

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Stephen and Diane Van Schoyck
v.
PECO Energy Company

Public Meeting – February 25, 2016
2478239-OSA
Docket No. C-2015-2478239

STATEMENT OF
COMMISSIONER PAMELA A. WITMER

Before the Pennsylvania Public Utility Commission (Commission) today are the Exceptions filed by Stephen and Diane Van Schoyck (Complainants) in response to the Initial Decision of Administrative Law Judge (ALJ) Steven K. Haas granting the Preliminary Objections of PECO Energy Company (PECO) and dismissing the Complaint. In April 2015, the Complainants filed a Formal Complaint alleging that PECO installed a smart meter without their consent, and that they were experiencing adverse health effects as a result of that installation. The Complainants requested that PECO be required to remove the smart meter and either re-install an analog meter, or allow the Complainants to do so.

In its Preliminary Objections, PECO argued that the Complaint should be dismissed under 52. Pa. Code § 5.101 (a) (4) for legal insufficiency, and that an opt-out is not provided for by any controlling authority. The ALJ granted PECO's Preliminary Objections and dismissed the Complaint. There are numerous Commission Orders in which similar Complaints were dismissed on preliminary objection. In *Gerald Smith v. PECO*, Docket No. C-2014-2443198, Mr. Smith alleged specific health effects upon installation of a smart meter and requested that PECO remove the smart meter and replace it with the original analog unit. I note that the relief sought by Mr. Smith is the same requested by the Complainants in this case.

Mr. Smith's case was dismissed on Preliminary Objections¹ as legally insufficient because "PECO did not violate any Statute, Regulation or Commission Order by installing the smart meter at the Complainant's residence."² The decision today reverses the ALJ's Initial Decision, denies PECO's Preliminary Objections, and returns the matter to the Office of Administrative Law Judge for further proceedings.

I disagree with today's action for several reasons. First, Act 129 of 2008 mandates universal deployment of smart meter technology by electric distribution companies with more than 100,000 customers. Act 129 provides no exception, and the Legislature has not created an opt-out provision. Moreover, the Commission approved PECO's smart meter installation plan,³ which was filed to comply with the requirements of Act 129, and which similarly did not provide

¹ See *Smith v. PECO Energy Company*, Docket No. C-2014-2443198 (Apr. 23, 2015)

² *Id.* at 10 (internal citations omitted).

³ See *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*).

for an opt-out. As such, the Commission lacks the authority to compel PECO to remove the smart meter and allow the use of an analog meter, as the Complainants seek.

Accordingly, the better course of action would be to affirm our holding in *Smith*, in which we granted PECO's Preliminary Objections because PECO's installation of a smart meter complied with the relevant provisions of Act 129 and the Commission's related Orders, none of which provide for an opt-out for customers. Absent legislative action, there is no other possible outcome.

For these reasons, I dissent.

DATE: February 25, 2016


PAMELA A. WITMER
COMMISSIONER