

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephen and Diane Van Schoyck	:	
	:	
v.	:	Docket No. C-2015-2478239
	:	
PECO Energy Company	:	

**COMPLAINANTS' AMENDED PETITION
FOR LEAVE TO WITHDRAW FORMAL COMPLAINT**

Pursuant to Section 5.94 of the rules and regulations of the Pennsylvania Public Utility Commission (“Commission”), 52 Pa. Code § 5.94, Complainants Stephen and Diane Van Schoyck (“Complainants”), through undersigned counsel, hereby submit this Amended Petition for Leave to Withdraw their Formal Complaint filed at the above-captioned docket. The Formal Complaint in this matter alleged violations of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, arising from health issues experienced by Complainants following PECO’s installation of a wireless digital meter at Complainants’ premises. In support of their amended withdrawal request, Complainants respectfully submit the following.

I. HISTORY OF THE PROCEEDING

1. On April 14, 2015, Complainants filed a formal complaint against PECO objecting to the Company’s installation of a wireless digital meter (“smart meter”) because they were concerned with the adverse effects the device had on their health. Complainants sought to have the Commission order PECO to remove the smart meter, and instead, install an analog meter to measure electric usage at the premises.

2. On May 6, 2015, PECO filed an answer and new matter to the complaint denying all material allegations and claiming they were legally obligated to install smart meters for all its electric distribution customers pursuant to Pennsylvania’s Act 129 of 2008 (“Act 129”).

3. Also on May 6, 2015, PECO filed preliminary objections seeking dismissal of the complaint for legal insufficiency. PECO claimed that Complainants did not allege a violation of any law, regulation or Commission order that could support a finding against the Company.

4. On May 23, 2015, the Van Schoycks filed an answer to PECO's preliminary objections. In their answer, the Van Schoycks continued to object to PECO's installation of a smart meter on their home due, in large part, to health concerns.

5. In an Initial Decision issued June 19, 2015, Administrative Law Judge Steven K. Hass sustained PECO's preliminary objections and dismissed the complaint.

6. On July 22, 2015, Complainants filed Exceptions to Judge Hass' decision asserting, among other things, that since the smart meter was installed at their premises in February 2015, they experienced health problems that included chest pain, difficulty sleeping and other symptoms.

7. On August 6, 2015, PECO filed Reply Exceptions arguing that Judge Hass' decision should be upheld in spite of Complainants' averments of health issues resulting from PECO's smart meter.

8. On February 25, 2016, the Commission reversed Judge Hass' decision dismissing the complaint and referred the matter to the Office of Administrative Law Judge for hearing.

9. The Commission found that the Complainants had made sufficient factual averments to point to a potential violation of Section 1501 of the Public Utility Code and that they were entitled to an opportunity to prove their health and safety claims at a hearing.

10. Administrative Law Judges Darlene Heep and Christopher Pell were assigned to hear the case and a hearing was scheduled for July 26-27, 2016.

11. The hearing in this matter was later continued to October 24-28, 2016.

12. In the course of proceedings in other similar cases before Judges Heep and Pell, undersigned counsel informed PECO counsel and the Judges that Complainants' intended to seek leave to withdraw from this case.

13. Complainants are requesting that the litigation schedule in this matter be suspended pending the Presiding Officers' decision on this petition.

II. REASONS FOR WITHDRAWAL

14. Complainants have spent considerable time and resources attempting to prevent PECO from installing an unsafe and harmful smart meter device on their property.

15. In addition to filing this case, Complainants have written many letters and made many phone calls to PECO, the Commission, legislators and others in an effort to secure some sort of relief or accommodation for their health concerns related to smart meters.

16. To date, Complainants have spent countless hours and significant sums of money to protect their health and the integrity of their home from a utility that is unwilling to provide any sort of reasonable accommodation.

17. Because Complainants' efforts have not yielded the desired results, they have decided to abandon the costly, time-consuming and stressful legal fight and disconnect their home from PECO's electric distribution system. Complainants have decided to go "off the grid."

18. Complainants have developed a transition plan to go off the grid, which includes the installation of solar system to generate electricity for their home and a whole-house battery for energy storage.

19. Currently, Complainants are engaged in the process of securing the necessary permits to complete the installation work and are taking a number of additional steps to ensure a safe and effective transition to solar power off the grid.

20. Once the project is completed, Complainants will have no need to be connected to PECO's electric distribution system, and therefore, will not need to have a smart meter installed at their home.

21. Complainants expect to go off the grid on or before November 30th of this year.

22. A full transition to an off-grid electrical system for their home will eliminate the Complainants' need to continue to litigate in order to prevent PECO's installation of a harmful wireless meter device at their home.

23. The planned conversion to a solar system for the Complainants' home also will put an end to PECO's threats of termination against Complainants for their purported failure to allow access to PECO's meter.

24. Complainants do not wish to be PECO customers any longer and would prefer to have their electric distribution service terminated rather than have a harmful smart meter installed on their property.

25. Granting this petition for leave to withdraw will conclude this matter and resolve the issues in this case in lieu of incurring the time, expense and uncertainty of litigation.

26. Complainants understand that a grant of this amended petition to withdraw may mean that their complaint case against PECO will end, and they will be barred from continuing the litigation or commencing or re-litigating the same issues that were the basis of the original complaint in a subsequent case involving the same parties and/or causes of action.

III. RESPONSE TO PECO'S OBJECTIONS

27. On October 20, 2016, Respondent PECO filed objections to the Complainants' Petition for Leave to Withdraw originally filed on October 17, 2016.

28. PECO's objections are based on conjecture and speculation in that they assume a scenario where the Complainants will be unable to effectuate their transition to an off-grid electrical system for their home. Complainants plan to be off the grid by November 30, 2016.

29. In PECO's hypothetical situation, Complainants will not transition away from PECO service, PECO will attempt to install a smart meter, and Complainants presumably will commence another case to prevent PECO from installing a smart meter in their home.

30. PECO appears to fear that this untenable situation will prolong the case and "then the Van Schoyck litigation will have effectively been pushed into 2017." Objection at 2.

31. PECO's speculation and conjecture are unfounded. There is nothing that Complainant want more than to be done with this case and have PECO leave them alone. They have done everything in their power to go off the grid by November 30th.

32. To support its position, PECO argues that since the case was remanded to hearing, Complainants "have done nothing to prosecute their evidentiary hearing." Objection at 3.

33. PECO's statement regarding Complainants' failure to prosecute their Complaint is demonstrably false.

34. Since the case was remanded to hearing, Complainants hired attorneys, consulted with experts to prosecute the Complaint and participated actively in hearing preparations as part of a group of complainants with similar cases against PECO.

35. Complainants joined in the filing of a motion to revise the litigation schedule and served answers to PECO's interrogatories.

36. Complainants sought medical attention for symptoms related to the installation of PECO's smart meter.

37. Complainants had to deal with a termination notice from PECO that was sent to Complainants in August of this year, while PECO was well aware that this case was still pending.

38. While it is true that Complainants have been actively considering options to avoid litigation and seeking an alternative to having a smart meter installed at their house, it is inaccurate to say that Complainants have failed to take action to prosecute their case as PECO claims.

39. PECO's claim that this matter is ripe for dismissal with prejudice for want of prosecution is inaccurate and does not comport with the facts.

40. Complainants' advised PECO and the Commission of their desire to withdraw from the case as early as August of this year while continuing to take steps to advance their interests in the complaint matter.

41. The Commission should take full consideration of the fact that Complainants have spent considerable time and money to proceed with the Complaint while, at the same time, planning to make the transition away from PECO and into an off-grid electrical system.

42. The fact that Complainants have limited resources and were not in a position to pursue the litigation with the vigor that PECO seems to expect should not be held against them as they attempt to withdraw their complaint.

43. A decision to grant this Petition to Withdraw does not preclude PECO from proceeding with termination if Complainants' transition to an off-grid system is not completed by November 30, 2016.

44. It would be unfair and unreasonable to compel Complainants to go forward with evidentiary hearings in this matter and force these individual customers to spend additional time

and money in a futile pursuit. Complainants have made it clear that they wish to withdraw from this case and cease to be PECO customers by going off the grid.

IV. CONCLUSION

WHEREFORE, Complainants respectfully requests that the Commission suspend the litigation schedule in this matter, grant this Amended Petition for Leave to Withdraw the Formal Complaint and mark this docket closed.

Respectfully submitted,



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Date: October 24, 2016

Counsel for Complainant

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CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Amended Petition to Withdraw Formal Complaint upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

Via Electronic Mail

Hon. Darlene Heep
Hon. Christopher Pell
Administrative Law Judges
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Date: October 24, 2016



Edward G. Lanza, Esq.