



An Exelon Company

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February 19, 2016

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

**RE: Jim and Nancy Colbert v. PECO Energy Company**  
**PUC Docket No. C-2015-2515607**

Dear Secretary Chiavetta:

Enclosed is a copy of PECO Energy's Reply to Complainants' Exceptions in this matter, which was e-filed today.

The PUC docket indicates the Exceptions were filed with the PUC on January 20, 2016. The Complainants sent PECO "the real world force awakens – in all of us" letter which was received on January 22, 2016. There were no additional attachments indicating these were exceptions and PECO was not placed on notice they were exceptions until we reviewed the docket. Accordingly, PECO Energy requests that the Commission accept these Reply Exceptions *nunc pro tunc*. The hearing for this matter has concluded; therefore, the Complainants will not be prejudiced by its acceptance.

Therefore, please accept PECO Energy's late-filed Reply Exceptions *nunc pro tunc* as being filed timely. If you have any questions regarding PECO Energy's Reply Exceptions or this request, please contact me at (215) 841-6841.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawane L. Lee".

Shawane L. Lee  
Assistant General Counsel, PECO

Encl.



## REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies *nunc pro tunc* to the Exceptions filed by Nancy and Jim Colbert (“Complainant”) in the above-referenced matter on January 20, 2016. Complainants filed a formal complaint against PECO Energy. In their formal complaint, Complainants object to the installation of an AMI electric “Smart Meter” at their residence and request to “opt out” of the meter installation. Complainants allege they do not want the smart meter installed at their property because they believe it is a violation of constitutional law and invades their privacy. They also believe the meter causes fires and identity theft.

Respondent, PECO Energy filed an Answer with New Matter on December 14, 2015, denying the allegations in the Complaint. PECO Energy also filed a Preliminary Objection to Complainants’ 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.

On January 7, 2016, Administrative Law Judge David A. Salapa issued an Initial Decision, dismissing Complainants’ Complaint, holding *inter alia* that Complainants

...complaint does not set forth any violation of a Commission regulation, statute or order, it is legally insufficient.

See Nancy and Jim Colbert v. PECO Energy Company, C-2015-2515607, (Order entered, January 7, 2016).

In their Exceptions, the Complainants state that ALJ Salapa did not sign the Initial Decision and dispute the finding of fact that they did not file a response to PECO’s Preliminary Objection. The issues the Complainants raise in their Exceptions, even if true, are not pertinent to (1) whether they have 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 their property. Even if the Complainants filed a response to PECO Energy's Preliminary Objection, as a matter of law, any argument in their response cannot prevail or legitimately attack Act 129 and the requirement that the meters must be installed.

The Complainants also argue in their Exceptions that the utilities and communication industry have become agents of harm. The Complainants allege that "radiation-pulsing utility meters" are surveillance agendas and "fry the planet". The Complainants' arguments surrounding the AMI meter still do 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.

The Complainants also argue in their Exceptions that PECO is a "technocratic dictatorship" and the corporate government military machine is "lurching for total control." None of these arguments challenges the key question of law – whether Act 129 or any other legislation permits the Complainants to refuse the smart meter installation. In their Exceptions, Complainants have provided no legal justification to support their allegations, regarding opting out of smart meter installation. Complainants' Exceptions do not present any grounds for overturning the Initial Decision. The Exceptions do not allege any misapplication of the law. Complainants do not provide any argument regarding why the Initial Decision was incorrect or improper other than their claim they filed a response to the Preliminary Objection. The Exceptions provide no grounds for overturning the Initial Decision whatsoever, and consist solely of opinions – not valid legal arguments. The Exceptions, raising either irrelevant points or Complainants' opinions are without any merit. Nothing in the Complainants' 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 Complainants were 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 attempting to install a smart meter at the Complainants' residence." Consistent with 66 Pa.C.S. §2807(f)(2), ALJ determined that there is no "opt out" provision, giving the Complainants a right to "opt out" of meter installation. As ALJ Salapa correctly concluded:

Viewing the complaint in this case in the light most favorable to the Complainants, the Respondent is threatening to shut off their service. The Complainants do not want a smart meter installed at their residence but rather want to opt out of having a smart meter installed at their residence.

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 Complainants' formal complaint states a case against PECO Energy and as a matter of law the Complainants have no ability to "opt out" of meter installation. 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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