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September 6, 2016

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

**RE: Alfred Ottaviano v. PECO Energy Company**  
**PUC Docket No.: F-2016-2542081**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Reply Exceptions* 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 horizontal flourish extending to the right.

Shawane Lee  
Counsel for PECO Energy Company

cc: Certificate of Service

s/LD



## **REPLY EXCEPTIONS**

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Alfred Ottaviano (“Complainant”) in the above-referenced matter on August 26, 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.

On April 27, 2016, 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 states that PECO is harassing him with shut off notices because he has refused to have the meter installed. The Complainant states that he does not want the meter because he fears the meter causes fires and “damage, havoc, injury and potential loss of life.” The Complainant additionally alleges that he read in the Philadelphia Inquirer that the meters involve “health, safety and exposure to certain levels of radiation.” The Complainant claims that the AMI meters have not been certified by the Underwriters Laboratory; therefore, the meters have been deployed without consideration of the safety of homeowners. The Complainant requests that the installation of his meter be deferred until the legislature can rule on an Act 129 provision.

Respondent, PECO filed an Answer with New Matter on May 4, 2016, 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. The Complainant did not file a response to PECO’s Preliminary Objection. On July 5, 2016, Administrative Law Judge Darlene D. Heep (“ALJ Heep”) and Christopher P. Pell (“ALJ Pell”) issued an Initial Decision, dismissing Complainant’s Complaint, holding inter alia that:

There are no disputed questions of fact that require a hearing and the claims as presented would permit no relief. The Complainant does not allege that PECO has violated any law, regulation or Commission Order. Further, Mr. Ottaviano's Complaint does not contain allegations to which he can personally testify, such as that he has experienced fire or damage or other specific safety or health problems with respect to installation of a smart meter. His Complaint also does not contain any allegations of material facts regarding any health effects that her or his family, specifically, would experience if a smart meter is installed in the future, and therefore, his claim is legally insufficient. *See Kreider v. PECO Energy Company.*

See Alfred Ottaviano v. PECO Energy Company, F-2016-2542081, (Order entered, July 5, 2016).

In his Exceptions, Complainant states that he has been terrified by the ALJ's decision and cannot get out of his mind that some evening he will awaken in a fiery smoke filled home caused by an AMI meter malfunction. The Complainant states that he is concerned for the loss of his privacy and the termination of his electric service through no fault of his own. The Complainant alleges that the AMI meter interruption into his life has made a terrible impact. The Complainant once again requests delay of the meter installation until a process can be developed which provides relief to the issues of safety, health, privacy and his quality of life.

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.

It has been well-settled that pursuant to Act 129, PECO customers are not permitted to "opt out" of smart meter installation. See e.g. Theresa Gavin v. PECO Energy, Docket No. C-2012-2325258 (Order entered January 24, 2013); Jeff Morgan v. PECO Energy, Docket No. C-2013-2356606 (Final Order entered July 23, 2013); Thomas McCarey v. PECO Energy, Docket

No. C-2013-2354862 (Final Order entered September 26, 2013); Renney Thomas v. PECO Energy, Docket No. C-2012-2336225 (Final Order entered December 31, 2013); Ellen Donnelly v. PECO Energy, Docket No. F-2013-2330663 (Final Order Entered March 18, 2014) and Gerald H. Smith v. PECO, Docket No. C-2014-2443198 (Opinion and Order entered April 23, 2015).

In this case, the Complainant's desire to "opt out" of meter installation because of his fear the meter will cause a fire or his belief the meters will intrude upon his privacy is not a basis to overturn ALJ Heep and ALJ Pell's Initial Decision. As ALJ Heep and ALJ Pell stated in their Initial Decision, Mr. Ottaviano's Complaint "does not contain allegations to which he can personally testify, such as that he has experienced fire or damage" or other specific safety problems with respect to installation of a smart meter. Similarly, the Commission adopted Administrative Law Judge Elizabeth H. Barnes' Initial Decision in the case Antonio Romeo v. PECO Energy Company, Docket No. C-2015-2479260 (Initial Decision entered June 4, 2015), where the Complainant refused to have a smart meter installed because he feared it would cause fires and affect his safety and health. ALJ Barnes reasoned:

There are some cases, such as this case, however, where a hearing would not alter the inevitable conclusion that this Commission cannot provide the Complainant the relief requested. *See, Floyd v. Verizon Pennsylvania LLC*, Docket No. C-2012-2333157 (Order entered April 4, 2013). Mr. Romeo has not presented a claim to which he could personally testify that would support a finding that a smart meter was responsible for any fire or damage or other specific safety or health affects he experienced within his home. For these reasons, we find *Carlock* distinguishable from the case now before us and agree with the ALJ's dismissal.

See Antonio Romeo v. PECO Energy Company, Docket No. C-2015-2479260 (Opinion and Order entered March 3, 2016).

Here, the Complainant has not specified that a meter has caused a fire in his home or any other damage. His fear that it will is not enough to overturn ALJ Heep and ALJ Pell's Initial Decision. Accordingly, the Complainant's Exception in this regard should be denied.

Second, the Complainant states in his Complaint that he read in the Philadelphia Inquirer that the meter can cause radiation and health problems. In his Exceptions, the Complainant states that installation of the meter should be delayed until a process is developed which will provide relief to health and quality of life issues. In this case, the Complainant has not alleged a specific health effect from the meter that is affecting him or anyone in his household. As Administrative Law Judge Steven K. Haas astutely reasoned in his Initial Decision Andrew Starr v. PECO Energy Company, Docket No. C-2015-2516061 (Initial Decision entered January 14, 2016):

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 Commission upheld ALJ Haas' Initial Decision in an Opinion and Order entered on September 1, 2016. Likewise, more recently, ALJ Heep and ALJ Pell reached the same conclusion in Fugo Eye Institute v. PECO Energy Company, Docket No. C-2015-2519763 (Initial Decision entered March 10, 2016) (Final Order entered July 7, 2016). In that case, the Complainant alleged that installation of the smart meter would have a negative health effect on their patients and staff. ALJ Heep and ALJ Pell dismissed the Complainant's formal complaint on PECO's Preliminary Objection stating:

The Fugos have made no specific factual averments regarding health or other effects experienced after a smart meter was installed. Complainants have not permitted installation of a smart meter at the medical facility. They state, speculatively, that the smart meter “will” have a negative impact on their staff and patients if installed and as relief want keep the old meter. They did not provide any details regarding the alleged future health effects.

See Fugo Eye Institute v. PECO Energy Company supra.

Finally, in his Exceptions the Complainant states that he is concerned about the termination of his electric service, through no fault of his own, because of his refusal to permit PECO to install the AMI meter. The Commission has determined that PECO is within its rights to terminate a customer’s electric service for refusal to have the meter installed. In Alexander Solowij v. PECO, Docket No. F-2015-2491428 (Initial Decision entered September 21, 2015), the Complainant objected to the installation of the Smart Meter because he believed if the meter were installed it would aggravate a health condition. PECO terminated Mr. Solowij’s service for his failure to permit installation of the meter. Administrative Law Judge David A. Salapa (“ALJ Salapa”) granted PECO’s Preliminary Objection and dismissed the complaint. The Commission determined that:

The Complainant’s claims that PECO improperly terminated service to his residence do not implicate a potential violation of the Code or the Commission’s Regulations or Orders. We have previously upheld determinations dismissing complaints that alleged wrongful termination or attempts to terminate service in instances where customers did not provide access to their meters. See Art Larson v. PECO Energy Company, Docket No. C-2014-2451754 (Order entered June 11, 2015); Louise Francis v. PECO Energy Company, Docket No. C-2014-2451351.

See Alexander Solowij v. PECO, Docket No. F-2015-2491428 (Opinion and Order entered April 7, 2016).

Clearly, none of the Complainant's 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 his viewpoint about his fear of fire, invasion of privacy and the potential impact to his health and quality of life. The Exceptions are without any merit and do not warrant a reversal of ALJ Heep and ALJ Pell's Initial Decision.

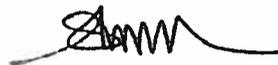
The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. 52 Pa. Code Section 5.101. Pursuant to 52 Pa. Code §5.101(a)(4), a formal complaint may be dismissed without a hearing for legal insufficiency. The Complainant was served with a copy of PECO's 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 Heep and ALJ Pell 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), the ALJs determined that there is exemption provision, giving the Complainant a right to opt out of meter installation. ALJ Heep and ALJ Pell'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 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 Heep and ALJ Pell'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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