of hearing in this matter.

11. Admitted. By way of further answer, this is not an “opt-out” Complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health. In addition, nothing in Act 129 or the Commission’s Implementation Order or any other Commission Order authorizes or compels PECO to create an unsafe condition that is harmful to a customer’s health.

12. Denied as stated. Whether a recent bill introduced at the General Assembly underscores the absence of an “opt-out” is conjecture and opinion on behalf of PECO, and as such, the allegations in paragraph 12 constitute legal conclusions to which no answer is required.

By way of further answer, this is not an “opt-out” complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health.

13. Denied as stated. House Bill 394 speaks for itself. Whether House Bill 394 seeks to change existing law is a matter of opinion on behalf of PECO, and as such, the allegations in paragraph 13 constitute legal conclusions to which no answer is required. By way of further answer, this is not an “opt-out” complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health.

14. Denied as stated. House Bill 394 speaks for itself. Whether House Bill 394 attempts to create a smart meter “opt-out” is a matter of opinion on behalf of PECO, and as such, the allegations in paragraph 14 constitute legal conclusions to which no answer is required. By way of further answer, this is not an “opt-out” complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health.

15. Denied. Complainants’ lack sufficient information to ascertain the veracity of PECO’s allegations in paragraph 15, and therefore, the allegations are denied. Strict proof of PECO’s claims are demanded at the time of hearing in this matter. By way of further answer, this is not an “opt-out” complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health.

16. Denied. By way of further answer, this is not an “opt-out” complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health. A complaint against a regulated utility that seeks to prevent the utility from creating an unsafe condition that is harmful to a customer’s health should

not be dismissed as a matter of law under the pretext that there is no smart meter “opt-out.” Nothing in the Public Utility Code, Commission regulations or orders authorizes or compels PECO to create an unsafe condition that is harmful to a customer’s health.

17. Admitted in part, denied in part. Complainants have not alleged that PECO has installed meters in violation of its Smart Meter Plan. Complainants have alleged that installation of a smart meter at Complainants’ premises would create an unsafe condition that is harmful to Complainant’s health.

18. Denied as stated. Complainants do not “simply” allege that they do not want a smart meter installed because they “believe” it will aggravate a health condition. Complainants allege that Mrs. Tucker cannot have a smart meter at her home for reasons of her poor health. As explained in more detail in the Complaint (and attachments), the installation of a smart meter in the Complainants’ home would be dangerous to Mrs. Tucker’s overall health and welfare.

19. Admitted in part, denied in part. The Commission has rejected some, but not all, claims that raise concerns about the health effects of smart meters. *See, Kreider v. PECO*, Docket No. P-2015-2495064 (Order issued Sept. 3, 2015). In *Kreider*, the Commission found that “the Complainant should have the opportunity to be heard on her averments regarding the ‘deleterious health symptoms’ related to the smart meter.” *Id.* at 18.

20. Admitted in part, denied in part. The Commission has rejected some, but not all, claims that raise concerns about the health effects of smart meters. *See, Kreider v. PECO*, Docket No. P-2015-2495064 (Order issued Sept. 3, 2015). In *Kreider*, the Commission found that “the Complainant should have the opportunity to be heard on her averments regarding the ‘deleterious health symptoms’ related to the smart meter.” *Id.* at 18.

21. Denied. The Commission has rejected some, but not all, claims that raise concerns about the health effects of smart meters. *See, Kreider v. PECO*, Docket No. P-2015-2495064 (Order issued Sept. 3, 2015). In *Kreider*, the Commission found that “the Complainant should have the opportunity to be heard on her averments regarding the ‘deleterious health symptoms’ related to the smart meter.” *Id.* at 18. By way of further answer, this is not an “opt-out” complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health. In addition, nothing in the Public Utility Code, Commission regulations or orders authorizes or compels PECO to create an unsafe condition that is harmful to a customer’s health.

22. Denied. Nothing in Act 129, the Public Utility Code, Commission regulations or orders authorizes or compels PECO to create an unsafe condition that is harmful to a customer’s health.

23. Admitted. By way of further answer, this is not an “opt-out” complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health.

24. Denied. By way of further answer, this is not an “opt-out” complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health. Nothing in the Public Utility Code, Commission regulations or orders authorizes or compels PECO to create an unsafe condition that is harmful to a customer’s health. The legal basis for the Complaint is that PECO has an obligation under the Public Utility Code to “furnish and maintain adequate, efficient, *safe*, and *reasonable* service and facilities.” 66 Pa. C.S. § 1501 (emphasis added). Furthermore, PECO is obligated to “make all such repairs, *changes, alterations, substitutions*, extensions, and improvements in or to such

service and facilities as shall be necessary or proper for the *accommodation, convenience, and safety of its patrons*, employees, and the public.” *Id.* (emphasis added).

25. Denied. The allegation in paragraph 25 is a legal conclusion to which no answer is required. However, by way of further answer, a complaint against a regulated utility that seeks to prevent the utility from creating an unsafe condition that is harmful to a customer’s health should not be dismissed as a matter of law under the pretext that there is no smart meter “opt-out.” Nothing in the Public Utility Code, Commission regulations or orders authorizes or compels PECO to create an unsafe condition that is harmful to a customer’s health.

### **III. CONCLUSION**

Based on the foregoing, Complainants Charles and Barbara Tucker respectfully request that the relief sought by PECO in its Answer and New Matter be denied. Alternatively, Complainant respectfully requests that this matter be allowed to proceed to hearing or be referred to the Office of Administrative Law Judge’s Mediation Unit for possible resolution.

Respectfully, submitted,



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Date: January 4, 2016

Counsel for Complainants

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

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