

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Harrisburg, Pennsylvania 17105-3265

**Antonio Romeo
v.
PECO Energy Company**

**Public Meeting - February 11, 2016
2479260-OSA
Docket No. C-015-2479260**

MOTION OF COMMISSIONER PAMELA A. WITMER

Before the Public Utility Commission (Commission) today for consideration are the Exceptions of Antonio Romeo (Complainant) to the Initial Decision of Administrative Law Judge (ALJ) Elizabeth H. Barnes issued on June 30, 2015. Mr. Romeo filed a Formal Complaint alleging that PECO Energy Company (PECO) was threatening to terminate his service because he refused to allow access to his meter so that the Company could install a smart meter. He also alleged that: 1) smart meters cause fires and serious health and safety issues, as well as privacy concerns; 2) PECO's conduct was in violation of the Energy Policy Act of 2005¹; and 3) he has neither denied PECO access to his meter for the purpose of reading the meter nor is his account in arrearage. Mr. Romeo requested that the Commission order PECO to refrain from shutting off his electric service and to cease attempts to install a smart meter on his property.

PECO filed Preliminary Objections and sought dismissal of the Complaint for legal insufficiency under 52 Pa. Code § 50101(a)(4) on the grounds that Act 129 of 2008 (Act 129) and the Commission Order² approving PECO's smart meter installation plan do not allow for an opt out provision. The ALJ granted PECO's Preliminary Objections finding that there were no disputed questions of fact and that the Commission does not have the authority, absent a legislative directive, to prohibit the Company from installing a smart meter.

The Complainant has one exception before us, which is that the ALJ failed to consider his federal preemption claim. Given that the ALJ did not consider at length Mr. Romeo's federal preemption challenge, I believe that the Initial Decision should be modified consistent with our staff recommendation and prior Commission Orders³ to include a discussion and legal determination explaining why PECO's mandatory installation of smart meters is not in violation of the Energy Policy Act of 2005.

¹ Pub. L. No. 109-58, 119 Stat. 594 (2005) (Energy Policy Act).

² *Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123944 (Order entered May 6, 2010) (*PECO Smart Meter Plan Order*).


³ *See Maria Povacz v. PECO Energy Company*, Docket No. C-2012-231776 (Order entered January 24, 2013).

I also do not support the referral of this Complainant's health and safety concerns to our Bureau of Investigation and Enforcement (I&E) for two reasons: 1) Mr. Romeo's Exceptions are limited only to the legal question of preemption and do not encompass the health and safety concerns alleged in his Complaint; and 2) our prior referrals of this issue to I&E are sufficient. Specifically, we have recently referred several cases involving similar allegations to I&E for their review and discretion to take whatever action may be appropriate.⁴ Accordingly, additional referrals of the same or similar allegations would be duplicative and are therefore unnecessary. Moreover, absent legislative action, the Commission lacks the authority to prohibit a company from installing a smart meter, and thus lacks the ability to grant the Complainant the relief that he seeks.

THEREFORE, I MOVE THAT:

1. The Initial Decision be modified consistent with this Motion.
2. The Office of Special Assistants draft an Opinion and Order consistent with this Motion.

DATE: February 11, 2016


Pamela A. Witmer
Commissioner

⁴ See, *Louise Francis v. PECO Energy Company*, Docket No. C-2014-2451351 (Order entered August 20, 2015); *Art Larson v. PECO Energy Company*, Docket No. C-2014-2451754 (Order entered June 11, 2015).