

Legal Department
2301 Market Street / S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Direct Dial: 215.841.6841

September 27, 2016

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

RE: Nancy Colbert v. PECO Energy Company
PUC Docket No.: C-2016-2561993

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Motion for Judgment on the Pleadings* 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".

Shawane Lee
Counsel for PECO Energy Company

SL/alb
Enclosure

cc: Certificate of Service

PENNSYLVANIA PUBLIC UTILITY COMMISSION

NANCY COLBERT
Complainant

v.

PECO ENERGY COMPANY
Respondent

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:
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DOCKET NO. C-2016-2561993

NOTICE TO PLEAD

To: Nancy Colbert

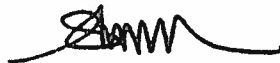
Pursuant to 52 Pa. Code §§5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion for Judgment on the Pleadings within 20 days from service of this notice, the facts set forth by PECO Energy Company may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane Lee, and where applicable, the Administrative Law Judge presiding over the issue.

Failure to respond to this Motion could result in the dismissal of your case.

File with:
Rosemarie Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:
Shawane L. Lee, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, September 27, 2016



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6863

PENNSYLVANIA PUBLIC UTILITY COMMISSION

NANCY COLBERT	:	
Complainant	:	
v.	:	DOCKET NO. C-2016-2561993
	:	
PECO ENERGY COMPANY	:	
Respondent	:	
	:	

MOTION FOR JUDGMENT ON THE PLEADINGS

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code § 5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On August 17, 2016, PECO was served with a formal complaint filed by Nancy Colbert (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1”.

2. In her formal complaint, Complainant disputes the installation of a Smart Meter at her home and an Initial Decision dismissing her case at docket number C-2015-2515607. The Complainant states there is “corruption” and that her case cannot be closed until due process has been completed.

3. On September 6, 2016, PECO filed an Answer, New Matter and Notice to Plead. A copy of PECO’s Answer and New Matter is attached hereto as Exhibit 2.

4. PECO averred in its New Mater that this is the Complainant’s second formal complaint in which the Complainant disputes the installation of the Smart Meter. New Matter ¶2.

5. PECO averred that the Complainant filed a formal complaint docketed at C-2015-2515607. In that Complaint, the Complainant alleged that she does not want a Smart Meter installed at her home because she believes it violates her constitutional rights and it is an invasion of her privacy. New Matter ¶3

6. PECO averred that on January 7, 2016, the issues raised in the formal complaint at docket number C-2015-2515607 were ruled on by Administrative Law Judge David A. Salapa (“Judge Salapa”), which dismissed the Complainant’s complaint. New Matter ¶6.

7. PECO averred that the Complainant filed Exceptions to Judge Salapa’s Initial Decision and the Commission issued an Opinion and Order on June 30, 2016, upholding Judge Salapa’s decision. New Matter ¶7-8.

8. Accordingly, PECO averred that all of the allegations in the Complainant’s current formal case should be dismissed on the grounds of res judicata. New Matter ¶9.

9. Complainant filed a response to PECO’s New Matter on September 17, 2016, stating there are several untruths in PECO’s pleading. The Complainant alleged that in her 2015 complaint she alleged skyrocketing billing errors and very ill health effects. The Complainant also states in her response that the meters cause overwhelming damage and are weakening people’s immune systems from EMF exposure.

10. All of the allegations raised in the Complaint were previously raised by the Complainant in her 2015 complaint. These allegations were dismissed by Judge Salapa and upheld by the Commission.

11. Further, the Complainant has not had a Smart Meter installed at her home; therefore, even if she had pled these issues in her 2015 formal complaint, she could not have skyrocketing billing errors from the meter or ill health effects. See e.g. Andrew Starr v. PECO

Energy Company, Docket No. C-2015-2516061 (Initial Decision entered January 14, 2016) (where Administrative Law Judge Steven K. Haas determined that since the Complainant refused to give his consent to install the smart meter no ill health effects could be claimed.)

12. The Commission's regulations at 52 Pa. Code §5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing. Under 52 Pa. Code §5.102(d)(1), the presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.

13. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983).

14. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of the case exists, a hearing is unnecessary. *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d. 557 (Pa. Cmwlt. 1989).

15. The pleadings in this case reveal that the Complainant's case is barred on res judicata grounds.

16. The doctrine of res judicata operates to prevent re-litigation of claims already litigated on the merits. As stated by the Commission in Frank Tomazin v. Pennsylvania-American Water Company, 1997 Pa. PUC Lexis 52 (1997), "the policies underlying the

doctrine of res judicata are minimizing judicial energy devoted to individual cases, establishing certainty and respect for court judgments, and protecting the party relying on the prior adjudication from vexatious litigation.”

17. Res judicata includes any issue, claim or defense that was raised or could have been raised in the prior proceedings. Glynn v. Glynn, 2001 PA Super 359, ¶ 27, 789 A.2d 242, 250.

18. The doctrine of res judicata, which is also known as claim preclusion, holds that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies. Hopewell Estates, Inc. v. Kent, 435 Pa. Superior Ct. 471, 476, 646 A.2d 1192 (1994). The doctrine of res judicata applies to cases before the Commission. See, O’Toole v. Bell Telephone Co. of Pennsylvania, Inc., 77 Pa. P.U.C. 98, 104 (1992). The doctrine of res judicata reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:

- (1) Identity of issues;
- (2) Identity of causes of action;
- (3) Identity of persons and parties to the action; and
- (4) Identity of the quality and capacity of the parties suing or sued.

Day v. Volkswagenwerk Aktiengesellschaft, 318 Pa. Superior Ct. 255, 474 A.2d 1313, 1316, 1317 (1983).

19. In the present case all four elements of res judicata are met.

20. Consistent with the requirement of res judicata, the issue sued upon in the 2015 matter and the 2016 complaint are the same. Complainant’s issue is founded on her refusal

to have the Smart Meter installed at her home because she believes it violates her privacy and constitutional rights. The Complainant believes the Public Utility Commission is interpreting Act 129 into unpromulgated regulation because it and PECO “have a lot of money to make selling” data on electric usage.

21. The cause of action in the most recent Complaint is also the same. In the 2015 matter, Complainant requested that she be permitted to refuse installation of the Smart Meter. The Complainant makes the same complaint in her current formal complaint where she refuses the installation of the Smart Meter and demands due process.

22. However, ALJ Salapa already determined that Complainant’s formal complaint failed to state a claim for which relief could be granted. See Nancy Colbert v. PECO, C-2015-2515607 (Initial Decision entered January 7, 2016).

23. In her current formal complaint, the Complainant confirms her smart meter concerns have already been litigated when she states: “all parties have all documentation” regarding docket number C-2015-2515607 and that her “rightful request for a hearing” remains under this docket number.

24. Res judicata also requires the parties to the instant action be the same or stand in privity to the parties of the original action. Hopewell Estates, Inc. v. Kent, 435 Pa. Superior Ct. 471. 476,646 A.2d 1192 (1994). The parties in the most recent action are the same as the 2015 complaint which was already dismissed. This matter is again initiated by Nancy Colbert against PECO Energy.

25. As required by the fourth tenant of the doctrine of res judicata, the quality and capacity of the parties involved is the same as it was in 2015.

26. Section 703 of the Public Utility Code, 66 Pa. C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing of, in its opinion, a hearing is not necessary to the public interest.

27. Here, the issues presented have all been litigated previously. Therefore, PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

28. All of the allegations raised in the Complaint were previously raised by the Complainant in a former complaint and were dismissed.

29. For purposes of determining whether res judicata applies, the essential inquiry is whether the ultimate and controlling issues have been decided in a prior proceeding where the parties had an opportunity to appear and to be heard. Stevens Painton Corp. v. First State Ins. Co., 746 A.2d 649, 654 (Pa. Super. 2000) (emphasis added). The Complainant was provided with an opportunity before ALJ Salapa who reviewed and considering the merits of her Complaint. The Complainant filed Exceptions to Judge Salapa's Initial Decision and the Commission reviewed the Decision and issued an Opinion and Order. Accordingly, the Complainant had an opportunity to be heard.

30. Because the present Complaint asserts the same factual and legal basis for relief as the dismissed 2015 Complaint, the Complainant is estopped from attempting to re-assert her claims here.

31. The doctrine of res judicata is meant to protect against just the type of re-litigation that the Complainant is attempting with her present formal Complaint. It is pointless and a waste of the Commission's time and resources to permit the new Complaint to go forward with respect to any issues already raised in the earlier Complaint.

32. For the reasons set forth above, all of the Complainant's claims should be dismissed on the grounds of res judicata.

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's Complaint, and all issues which were raised in the 2015 Complaint at docket number C-2015-2515607.

Respectfully submitted,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NA NCY COLBERT
Complainant

v.

PECO ENERGY COMPANY
Respondent

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:
:

DOCKET NO. C-2016-2561993

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: September 27, 2016



Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY COLBERT	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2016-2561993
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Nancy Colbert
142 Pennsylvania Avenue
Phoenixville, PA 19460

Dated at Philadelphia, Pennsylvania, September 27, 2016.



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

EXHIBIT 1

Botak, Amy:(PECO)

From: eServe@pa.gov
Sent: Wednesday, August 17, 2016 11:24 AM
To: Lee, Shawane L:(PECO)
Cc: Botak, Amy:(PECO)
Subject: [EXTERNAL] PA PUC eServe Notice
Importance: High

Dear Shawane L Lee,

A(n) **Formal Complaint** has been served in this proceeding. This document is docketed as **C-2016-2561993**.
You may view this document at
[Colbert Formal Complaint](#)

You are receiving this email because you are a(n) **Respondent** for this case and have agreed to be served electronically. By selecting electronic service (eService), you have agreed that this notification constitutes valid service. Electronic service of any and all documents will be in place of paper service.

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

* *Please do not respond to this automatically generated email.*

PECO ENERGY
EXHIBIT 2

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an objection to the complaint.

RECEIVED

AUG 08 2016

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

PA PUBLIC UTILITY COMMISSION

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name NANCY COLBERT
Street/P.O. Box 142 PENNSYLVANIA AVE Apt #
City PHOENIXVILLE State PA Zip 19460
County CHESTER

Telephone Number(s) Where We Can Contact You During the Day:

610 917 1116 (home) () (mobile)

E-mail Address (optional): _____

Utility Account Number (from your bill) 35558 - 00208

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name _____
Street/P.O. Box _____
City _____ State _____ Zip _____

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

peco

3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- ELECTRIC
- GAS
- WATER
- STEAM HEAT
- WASTEWATER/SEWER
- TELEPHONE/TELECOMMUNICATIONS (local, long distance)
- MOTOR CARRIER (e.g. taxi, moving company, limousine)

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.

DOCKET C-2015-2515607

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.

Other (explain).

CORRUPTION

ALL PARTIES HAVE
ALL DOCUMENTATION
DOCKET No

C-2015-2515607

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or internet service, but may be able to resolve a dispute regarding voice communications over the internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to internet service.

8. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

JULY 4, 2016 letter

ATTACHED

6th NOTICE

8 Staples

Copied

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. **Protection From Abuse (PFA)**

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. **Prior Utility Contact**

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

CORRUPTION

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. Verification and Signature

You must sign your complaint. Individuals filing a Formal Complaint must print or type their name on the line provided in the verification paragraph below and must sign and date this form in ink. If you do not sign the Formal Complaint, the PUC will not accept it.

Verification:

I, NANCY COLBERT, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4804 (relating to unsworn falsification to authorities).


(Signature of Complainant)

8/5/16

(Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions).

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification must be signed by an authorized officer or authorized employee. If the Formal Complaint is not signed by one of these individuals, the PUC will not accept it.

10. Two Ways to File Your Formal Complaint

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/eFiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

Note: Formal Complaints sent by fax or e-mail will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE
NUMBER

July 7, 2016

Nancy Colbert
142 Pennsylvania Avenue
Phoenixville, PA 19460

RE: Nancy and Jim Colbert v. PECO Energy Company
Docket No. C-2015-2515607

Dear Mrs. Colbert:

On July 5, 2016, my office received the enclosed document challenging the Commission's June 30, 2016 Opinion and Order in the above-referenced case. I am returning it unfiled because it does not comply with the Commission's Regulations. You may file again, following the instructions below.

By July 15, 2016, you may file a Petition for Reconsideration. After that date, you may file a Petition for Rescission or Amendment. 52 Pa. Code § 5.571(e) and (d). Regardless of which type of petition you file, you should give specific reasons why you believe the Commission's decision is incorrect. It is recommended that you identify each finding of fact or conclusion of law that you dispute, and give supporting reasons why the Commission should change its decision.

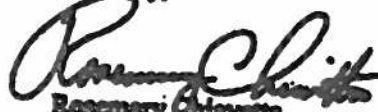
In addition, regardless of which type of petition you file, you should:

- include a verification (a form is enclosed);
- mail a copy to the attorney for PECO Energy Company (PECO) at:
Shawna L. Lee
Epsilon Business Services
Legal Department, 823-1
2301 Market Street
Philadelphia, PA 19101
- include a certificate of service proving that a copy of your filing was sent to PECO Energy Company (a form is enclosed).

PECO would then have an opportunity to respond to your filing before the Commission takes any further action in this proceeding.

Should you have any questions, you may contact the Office of Special Assistants, Cheryl Waller Davis, Director. Please direct your inquiry to Jonathan Ness, Deputy Director - Legal, at (717) 787-3490 or jnass@pa.gov.

Sincerely,


Rosemary Calavetta
Secretary

Enclosure

MAY 4, 2016 INDEPENDENCE DAY - 202 Years later under NO 20 CONSTITUTION

Now tragic and unfortunate this letter has to be written on the birth date of our nation for testimony against the violations of its Constitution and the assault on the Pennsylvania citizens

Rosemary Chiavetta, all commissioners and associated personnel

per

P.O. Box 326

Harrisburg, PA 17105-3265

C-2015-2515607

RE: Docket # 2025-2515607

RECEIVED

JUL - 5 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

As a Former Complainant receiving an "Opinion and Order" which declares the right to deny all evidence of FACT and to force UNPROMULGATED REGULATION (which also has ~~deliberately~~ been denied legislative reform clamored by the public), this letter exercises the right to an in-person hearing during normal business hours in Philadelphia on Market Street where many events occurred as our Founding Fathers first established the founding principles of the United States of America, beginning with the Declaration of Independence and ending with the Bill of Rights. You will need to provide public testimony with the same manner of treating me despicably just like all the other Complainants dismissed with prejudice which will further testify of your ever-increasing liability. No foolery here, THIS IS AMERICA. And as Jesus Christ said; "If they slip one cheek, offer them the other."

We both know the case cannot be closed until due process has been completed, especially since it has already been delayed on several occasions which you know full well also and has been carefully documented. In any case, a new formal complaint will be considered for commencement with new and continuing evidence, actual evidence and legal fact included as the public arena increasingly aware.

Furthermore, please be advised this matter is being addressed at a higher level of authority according to the Real Law of Pennsylvania, the United States of America and beyond.

A response to the June 30, 2016 OPINION and ORDER has been sent to the appropriate office about which you may be informed when appropriated by law. Legal action based on Real Law - Real Law does not harm humanity - has already commenced internationally since enough people take offense at being treated abusively like inconsequential waste.

In the meantime, here is a suggestion for your next vacation trip: GO VISIT THE ADAMS ANTIQUARIAN BOOK COLLECTOR AND TRAVELER A NEW YORK HISTORIC PERSON WHO LIVED IN MAY 4 INDEPENDENCE DAY and being the Pennsylvania state capital with you! In fact, the Adams estate holds a special June celebration into the "Pennsylvania State House" Independence Hall where the public will be around the anniversary events of 2025. ~~www.PennsylvaniaPA~~

Lastly and of most importance: By the Principle of Freedom, Universal Law allows you to sow your seeds of unpromulgated regulation, but if you fail to awaken to the harm you are inflicting upon humanity (including yourselves), in due season, that Law will have no choice but to allow you to reap what you have sown.

In other words, "...they have the desire for power, and the disguised aristocracy of the 'super-man,' who lives in the illusion of being such, while in reality he is prey to mostly sub-human instinct. These directions claim the right to be served by the masses, but bear no responsibility toward them. The

142 PA Ave
PHX, PA 19160

CERTIFIED MAIL



7016 0340 0000 1433 8774



1000



17120

U.S. POSTAGE
HARRISBURG, PA
AUG 08 10
AM
\$3.77
R2009145783-01

RECEIVED

AUG 08 2016

PA PUBLIC UTILITY COMMISS-
SECRETARY'S BUREAU

SECRETARY
PA puc
400 NORTH STREET
HARRISBURG, PA

17120

1712000211 0000



EXHIBIT 2



**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

CONSUMER INFO UTILITY & INDUSTRY FILING & RESOURCES ABOUT PUC CONTACT US

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eFiling Successfully Transmitted



Your filing has been electronically received. Upon review of the filing for conformance with the Commission's filing requirements, a notice will be issued acknowledging such compliance and assigning a Docket Number. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

Print this page for your records. The date filed on will be the current day if the filing occurs on a business day before or at 4:30 PM Harrisburg, PA time. It will be the next business day if the filing occurs after 4:30 PM Harrisburg, PA time or on weekends or holidays.

If your filing exceeds 200 pages, you are required to submit ~~your~~ paper copy of the filing within 3 business days of submitting the electronic filing. This paper copy can be mailed to: Secretary, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120. Please print a copy of this page and attach it to the paper copy of your filing as the first page.

eFiling Confirmation	
Docket Number:	C-2016-2561993
Description:	Nancy Colbert v. PECO Energy Company Answer and New Matter to Formal Complaint
Transmission Date:	9/6/2016 1:35:07 PM
Filed On:	9/6/2016 1:35:07 PM
eFiling Confirmation Number:	1649114

Uploaded File List

File Name	Document Class	Document Type
Nancy Colbert - Answer and New Matter.pdf	Communication	Answer to Formal Complaint

PECO ENERGY
2



An Exelon Company

Legal Department
2301 Market Street / S23-1
Philadelphia, PA 19103

Direct Dial: 215-841-6841

September 6, 2016

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

RE: Nancy Colbert v. PECO Energy Company
FUC Docket No: C-2016-2561993

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Answer and New Matter to the Formal Complaint* 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".

Shawane Lee
Counsel for PECO Energy Company

Scheduling Recommendation: **NOT CALL OF THE DOCKET**

SL/d

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY COLBERT
Complainant
v.

PECO ENERGY COMPANY
Respondent

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DOCKET NO. C-2016-2561993

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed **NEW MATTER** of PECO Energy Company within 20 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to **NEW MATTER**, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

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

With a copy to:
Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, September 6, 2016



Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103
(215) 841-6481
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY COLBERT
Complainant
v.

PECO ENERGY COMPANY
Respondent

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DOCKET NO. C-2016-2561993

ANSWER OF RESPONDENT
PECO ENERGY COMPANY

On August 17, 2016, PECO Energy Company ("PECO Energy") was served with a formal complaint filed by Nancy Colbert (hereafter "Complainant"). Pursuant to 52 Pa. Code § 5.61, PECO Energy responds to the Complaint and states:

1. Admitted
2. Admitted.
3. Admitted.
4. Denied. Unless specifically admitted herein, PECO Energy denies all material allegations of fact and conclusions of law in the Complaint.

In her Complaint, the Complainant opposes the installation of PECO Energy's smart meter and makes reference to Docket C-2015-2515607. The Complainant states in her Complaint "corruption" and "all parties have all documentstion C-2015-2515607." PECO Energy's records reveal the following:

The Complainant, Nancy Colbert, established service at 142 Pennsylvania Avenue, Phoenixville, PA. PECO sent correspondence to the Complainants advising of the meter installation. The Complainants refused to have the meter installed. PECO Energy sent a ten-

day termination notice to the Complainants, advising that their service will be terminated for failure to give access to install the meter.

On November 23, 2015, the Complainant filed a formal complaint at docket number C-2015-2515607, objecting to the installation of a smart meter at her residence. Complainant alleged that she did not want the smart meter installed at her property because she believes it is a violation of constitutional law and invades her privacy. She stated that she also believes the meter causes fires and identity theft. PECO Energy filed an Answer with New Matter on December 14, 2015, denying the allegations in the Complaint. PECO Energy also filed a Preliminary Objection to Complainant's Complaint, averring that PECO Energy is required to install the meter pursuant to Act 129 and there are no consumer "opt out" provisions in the current statute. On January 7, 2016, Administrative Law Judge David A. Salapa issued an Initial Decision, dismissing Complainants' Complaint, holding *inter alia* that Complainants

...complaint does not set forth any violation of a Commission regulation, statute or order, it is legally insufficient.

See Nancy and Jim Colbert v. PECO Energy Company, C-2015-2515607, (Order entered, January 7, 2016).

The Complainant filed Exceptions to Judge Salapa's Initial Decision. The Commission issued an Opinion and Order on June 30, 2016, dismissing the Complainant's formal complaint. See Opinion and Order, attached hereto as Exhibit "1".

PECO Energy avers that with the filing of this formal complaint, the Complainant is attempting to re-litigate the formal complaint filed at docket number C-2015-251560. Under that basis, the Complainant's formal complaint should be dismissed as set forth in the company's New Matter.

5. Denied.
6. Admitted.
7. Admitted.
8. Energy neither admits nor denies the allegations in paragraph 8. PECO is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, such allegation is deemed denied.
9. Paragraph 9 is a Verification and Signature to which no response is required.
10. Paragraph 10 contains information regarding Filing, to which no response is required.

NEW MATTER OF RESPONDENT, PECO ENERGY COMPANY

PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.62(b), further responds to the Complaint and states:

1. PECO incorporates by reference responses contained in Paragraphs 1 through 10 above as though fully set forth at length.
2. This is the Complainant's second formal complaint against PECO in which the Complainant disputes the installation of the smart meter.
3. The Complainant filed formal complaint docketed at C-2015-2515607. In that Complaint, she alleged that she does not want the smart meter installed at her property because she believes it is a violation of constitutional law and invades her privacy. She stated that she believes the meter causes fires and identity theft.
4. PECO Energy filed an Answer with New Matter on December 14, 2015, denying the allegations in the Complaint.

5. PECO Energy also filed a Preliminary Objection to Complainant's Complaint, averring that PECO Energy is required to install the meter pursuant to Act 129 and there are no consumer "opt out" provisions in the current statute.

6. On January 7, 2016, Administrative Law Judge David A. Salapa issued an Initial Decision, dismissing Complainants' Complaint, holding inter alia that Complainants ...complaint does not set forth any violation of a Commission regulation, statute or order, it is legally insufficient.

See Nancy and Jim Colbert v. PECO Energy Company, C-2015-2515607, (Order entered, January 7, 2016).

7. The Complainant filed Exceptions to Judge Salapa's Initial Decision.

8. The Commission issued an Opinion and Order on June 30, 2016, upholding Judge Salapa's Decision and dismissed the Complainant's formal complaint.

9. The Complainant's allegations in the current formal complaint should be dismissed on the grounds of res judicata.

10. The doctrine of res judicata reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:

- (1) Identity of issues;
- (2) Identity of causes of action;
- (3) Identity of persons and parties to the action; and
- (4) Identity of the quality and capacity of the parties suing or sued.

Day v. Volkswagenwerk Aktiengesellschaft, 318 Pa. Superior Ct. 255, 474 A.2d 1313, 1316, 1317 (1983).

11. In the present case all four elements of res judicata are met. Clearly, the parties are identical in both Complaints. The thing sued upon is identical in both Complaints. Both the current formal complaint and the 2015 Complaint relate to the same issues: a request to opt out of smart meter installation. Indeed, in the present formal complaint, the Complainant makes reference to the former docket number C-2015-2515607 and states that all parties have the documentation relating to this complaint.

12. The cause of action is identical. Finally, the quality and capacity of the parties is identical in both Complaints. The Complainant is the electric customer in both Complaints, and PECO is the public utility providing service to the Complainant.

13. Because the present complaint asserts the same factual and legal basis for relief as the dismissed 2015 Complaint, the Complainant is estopped from attempting to re-assert her claims here.

14. Accordingly, the Complainant's Complaint should be dismissed pursuant to the doctrine of res judicata.

15. By way of further response, PECO is required by Act 129 to install AMI meters. There is no "opt out" from installing the meter.

16. Through strategically filing the formal complaints, the Complainant is attempting to stall installation of the meter.

17. While PECO is able to identify this abuse, the company is unable to mitigate this issue while the Complainant uses the PUC complaint process to stall meter installation.

**WHEREFORE, PECO Energy Company respectfully requests that your
Honorable Commission dismiss the instant Complaint.**

Respectfully Submitted,



**Shawana L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
shawana.lee@exeloncorp.com**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY COLBERT
Complainant
v.

PECO ENERGY COMPANY
Respondent

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DOCKET NO. C-2016-2561993

VERIFICATION

I, Shawane 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: September 6, 2016

Shawane L. Lee

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

NANCY COLBERT
Complainant
v.

DOCKET NO. C-2016-2561993

PECO ENERGY COMPANY
Respondent

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CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Nancy Colbert
142 Pennsylvania Avenue
Phoenixville, PA 19460

Dated at Philadelphia, Pennsylvania, September 6, 2016.



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com



An Exelon Company

Legal Department
2301 Market Street / S23-1
Philadelphia, PA 19103

Direct Dial: 215-641-6941

September 6, 2016

Nancy Colbert
142 Pennsylvania Avenue
Phoenixville, PA 19460

RE: Nancy Colbert v. PECO Energy Company
FUC Docket No: C-2016-2561993

Dear Ms. Colbert:

Enclosed is a copy of PECO Energy Company's response to the formal complaint filed in the above-referenced docket. The law requires PECO Energy to file an answer to your Public Utility Commission complaint. Keep these papers for your records. This is not a decision on your complaint. PECO's response may include a New Matter, Motion or Preliminary Objection. Please note that if you do not respond to a New Matter, Motion, or Preliminary Objection an unfavorable decision may be rendered against you. Responses to New Matters and Motions must be filed within 20 days. Responses to Preliminary Objections must be filed within 10 days. If there is no New Matter, Motion or Preliminary Objection included, no response is required.

Soon, the Public Utility Commission will schedule either a settlement conference or a hearing on your complaint. The Commission will let you know by mail whether there will be a conference or a hearing and will include instructions on what to do next. If the matter is set for hearing, the notice will provide you with information about the date, time and place of the hearing. If we are unable to resolve your complaint and have to proceed with a hearing, a judge will be at the hearing and will decide your complaint. You must call the Public Utility Commission if you have any questions about the hearing or if you cannot attend the hearing.

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

SL/lid
Enclosure

EXHIBIT "1"

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17103-3263**

Public Meeting held June 30, 2016

Commissioners Present:

**Gladys M. Brown, Chairman
Andrew G. Flaco, Vice Chairman
John F. Coleman, Jr.
Robert F. Powelson
David W. Sweet**

Nancy and Jim Colbert

C-2015-2515607

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Nancy and Jim Colbert (Complainants) on January 13, 2016, in response to the Initial Decision Sustaining Preliminary Objection and Dismissing Complaint (Initial Decision or I.D.) of Administrative Law Judge (ALJ) David A. Salapa, issued on January 14, 2016. PECO Energy Company (PECO, Respondent, or Company) filed Replies to Exceptions on February 19, 2016. For the reasons stated below, we will grant the Complainants' Exceptions, in part, and modify the ALJ's Initial Decision, consistent with this Opinion and Order.

**PECO ENERGY
EXHIBIT**

1

History of the Proceeding

On November 23, 2015, the Complainants filed a Formal Complaint against PECO, alleging that the Company was attempting to install a smart meter at the Complainants' residence that the Complainants did not want and that the Company was threatening to shut off their electric service because they would not provide the Company with access to their property to install a smart meter. In letters attached to the Complaint, the Complainants averred that the Respondent's attempts to install a smart meter at the Complainants' residence were unlawful, and that the Respondent was obligated to inform its customers of the risk of damages from smart meters, including the loss of privacy, radiation poisoning, identity theft, and fire. The Complainants also cited to various websites and publications in support of their position that, among other things, smart meters are not cost effective, are an invasion of privacy, and cause adverse health effects.

On December 14, 2015, the Respondent filed an Answer with New Matter. In the Answer, PECO denied all material allegations of fact and conclusions of law in the Complaint. PECO stated that it sent a ten-day termination notice to the Complainants, because they failed to grant PECO access to install the smart meter. Answer at 2. PECO averred that, in accordance with Act 129 of 2008 (Act 129), it was required to install Advanced Metering Infrastructure (AMI) meters for all of its current Automated Meter Reading (AMR) customers by the end of 2014. Answer at 3.

In its New Matter, PECO averred that the Complainants requested to opt out of smart meter installation, but that an opt out is not an option under any controlling authority. An opt out is not provided for under PECO's smart meter installation plan¹

¹ See Position of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123944 (Smart Meter Plan).

that was approved by the Commission,² under Act 129 under which PECO's smart meter plan was compelled, or under the Commission's June 18, 2009 Order establishing standards for which each electric distribution company (EDC) with more than 100,000 customers must file smart meter technology procurement and installation plans.³ Answer at 4. PECO argued that the absence of an opt out was further underscored by legislation introduced in the Pennsylvania General Assembly that sought to amend Act 129 to provide for an opt out provision but which had not yet been acted on. Therefore, PECO contended that, because the Company was operating in accordance with state law and Commission Order, no legal basis existed for the Complaint and dismissal as a matter of law was appropriate. Answer at 5-6.

Also on December 14, 2015, the Respondent filed Preliminary Objections, averring that the Complaint was legally insufficient pursuant to 52 Pa. Code § 5.101(a)(4). In its Preliminary Objections, PECO reiterated its position that its installation of smart meters was compelled by its Smart Meter Plan, the *PECO Smart Meter Plan Order*, the Commission's *Smart Meter Procurement and Installation Order*, and Act 129, none of which allowed for a customer to opt out of smart meter installation. PECO also further addressed the fact that lack of action by the General Assembly on draft legislation to provide for an opt out underscored its position. Preliminary Objections at 5-8. PECO also cited numerous Commission orders in which complaints

² 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*).

³ See *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Procurement and Installation Order*).

against smart meter installation were dismissed upon preliminary objection.⁴ *Id.* at 9-10. For these reasons, PECO argued that the Complainants failed to state a claim upon which relief could be granted and that the Complaint should be dismissed as a matter of law. *Id.* at 10-11.

On December 21, 2015, the Complainants filed an Answer to the New Matter and Preliminary Objections (Answer to Preliminary Objections). By Secretarial Letter issued December 28, 2015, the Commission's Secretary returned the Answer to Preliminary Objections to the Complainants because it did not contain an original signature. The Secretarial Letter provided the Complainants with ten days from the date of its issuance to return the filing with an original signature in order for the filing to be processed. The Complainants returned the Answer to Preliminary Objections, with the required signature, on January 4, 2016. In the Answer to Preliminary Objections, the Complainants reiterated many of the arguments in their Complaint, including that the Respondent's attempts to install a smart meter at their residence were unlawful.

In the Initial Decision issued January 14, 2016, ALJ Salapa sustained the Preliminary Objections, dismissed the Complaint with prejudice, and referred the public safety concerns raised in the Complaint to the Commission's Bureau of Investigation and Enforcement (I&E) for whatever action it deemed necessary.

⁴ PECO cited to *María Povecz v. PECO Energy Company*, Docket No. C-2012-2317176 (Order entered January 24, 2013); *Theresa Gavin v. PECO Energy Company*, Docket No. C-2012-2325258 (Order entered January 24, 2013); *Jeff Morgan v. PECO Energy Company*, Docket No. C-2013-2356606 (Final Order entered July 23, 2013); *Thomas McCarey v. PECO Energy Company*, Docket No. C-2013-2354862 (Final Order entered September 26, 2013); *Renee Thomas v. PECO Energy Company*, Docket No. C-2012-2336225 (Final Order entered December 31, 2013); *Ellen Darnally v. PECO Energy Company*, Docket No. F-2013-2330663 (Final Order entered March 18, 2014); and *Gerald H. Smith v. PECO Energy Company*, Docket No. C-2014-2443198 (Order entered April 23, 2015).

As previously noted, the Complainants filed Exceptions on January 15, 2016,⁵
PECO filed Replies to Exceptions on February 19, 2016.⁶

On February 22, 2016, the Complainants also filed a letter in response to
PECO's Replies to Exceptions. Because our Regulations at 52 Pa. Code §§ 5.533 and
5.535 do not provide for a response to Replies to Exceptions, we will not consider the
Complainants' response in rendering the instant decision.

Discussion

Initially, we note that any issue or Exception that we do not specifically
define shall be deemed to have been duly considered and denied without further
discussion. It is well-settled that the Commission is not required to consider expressly or
at length each contention or argument raised by the parties. *Consolidated Rail Corp. v.*
Pa. PUC, 625 A.2d 741 (Pa. Civ. Ct. 1993); also see, generally, *University of*
Pennsylvania v. Pa. PUC, 485 A.2d 1217 (Pa. Civ. Ct. 1984).

⁵ We acknowledge that the Complainants' Exceptions do not strictly conform
to 52 Pa. Code § 5.533(b), which requires each exception to "be numbered and identify
the finding of fact or conclusion of law to which exception is taken and cite relevant
pages of the decision." However, we will consider the Exceptions as filed in order to
secure a just, speedy, and inexpensive determination in this proceeding, consistent with
52 Pa. Code § 1.2(a) and (d), particularly because the Complainants are appealing *pro se*.
⁶ Replies to Exceptions were due on February 16, 2016; however PECO filed
its Replies three days after the deadline. The Exceptions consist of: (1) a document
bearing no docket number, no case name, and no signatures; (2) a copy of the Initial
Decision bearing handwritten markings; and (3) a letter addressed to the PUC. PECO
averts in its Replies to Exceptions that the Complainants only sent PECO a copy of the
first document, and that it did not construe that document as Exceptions. PECO further
averts that it subsequently viewed the second and third documents on the PUC website
and promptly filed its Replies. PECO requests that the Commission consider its Replies
to Exceptions, *mutatis mutandis*. Our Regulation at 1.13(a)(1) permits us to extend a
deadline, after the expiration of the specified period, where reasonable grounds are shown
for the failure to act. Upon review, we find reasonable grounds for PECO's brief delay in
filing Replies. Accordingly, we shall consider the Replies to Exceptions.

In his Initial Decision, ALJ Salapa made six Findings of Fact and reached three Conclusions of Law. I.D. at 4, 10. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Legal Standards

Section 5.101 of our Regulations, 52 Pa. Code § 5.101, sets forth the grounds for granting preliminary objections. That section provides as follows:

§ 5.101. Preliminary objections.

(a) **Grounds.** Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) **Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.**
- (2) **Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.**
- (3) **Insufficient specificity of a pleading.**
- (4) **Legal insufficiency of a pleading.**
- (5) **Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.**
- (6) **Pendency of a prior proceeding or agreement for alternative dispute resolution.**

(7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dep't of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979). The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commonwealth of Pa.*, 507 Pa. 360, 480 A.2d 402 (1985). The preliminary objection may be granted only if the moving party prevails as a matter of law. *Rek v. Fishery*, 527 A.2d 211 (Pa. Cirwith. 1987). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dep't of Auditor General, et al. v. State Employees' Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cirwith. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cirwith. 2002)).

ALJ's Initial Decision

The ALJ initially stated that, viewing the Complaint in the light most favorable to the Complainants, the Complainants do not want a smart meter installed at their residence and object to the termination of their service. The ALJ found that accepting these facts as alleged as true for the purpose of disposing of the Preliminary Objections, the Complainants failed to allege that PECO violated the Code, a Commission Order, or Regulation. On this basis, the ALJ determined that the Complaint was legally insufficient. I.D. at 6.

The ALJ stated that the Respondent was complying with Act 129 and the *PECO Smart Meter Plan Order* that was approved by the Commission. The ALJ determined that dismissal of the Complaint was consistent with prior Commission decisions. *Id.* at 7. The ALJ also determined that the instant case was distinguishable from the Commission's determination in *Susan Kreider v. PECO Energy Company*, Docket No. P-2015-2493064 (Order entered September 3, 2015). The ALJ averred that, because the Complainants did not allege that the Respondent installed a smart meter at their residence and did not allege that they suffered specific health symptoms resulting from the installation of a smart meter, *Kreider* was not applicable to this case. *Id.* at 8. While the ALJ dismissed the Complaint, the ALJ decided to refer the Complainants' safety concerns to I&E for whatever action I&E deemed appropriate, consistent with *Feldman v. PECO Energy Company*, Docket No. C-2014-2442308 (Order entered November 19, 2015). *Id.* at 9. The ALJ also found that PECO could terminate the Complainants' service if the Complainants refuse to provide PECO with access to their meter and equipment to install a smart meter. *Id.* (citing *Larson v. PECO Energy Company*, Docket No. C-2014-2451754 (Order entered June 11, 2015)).

Exceptions and Replies

In their Exceptions, the Complainants aver that, contrary to the ALJ's finding on page four of the Initial Decision, the Complainants did, in fact, file an Answer to the New Matter and Preliminary Objections. In Finding of Fact No. 6, the ALJ indicated that "[t]he Complainants have not filed an answer to either the Respondent's new matter or its preliminary objections." *Id.* at 4. The Complainants object to the ALJ's failure to consider their Answer to Preliminary Objections prior to ruling on the Preliminary Objections. The Complainants also contend that the Initial Decision is deficient because it does not contain an original signature of the ALJ.

In its Replies to Exceptions, PECO avers that the issues the Complainants raise in their Exceptions are not relevant to whether the Complainant has the ability to refuse meter installation under state law and whether PECO violated the Code, a Commission Order or Regulation, or the Company's tariff. R. Exc. at 1-2. PECO contends that, even if the Complainants filed a response to the Company's Preliminary Objections, they cannot raise any argument that will prevail as a matter of law, because Act 129 requires smart meters to be installed. R. Exc. at 2. PECO states that the Complainants have not provided legal justification to support their decision to refuse smart meter installation or to challenge the service termination. *Id.* at 2. PECO argues that the ALJ's decision should be upheld, because it is clear from the pleadings that PECO was complying with relevant Statutes, Regulations, and Orders and, under applicable law, the Complainant may not opt out of smart meter installation. *Id.* at 3-4.

Disposition

Based on our review of the record in this proceeding and the Exceptions and the Replies thereto, we shall grant the Exceptions, in part, and modify the ALJ's Initial Decision. We shall grant the Exceptions and modify the Initial Decision to correct Finding of Fact No. 4 and the related language on page four of the Initial Decision, which indicate that the Complainants did not file an answer to PECO's New Matter or Preliminary Objections. Our review of the Complainants' Answer to Preliminary Objections reveals that the filing does not contain a Certificate of Service or other indication that the ALJ or PECO were served with the Answer to Preliminary Objections. However, as noted herein, the Complainants timely filed an Answer to Preliminary Objections on December 21, 2015, as well as an amended Answer to Preliminary Objections on January 4, 2016, which contained an original signature consistent with the directive in the December 28, 2015 Secretarial Letter. We find that the Complainants' Answer to Preliminary Objections is properly before the Commission, and that PECO

will not be prejudiced by our consideration of the Answer in reaching our disposition in this Opinion and Order.

We shall adopt the remainder of the Initial Decision. We agree with the ALJ's determination to dismiss the Complaint on legal insufficiency grounds. We have held that the express language in Act 129 does not prohibit us from holding a hearing on issues related to the safety of smart meters, consistent with our statutory authority in Section 1501 of the Code, when a legally sufficient claim is present. *Kreider, supra*, at 17. In cases involving smart meter installation, we evaluate the specific allegations made by the complainant under the circumstances in each case and reach a conclusion based on those particular circumstances. *See Susan Kreider v. PECO Energy Company*, Docket No. P-2015-2495064 (Order on Reconsideration entered January 28, 2016), at 21. In this particular case, the Complainants' factual averments fail to implicate a potential violation of the Code, a Commission Order or Regulation, or the Company's tariff. The Complainants have not presented a claim to which they could personally testify that would support a finding that the installation of a smart meter was responsible for any specific safety or health effects they experienced within their home.

While we are dismissing the Complaint in this case, we recognize that the Complainants are appearing *pro se* and that we would not generally dismiss a *pro se* complaint without first providing a hearing during which the *pro se* complainants could further explain their position and the factual basis for the complaint. *See, e.g., Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (Order entered July 14, 1993) (*Carlock*). Such accommodation must be within the bounds of due process. *See MacLachlan v. Palmetto Energy, LLC*, Docket No. C-2014-2402558 (Order entered December 4, 2014). There are some cases, such as this case, however, where a hearing would not alter the inevitable conclusion that this Commission cannot provide the Complainants the relief requested. *See Floyd v. Verizon Pennsylvania LLC*, Docket No.

C-2012-2333157 (Order entered April 4, 2013). For these reasons, we find *Carlock* distinguishable from the case now before us and agree with the ALJ's dismissal.

We also find that the ALJ's Initial Decision contained a proper signature, because it contained an "/s/" on the signature line above ALJ Salapa's typewritten name. By Secretarial Letter issued January 29, 2013, at Docket No. M-2013-2344553, the Commission approved the use of such "/s/" electronic signatures on Initial Decisions. The Code and the Commission's Regulations do not otherwise contain a requirement regarding the format of signatures on Initial Decisions.

Conclusion

In light of the above discussion, we shall: (1) grant the Complainants' Exceptions, in part; (2) modify the ALJ's Initial Decision; and (3) dismiss the Complaint, all consistent with this Opinion and Order. **THEREFORE,**

IT IS ORDERED:

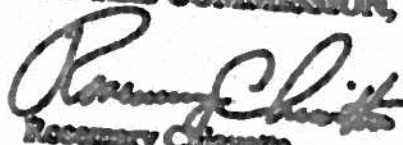
1. That the Exceptions filed by Nancy and Jim Colbert on January 15, 2016, are granted, in part.
2. That the Initial Decision Sustaining Preliminary Objection and Dismissing Complaint of Administrative Law Judge David A. Salapa, issued on January 14, 2016, is modified, consistent with this Opinion and Order.
3. That the Preliminary Objections filed by PECO Energy Company on December 14, 2015, are sustained.

4. That the Formal Complaint filed by Nancy and Jim Colbert at Doctst No. C-2015-2515607 is dismissed with prejudice.

5. That the public safety concerns raised by Nancy and Jim Colbert are referred to the Commission's Bureau of Investigation and Enforcement for whatever action it deems necessary.

6. That the proceeding at Doctst No. C-2015-2515607 is marked closed.

BY THE COMMISSION,


Rosemary Calivetta
Secretary

(SEAL)

ORDER ADOPTED: June 30, 2016

ORDER ENTERED: June 30, 2016