

EXCEPTIONS OF ANDREW STARR, COMPLAINANT C-2015-2516061

Andrew Starr
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

February 24, 2016

Rosemary Chiavetta, Secretary
PA PUC Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, Pennsylvania 17120

EXCEPTIONS OF ANDREW STARR, COMPLAINANT C-2015-2516061

Dear Secretary Chiavetta,

ALJ Haas has incorrectly dismissed my Formal Complaint due to the exclusion of law during the discussion phase. On December 28, 2015, I submitted a response where I presented opinions that PECO and the PA PUC over-reached its administrative authority when interpreting HB2200, which was signed into law as PL 1592, No. 129 and was in violation of the law as intended, written and passed by the Pennsylvania state legislature. ALJ Haas glossed over and did not address pertinent and specific Complainant's issues. His only comment was:

On December 28, 2015, Complainant filed a response to PECO's POs. In his response, Mr. Starr makes reference to provisions of the Public Utility Code, the Pennsylvania Constitution, Commission regulations, legal dictionary definitions and case law in support of his position. He concludes by reiteration his position that he refuses consent to the installation of a smart meter at his residence.

Complainant Discussion

The well documented evidence of health effects associated with smart meter use in my Formal Complaint were summarily dismissed by PECO and the PA PUC due to fact that regardless of how well the material was pleaded, no law or regulation was broken and that PECO and the PUC were acting under the law as stated in ACT 129.

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In my response referenced above, submitted December 28, 2015, I averred that PECO claimed its mandatory stance of smart meter installation by defining the word "shall" in the act to imply a mandate for forced smart meter implementation. I submitted that "words defined in the statute bear the weight of the definition found in the context. The word "shall" was not defined in the statute (HB2200) and therefore the definition must be defined by a law dictionary".

The law dictionary definition of "shall" reads:

As used in statutes and similar instruments, this word is generally imperative or mandatory; but it may be construed as merely permissive or directory, (as equivalent to "may,") to carry out the legislative intention and In cases where no right or benefit to any one depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense. Also, as against the government, "shall" is to be construed as "may," unless a contrary intention is manifest. See Wheeler v. Chicago, 24 111. 105, 76 Am. Dec. 736; People v. Chicago Sanitary Dist., 184 111. 597, 56 N. E. 9. .;: Madison v. Daley (C. C.) 58 Fed. 753; Cairo & F. R. Co. v. Ilcht, 95 U. S. 170, 24 L. Ed. 423. SHAM PLEA. See PLEA. SHARE 1082 SHERIFF [A. Starr emphasis]

In Francis v. Corleto, 418 Pa. 417, 428, 211 A.2d 503, 509 (1965) quoting, Pleasant Hills Borough v. Carroll, 182, The Pennsylvania Supreme Court defined "shall", quoting it from a lower court decision:

"In observing that the word "shall" can be ambiguous given that it may be interpreted in at least one of two ways, we have stated that [e]xcept when relating to the time of doing something, statutory provisions containing the word "shall" are usually considered to be mandatory, but it is the intent of the legislature which governs, and this intent is to be ascertained from a consideration of the entire act, its nature, its object, and the consequences that would result from construing it one way or the other." [A. Starr emphasis]

The definite intent of HB2200 as recorded by the legislature's discussions and as published in the Senate and House Journals of the day, repeatedly document that smart meters were "not mandated". Rather, HB2200 was intended to help consumers deal with the potentially large energy price increases brought on by deregulation of the energy industry.

When PECO and the PA PUC defined "shall", they failed to take into consideration the consequences of incorrectly construing "shall" as a mandate. Not only were smart

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meters not mandated by the legislators, but PECO and the PA PUC failed in their duty to research these adverse health effects even as more evidence mounted. To construe "shall" as a mandate in HB2200 so as to force installation of dangerous smart meters, violates the very principle of law and the word "shall" as defined in the context of HB2200 as intended, written, passed and signed into law.

The above definition as presented in case law, falls under the principle of *Stare decisis* as a guiding principle for lateral and inferior courts which ALJ Haas should have taken into consideration.

I also averred by quoting Article 1, Section 1 of the Pennsylvania Constitution which reads:

Inherent Rights of Mankind; All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life, liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

As the supreme law of the State of Pennsylvania, the Constitution immediately identifies that my inherent right to life, liberty and property are the foremost considerations of organized government. It would therefore be abhorrent to these inherent rights that any law created would be defined to directly attack and/or subvert these inherent rights. Therefore as outlined in the PA Constitution, legislators are restricted in creating laws that negatively affect my inherent right to life, liberty and property. Therefore, it is inconceivable that a state government sponsored entity such as the PA PUC could find legitimacy in defining law that is in direct opposition to the supreme law of the land and in essence rewrite legislation passed by the only legal authority to make laws in Pennsylvania, the state legislature.

Neither PECO nor the PA PUC has the power to take away from any Pennsylvanian the right to defend one's health, which is an integral part of life.

As averred in case law that for purposes of disposing of the Preliminary Objection, the PUC must accept as true all well pleaded material facts of the nonmoving party, as well as every reasonable inference from those facts. *See Margeret H. Hager, M.D. v. PECO Energy Co., Docket No. C-2014-2444961.*

If PECO, under law, must consider my evidence as fact, and that the forced implementation of a smart meter is dangerous to my health, then PECO and the PA PUC are in direct violation of Article 1, Section 1 of the Pennsylvania Constitution.

*through a depreciation process, through new home construction process, and through the depreciation of 15 years, and **for anyone who wants to purchase a smart meter which they feel will help them manage their electric load better.**" See pg. 2626 Pennsylvania Legislative Journal, Wednesday, October 8, 2008 [A. Starr emphasis]*

As a multi-term Senator, I would hold in high regard that Senator Tomlinson knows how to correctly present an up-and-coming law to his fellow legislators. **Senator Tomlinson's words are very specific, following in context that smart meters are not mandatory.** To believe and imply otherwise that smart meters via HB2200 are mandatory would no doubt have to mean that Senator Tomlinson perjured himself before these same legislators.

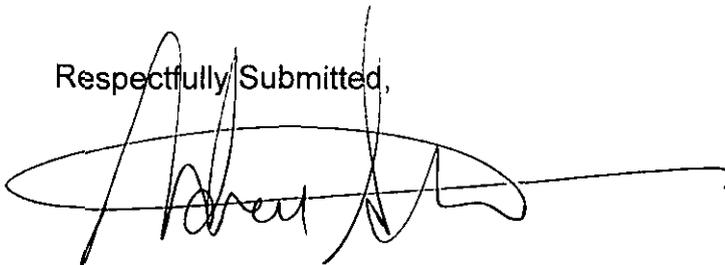
Conclusion

During the discussion phase of the initial decision, ALJ Haas used the PA State code, case law, *Stare decisis* precedent and regulations as part of his reasoning to bring judgement against me. Meanwhile, ALJ Haas summarily dismissed the very same PA State code, case law, *Stare decisis* precedent and regulations I submitted in my nine-page response dated December 28, 2015, which I partially detailed above. It therefore is not unreasonable to conclude that ALJ Haas acted in prejudice and in possible contradiction to his oath of office in his decision against me.

I respectfully request that ALJ Haas recuse himself due to prejudice so that all matters of law can be presented without prejudice and that the PA PUC revisits my complaint from the very beginning.

In light of the serious allegations brought against PECO and the PA PUC, and that over 1.7 million people have had smart meters installed, a hearing is in the public interest in order to resolve these allegations.

Respectfully Submitted,



Andrew Starr

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Also I averred the code of ethics was written as law into section 56 of the Pennsylvania State Code, which governs Public Utilities. PECO is bound by this code of ethics.

56.1. Statement of purpose and policy.

*(a) This chapter establishes and enforces uniform, fair and equitable residential public utility service standards governing eligibility criteria, credit and deposit practices, and account billing, termination and **customer complaint procedures**. This chapter assures adequate provision of residential public utility service, to restrict unreasonable termination of or refusal to provide that service and to **provide functional alternatives to termination** or refusal to provide that service while eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills and protecting against rate increases for timely paying customers resulting from other customers' delinquencies. Public utilities shall utilize the procedures in this chapter to effectively manage customer accounts to prevent the accumulation of large, unmanageable arrearages. **Every privilege conferred or duty required under this chapter imposes an obligation of good faith, honesty and fair dealing in its performance and enforcement. This chapter will be liberally construed to fulfill its purpose and policy and to insure justice for all concerned.** [Emphasis A.Starr]*

With regards to forced smart meter implementation, PECO has not practiced good faith, honesty or fair dealing regarding non-thermal adverse health effects from smart meter microwave electromagnetic and radiofrequencies for which there is more than ample scientific documentation.

PECO refuses to accept scientific data, or research for themselves, current medical literature regarding microwave health hazards. With that, PECO has resorted to aggressive harassment practices which include the threat of disconnecting electric power. Their primary tactic to achieve their mistaken goal is hiding behind their incorrect definition of "shall" in HB2200 and is in direct opposition of how HB2200 was intended, written, passed and signed into law. This is in direct violation of their code of ethics for both the PA PUC and PECO.

Finally, I submitted written transcript of debate in the Pennsylvania Senate on October 8, 2008 which included sworn testimony from Senator Tomlinson, an advocate of HB2200 who appeared to be very intimate with the bill, that smart meters were not mandatory:

*"It also contains language in there that we will have smart meters. **It is not mandated**, [A. Starr emphasis] but it allows for the deployment of smart meters*

Andrew Starr
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(215) 646-6386

February 29, 2016

DOCKET NO. C-2015-2516061

CERTIFICATE OF SERVICE

I, Andrew Starr, hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 by mailing certified, return request and postage paid to:

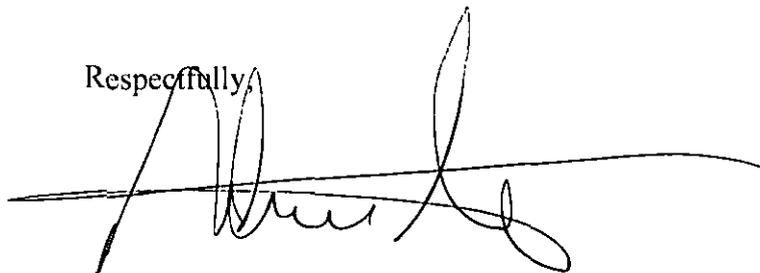
Secretary
Pa Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA. 17120

Along with an email copy to:

Commission's Office of Special Assistance
ra-OSA@pa.gov

Dated at Horsham, Pennsylvania, this day of February 29, 2016

Respectfully,

A handwritten signature in black ink, appearing to read 'Andrew Starr', written over a horizontal line.

Andrew Starr

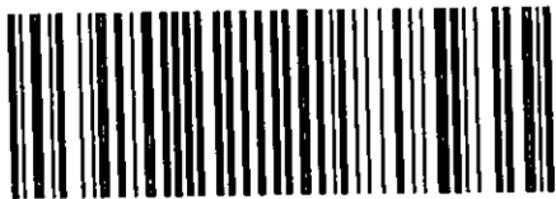
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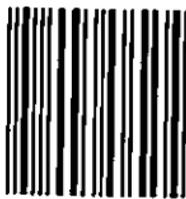
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