



An Exelon Company

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April 6, 2016

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

**RE: Andrew Starr v. PECO Energy Company**  
**PUC Docket No.: C-2015-2516061**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Motion to File Reply Exceptions Nunc Pro Tunc* with regard to the matter referenced above.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a long, sweeping underline.

Shawane Lee  
Counsel for PECO Energy Company

cc: Certificate of Service

SL/alb  
Enclosure



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ANDREW STARR**

**COMPLAINANT**

**v.**

**PECO ENERGY COMPANY,**

**RESPONDENT**

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**Docket No. C-2015-2516061**

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**PECO ENERGY'S MOTION TO FILE REPLY EXCEPTIONS**  
**NUNC PRO TUNC**

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Respondent, PECO Energy Company ("PECO"), pursuant to 52 Pa. Code §1.2 respectfully petitions this Honorable Commission to accept the attached Reply Exceptions for filing *nunc pro tunc*.

1. On March 1, 2016, the Complainant filed Exceptions with the Public Utility Commission to Administrative Law Judge Steven K. Haas' January 14, 2016, Initial Decision.
2. PECO was never served with a copy of Complainant's Exceptions by the Complainant or the Commission.
3. Pursuant to 52 Pa. Code § 5.535, if PECO had been served with the Exceptions, PECO's Reply to the Complainant's Exceptions were due for filing on or before March 11, 2016.
4. As PECO found the Exceptions on the PUC docket yesterday, PECO is filing the response beyond the March 11, 2016 due date.

5. PECO respectfully requests that this Honorable Commission accept the filing of PECO Energy's reply exceptions *nunc pro tunc*.

6. 52 Pa. Code § 1.1 et seq. governs the rules of administrative practice and procedure before the Public Utility Commission.

7. 52 Pa. Code § 1.2 states that the procedural rules of Title 52 shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The section further states that the "presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties."

8. Furthermore, the Pennsylvania Commonwealth Court has held that the PUC has authority to waive procedural defects when they do not affect the substantive rights of the parties. Info. Connections, Inc. v. Pennsylvania Public Utility Commission, 630 A.2d 498 (Pa. Cmwlth. 1993).

9. PECO Energy respectfully submits that the late filing of its reply exceptions was due to the fact the company was not served with the exceptions.

10. More importantly, the acceptance of its reply exceptions *nunc pro tunc* does not affect the substantive rights of the Complainant in this matter. The Response does not contain any information that was not already expressed to the Complainant, nor does PECO Energy's response contain any new allegations that require a response from the Complainant.

11. Further, the Complainant's exceptions have not been reviewed; therefore, there is no delay in the adjudication of this case.

12. Accordingly, PECO Energy respectfully requests that PECO's Reply Exceptions be accepted for filing *nunc pro tunc* so that this matter can be decided on the merits.

**WHEREFORE**, PECO Energy Company respectfully requests that PECO's Reply Exceptions be accepted for filing *nunc pro tunc*.

Respectfully Submitted,



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Shawane L. Lee  
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**BEFORE THE  
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**ANDREW STARR**

**COMPLAINANT**

**v.**

**PECO ENERGY COMPANY,**

**RESPONDENT**

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**Docket No. C-2015-2516061**

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**VERIFICATION**

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

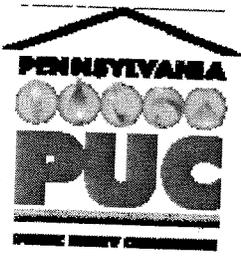
Date: April 6, 2016



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Shawane L. Lee





**PENNSYLVANIA**  
PUBLIC UTILITY COMMISSION

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eFiling Confirmation	
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**Uploaded File List**

File Name	Document Class	Document Type
Andrew Starr - Reply Exceptions.pdf	Decision	Exception - Reply



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Counsel for PECO Energy Company

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SL/ab



## REPLY EXCEPTIONS

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Andrew Starr (“Complainant”) in the above-referenced matter on March 1, 2016. PECO was not served with a copy of the Exceptions and recently identified them on the PUC docket. The Complainant did not list PECO on his certificate of service. Accordingly, PECO submits its reply exceptions *nunc pro tunc*.

On November 27, 2015, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant objects to the installation of an AMI electric “Smart Meter” at his residence and stated that he received a termination notice after he refused to have the meter installed. The Complainant states that he does not want the meter because he believes the meters emit “microwave radiation”. He claims he will not be able to raise his children in a safe environment with the meter attached to his dwelling.

Respondent, PECO filed an Answer with New Matter on December 11, 2015, denying the allegations in the Complaint. PECO also filed a Preliminary Objection to Complainant’s Complaint, averring that PECO is required to install the meter pursuant to Act 129 and there are no consumer “opt out” provisions in the current statute. On January 4, 2016, Complainant submitted a response to PECO’s New Matter, stating that PECO defined the word “shall” in the Act 129 statute as the ultimate authority to “force” installation of the meters on its customers. On January 14, 2016, Administrative Law Judge Steven K. Haas issued an Initial Decision, dismissing Complainant’s Complaint, holding *inter alia* that Complainant:

The installation of smart meters in PECO’s customers’ homes represents compliance with the Commission orders and the statute that requires it. 66 Pa.C.S. § 2807(f)(2).

See Andrew Starr v. PECO Energy Company, C-2015-2516061, (Order entered, January 14, 2016).

In his Exceptions, Complainant states that PECO and the PUC incorrectly construed “shall” in the Act 129 statute as a mandate by the legislators to install the meter. The Complainant states that PECO and the PUC failed to research the adverse health effects of the meters. The Complainant argues that the “forced implementation of a smart meter is dangerous to [his] health”; therefore PECO and the PUC are in violation of the Pennsylvania Constitution. The issues the Complainant raises in his Exceptions are not pertinent to (1) whether he has the ability to refuse meter installation pursuant to state law; and (2) whether PECO violated The Public Utility Code, Commission Order or Commission-approved tariff by following the Act 129 provision to attempt installation of the meter at his property.

The Complainant argues in his Exceptions regarding the health affects of the smart meter and claims that PECO refuses to accept scientific data regarding microwave health hazards. In this case, the Complainant has not alleged a specific health effect from the meter and has not provided any medical documentation of a health effect. The Complainant claims the meter will have an effect on his children and the environment they live in but how can he know what affect the meter has when it has not been installed? As Judge Haas stated in his Initial Decision, the Complainant has not even had the meter installed so how can he claim the meter has a health affect? ALJ Haas astutely reasoned:

In the present case, installation of the smart meter has not yet occurred, since the Complainant has refused to provide his consent to PECO. Therefore, no actual ill health effects have been or could be claimed. The Complainant has not alleged any act done or omitted to be done by the Respondent that constitutes a violation of a statute, Commission regulation or order. Accordingly, the Formal Complaint is legally insufficient and this complaint is dismissed. As there is no legally justifiable claim, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b).

The Complainant's argument regarding whether PECO and the Commission should consider the health concerns surrounding the AMI meter still does not challenge ALJ Haas' ruling that there is no provision in Act 129 or any Implementation Order giving the Complainant the right to "opt out" of meter installation; and therefore, is an irrelevant basis to overturn his decision.

The Complainant also argues that Act 129 does not mandate the installation of the smart meter. He argues that PECO has not practiced good faith, honesty or fair dealing regarding the meter and the company has violated their code of ethics as defined in the Pennsylvania State Code. None of these arguments challenges the key question of law – whether Act 129 or any other legislation permits the Complainant to refuse the smart meter installation. In his Exceptions, Complainant has provided no legal justification to support his allegations, regarding whether Act 129 or any other regulation, statute or provisions give him the right to opt out of smart meter installation. PECO is required, by law, to install the meter and has been directed to do so by the legislature and the PUC. Therefore, Complainant's Exceptions do not present any grounds for overturning the Initial Decision. The Exceptions do not allege any misstatement of facts or misapplication of the law. Complainant does not provide any argument regarding why the Initial Decision was incorrect or improper. The Exceptions provide no grounds for overturning the Initial Decision whatsoever, and consist solely of policy arguments. The Exceptions, which quibble with the definition of the word "shall" and its interpretation or raise safety, health and policy arguments are without any merit. Nothing in the Complainant's Exceptions warrants a reversal of ALJ Haas' 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 Complainant was 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 Haas in the Initial Decision, it is clear from the pleadings that PECO has not violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff with regard to its smart meter installation policies and procedures. Consistent with 66 Pa.C.S. §2807(f)(2), ALJ determined that there is exemption provision, giving the Complainant a right to opt out of meter installation. As ALJ Haas correctly concluded:

Commission cases dating back to 2011 have consistently held that no exemptions can be provided to the smart meter installation requirement. *Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Final Order entered March 3, 2011); *Luthersmidt v. Metropolitan Edison Company*, Docket No. C-2010-2200353 (Final Order entered March 25, 2011); *Corbett v. Pennsylvania Power Company*, Docket No. C-2011-2219898 (Final Order entered May 27, 2011); *Jones v. Metropolitan Edison Company*, Docket No. C-2011-2224380 (Final Order entered June 28, 2011); *Griffin v. Metropolitan Edison Company*, Docket No.

C-2012-2300172 (Final Order entered July 31, 2012); *Brake v. West Penn Power Company*, Docket No. C-2013-2367308 (Opinion and Order entered November 14, 2013); *Drake v. Pennsylvania Electric Company*, Docket No. C-2014-2413744 (Final Order entered June 12, 2014); *Siemion v. PECO Energy Company*, Docket No. C-2015-2493952 (Final Order entered October 21, 2015); *Schoefer v. PECO Energy Company*, Docket No. C-2015-2497438 (Final Order entered November 6, 2015).

ALJ Haas' 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 Complainant's formal complaint states a case against PECO Energy and as a matter of law the Complainant has no ability to refuse 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 Haas' 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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