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April 25, 2016

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

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PA PUBLIC UTILITY COMMISSION  
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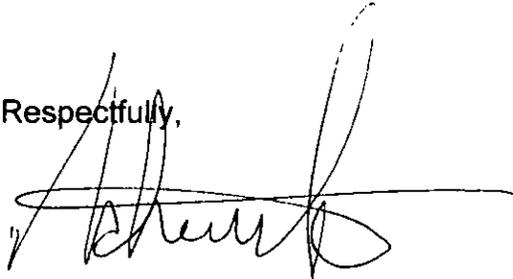
RE: PUC Docket no.: C-2015-2516061

Dear Ms. Chiavetta,

Please find the enclosed Reply to PECO's Motion for docket number C-2015-2516061.

Also, please find the enclosed Certificate of Service showing that a copy of the above document was served on the interested parties.

Respectfully,

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

Andrew Starr

Reply to PECO's Motion, COMPLAINANT C-2015-2516061

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Reply to PECO's Motion, COMPLAINANT C-2015-2516061

Dear Secretary Chiavetta,

Please find my "Reply to PECO's Motion" as required.

PECO is still insisting that I am requesting an opt-out of the smart meter installation. This is not the case and as explained in my Formal Complaint this is a non-consent. I do not have to attempt to opt-out of a non-compulsory program.

**Discussion**

In PECO's Motion, PECO failed to acknowledge or explain what I feel is an obvious bias shown by ALJ Haas in his initial ruling against me. In his ruling, ALJ Haas summarily dismissed the very same PA State code, case law, *Stare Decisis* precedent and regulations he used to find judgement against me. The serious nature of these accusations and the request that ALJ Haas recuse himself should warrant some type of rebuttal unless PECO and ALJ Haas are favored in law.

PECO, in *Margaret H. Hager, M.D. v. PECO Energy Company C-2014-2444961* claimed sole power in defining "shall" as mandating the forced implementation of smart

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meters. 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."*

This decision acknowledges that "shall" has ambiguity and that one cannot blindly define shall as a mandate but must consider many factors. One of these factors is the private right as defined in Black's Law dictionary.

*As used in statutes and similar instruments, this word (shall) 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. [A. Starr emphasis]*

In my Formal Complaint I entered into evidence numerous pages of the biological and neurological health effects associated with the non-ionizing, non-thermal, pulsed microwave radiation associated with smart meters. These studies were performed and published by registered doctors and biochemists. I 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 indefeasible 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.*

In his decision ALJ Haas also summarily dismissed my averment from the Pennsylvania State Constitution.

Also in *Francis V. Corletto*, the Pennsylvania Supreme Court also acknowledges the intent of the legislature. In my Exceptions to the ALJ Haas ruling, PECO, along with ALJ Haas failed to acknowledge the intent of the law that I submitted with written transcript of debate from the Pennsylvania Senate on October 8, 2008 which included sworn testimony from Senator Tomlinson, an advocate of HB2200 who appeared to be very

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intimate with the bill, stating that smart meters were not mandatory. In Penn. Assigned Claims Plan v. English, 664 A. 2d 84 - Pa: Supreme Court 1995 it states the following:

*Our rules of statutory construction make clear that in interpreting statutes we must at all times seek to ascertain and effectuate the legislative intent underlying the enactment of the particular statute(s). 1 Pa.C.S. § 1921(a). Where the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words. Where, however, the statute is unclear or susceptible of differing interpretations, the courts must look to the necessity of the act, the object to be attained, the circumstances under which it was enacted and any **legislative or administrative interpretations thereof**. Coretsky v. Board of Commissioners of Butler Township, 520 Pa. 513, 555 A.2d 72 (1989). In ascertaining the legislative intent of a particular statute it is presumed, inter alia, **that the legislature did not intend a result that is absurd or unreasonable nor one that would be violative of the United States Constitution or the Constitution of this Commonwealth. It is also presumed that the legislature intends to favor the public interest as opposed to any private interest**. See generally, 1 Pa.C.S. § 1922. [A. Starr emphasis]*

In this case, the Pennsylvania Supreme Court is clear and follows similar guidelines as in *Francis V. Corletto*. In instances where there is ambiguity in the law, legislative intent is also referenced and it is presumed that this intent cannot violate the United States Constitution or the Constitution of this Commonwealth. In this instance, "shall" as used in 66 Pa.C.S.A. § 2807(f)(2) as defined in case law cannot be used as a mandate. And if there is an instance that there is ambiguity then we must identify if it follows the legislative intent and whether it violates our individual rights as protected in the United States Constitution and the Constitution of this Commonwealth. Due to the negative health effects associated to smart meter technology, the forced implementation of smart meters directly violates our individual rights as protected in the United States Constitution and the Constitution of this Commonwealth

On page 3 of PECO's reply to exceptions, PECO states:

*The exceptions, which quibble with the definition of the word "shall" and its interpretation or raise safety, health and policy arguments are without merit. Nothing in the Complainant's Exceptions warrants a reversal of ALJ Haas' decision.*

It was PECO who incorrectly defined "shall" and refuses to acknowledge, in a legal proceeding, averments in law. Rather they feel that use of legal definitions and case law from The Supreme Court of Pennsylvania along with our protected rights as averred in the United States Constitution and the Constitution of this Commonwealth is nothing

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more than to "quibble". The lack of a rebuttal and the attempt to marginalize law as presented in this instance indicates a lack of standing in law. It is the shallow argument set forth by PECO that has no merit.

PECO has now joined ALJ Haas by stating (see page 2 of PECO's Motion):

*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 the statue, 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).*

Although I have provided sufficient evidence to show that that PECO has violated the law with the forced implementation of smart meters, what is troubling is the assertion that no claim can be made with regards to health effects of smart meters since I do not have a dangerous smart meter installed. To be clear, I am not claiming that I have experienced any health effects as correctly asserted by ALJ Haas, but rather using the knowledge I have learned I am protecting myself and my family from these dangers.

So I would like to answer a question with a question. Would it be negligent on my behalf to let my children play on a busy highway? Certainly I have no proof of a life threatening event, I have never played on a busy highway nor do I know anyone that has had any of their children injured or killed playing on a busy highway. But we do have knowledge that we have learned that dictates that we should be prudent and not let children play on a highway. This knowledge makes sense but if I disregard it due to lack of any actual experience and elect to let my children play on the highway where they are then subsequently injured, would I be negligent and held responsible for their injuries? Common sense and the definition of negligence dictates that I would.

Blacks Law Dictionary defines Negligence:

*NEGLIGENCE. The omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do. or doing something which a prudent and reasonable man would not do. It must*

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*be determined in all cases by reference to the situation and knowledge of the parties and all the attendant circumstances. Nitrolycerin Case, 15 Wall. 536, 21 I\* Ed. 206; Blythe v. Birmingham Waterworks Co., 11 Evch. 7S4. Negligence, in its civil relation, is such an inadvertent imperfection, by a responsible human agent, in the discharge of a legal duty, as immediately produces, in an ordinary and natural sequence, a damage to another. Wirt. Neg. (Source: <http://thelawdictionary.org/negligence/>)*

Since I now have knowledge of the biological and neurological health effects associated with the non-ionizing, non-thermal, pulsed microwave radiation associated with smart meters, it is my responsibility as a reasonable man to protect myself and family from these apparent dangers. I would also like to acknowledge that PECO and the PUC are now aware of them also.

As presented in Stewart v. Motts, 654 A. 2d 535 - Pa: Supreme Court 1995:

*We begin our discussion by reaffirming the principle that there is but one standard of care to be applied to negligence(sic)actions involving dangerous instrumentalities in this Commonwealth. This standard of care is "reasonable care" as well stated in the Restatement (Second) of Torts:*

*The care required is always reasonable care. The standard never varies, but the care which it is reasonable to require of the actor varies with the danger involved in his act and is proportionate to it. The greater the danger, the greater the care which must be exercised. . . .*

In my Formal Complaint I entered into evidence numerous pages of the biological and neurological health effects associated with the non-ionizing, non-thermal, pulsed microwave radiation associated with smart meters and how they have a more serious effect on the undeveloped bodies of children. This information provided by biologists and medical doctors is but a small sample of the information that is constantly being released which, if it pleases the Madam Secretary, I am willing to supply. 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.*

With the evidence submitted and the fact that PECO, the PUC and the ALJ must accept this information as true, the inference that I cannot claim that there are potential negative health effects of a smart meter unless I install one is to insinuate that I must commit negligence against myself and my children. This is an absurd notion and highly irregular as the rule of law is supposed to protect me from the negligence of others.

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In light of the evidence now available to PECO and the ALJ and their refusal to act on this information and then to suggest that I need to install the smart meter before I can claim any health effects, one could possibly charge gross negligence on their behalf.

Blacks Law Dictionary defines Gross Negligence:

*A severe degree of negligence taken as reckless disregard. **Blatant indifference to one's legal duty, other's safety, or their rights are examples.** There is no specific legal definition, but if one drives recklessly and kills another, it is applied as involuntary manslaughter. [A. Starr emphasis] (Source: <http://thelawdictionary.org/gross-negligence/>)*

PECO is using a double standard. In a Philly.com article "After tests, Peco to resume smart-meter installations" dated October 10, 2012 it was reported that PECO had suspending smart meter installations. If smart meter installation was mandated by law, would PECO have the power to stop installation without approval from the legislature or did PECO break the law? Whether or not PECO broke the law by stopping the installation of smart meters is not the issue, rather it is why did they stop installations in the first place? In this instance PECO suspended installations for the health risks associated with meter fires or its associated liability. The double standard presents itself as to why they will not suspend installations for the known biological and neurological health effects associated with the non-ionizing, non-thermal, pulsed microwave radiation associated with smart meters or its associated liability. PECO had the meters tested and without identifying a root cause of the fires or placing blame, thought it prudent enough to replace 186,000 meters. In this instance PECO exercised the "precautionary principle" by stopping installations and replacing 186,000 meters that where not deemed defective, yet PECO does not afford the same consideration for other issues. PECO, in suspending its installations due to a smart meter safety issue and then to categorically deny or ignore other fact-based safety issues regarding smart meter installation is a double standard of the highest degree.

### Conclusion

In 66 Pa.C.S.A. § 2807(f)(2) "shall" is an ambiguous term. The law is clear that in statues where ambiguity can arise when defining shall, it is the legislative intent along with the private right as protected in the United States Constitution and the Constitution of this Commonwealth that dictates the rightful meaning.

In alleging that "shall" in 66 Pa.C.S.A. § 2807(f)(2) is a mandate, PECO is violating the law, the PA Code and PUC Commission under which it operates. I have averred case law, legal definitions and supplied documented legislative intent. This evidence was either summarily dismissed or argued as "quibbling". In light of the law averred, PECO has no standing in law and no merit in their argument.

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PECO and ALJ Haas have not followed the law as averred in *Margeret H. Hager, M.D. v. PECO Energy Co., Docket No. C-2014-2444961* by refusing to consider the dangerous health effects associated with smart meter technology. And due to failing to recognize my pleaded material as true in dismissing my claim, PECO and ALJ Haas have subsequently suggested that I must be negligent to myself and children before a claim can be made. The law protects me from negligence and gross negligence and their inference has no standing.

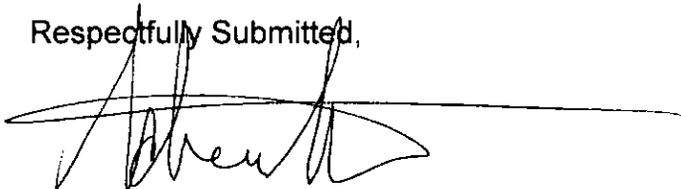
I have submitted into evidence documents from the legislature that prove the intent of the law that smart meters are not mandatory. These documents were also summarily dismissed while at the same time PECO still insists it is doing the will of the legislature by forcing smart meter installation. This is factually not possible. PECO and ALJ Haas have not acknowledged my averment from the legislative journal nor recognized the true intent of the legislature.

Granted, PECO and ALJ Haas may use previous dismissed PUC cases as precedent in my ruling against me, but can they just ignore or summarily dismiss the precedent I submitted into evidence which ultimately brings into question the validity of these rulings? I have brought into question the legitimacy of the definition that PECO has assigned to the word "shall" yet they offer no other evidence to support the validity of their definition except to recite the same previously dismissed PUC cases.

In light of PECO's inability to support its position by challenging my averments or acknowledgment of these averments it is clear that they have no case in law. Therefore I request that the ALJ's decision be reversed due to these facts of law I have presented.

I submit that there are disputed questions of fact in this case and that a public hearing is warranted. 52 Pa. Code § 5.21(d); *Dee-Dee Cab v. Pa. PUC*, 817 A.2d 593 (Pa. Cmwlth. 2003).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Andrew Starr", with a long horizontal line extending to the right.

Andrew Starr

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April 25, 2016

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PUC DOCKET NO. C-2015-2516061

PA PUBLIC UTILITY COMMISSION  
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**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, 2<sup>nd</sup> Floor  
Harrisburg, PA. 17120**

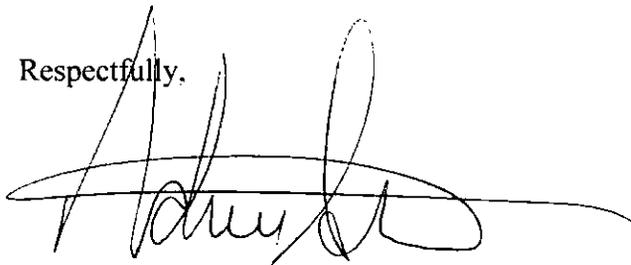
**Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market St, S23  
Philadelphia, PA. 19101-8609**

Along with an email copy to:

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

Dated at Horsham, Pennsylvania, this day of April 25, 2016

Respectfully,

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

Andrew Starr



Mr. Andrew Starr  
 926 Langdon Ave  
 Horsham, PA 19044-1010

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