



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

BUREAU OF CONSUMER PROTECTION
Harrisburg Office
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
(717) 787-9707
October 31, 2016

Francis Hriadil
331 Shady Ridge Drive
Monroeville, PA 15146

Re: Duquesne Light
BCP-16-05-016827

C-2016-2571726

Dear Mr. Hriadil:

Your complaint regarding the above referenced matter has been reviewed and appears to come within the primary jurisdiction of another agency or another state. By copy of this letter, your complaint has been forwarded with a request that it be handled by the office listed below. By forwarding your complaint, we believe the issues you raise will be addressed by the agency primarily responsible for dealing with these types of problems.

Please direct any further inquiries about this matter to that office. If you would like more information on this referral, please feel free to contact our office.

A copy of your complaint will remain on file for our future reference. On behalf of the Office of Attorney General, thank you for bringing this matter to our attention.

Very truly yours,

Richard A. Lebo
Agent Supervisor

ml
23

cc: Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED
2016 NOV -3 AM 10:52
PA.P.U.C.
SECRETARY'S BUREAU

AC 211-5/165-270 PUC

331 Shady Ridge Drive
Monroeville, PA 15146

BCP

RECEIVED
October 22, 2016

RECEIVED
OCT 26 2016
Office of Attorney General
EXECUTIVE OFFICE

Office of the Governor
508 Main Capitol Building
Harrisburg, PA 17120

OCT 28 2016

PA Office of Attorney General
Consumer Protection - Harrisburg

Dear Governor Wolf:

On October 20, 2016, I received a letter from Mr. Dave Hixson, Office of Communications, PA Public Utility Commission.

I read his letter, and to be honest, I am not comforted nor am I reassured by anything that he had to say. And, I am disappointed that you did not see fit to look into this in more detail yourself, as I had urged and requested. Instead, you simply passed my complaint on to PUC for comment. Passing this matter on to them, does nothing to resolve the issue and protect the residents of this state, as the PA PUC is chiefly responsible for creating and perpetuating this situation in Pennsylvania. They are the problem that needs to be addressed.

I ask you, have you taken any time to read his letter in detail and do you understand the "matter of fact" statements that he has made, that are short but not so "matter of fact?" I hope to explain this all to you in some detail, and I apologize for the length of this letter; but, there is simply no shorter way to do it. Everything that I will state in response to Mr. Hixson's letter and comments is readily verified.

I have included three main points from that letter, and bolded particularly significant phrases in the paragraphs excerpted below, that you should take great care to fully understand and appreciate.

#1 - In para. 2, Mr Hixson states, concerning the deployment of Smart Meters,

"The PUC supports this decision because of the advantages smart meters can bring to the state by **empowering customers to take control of their electricity usage, reducing outage times, saving customers money, and increasing overall system reliability.**"

#2 - In para. 4, Mr. Hixson states

"With respect to health and safety concerns, the PUC acknowledges that **smart meters do emit small amounts of radio frequencies (RF)**. However, the amount emitted by smart meters is **well within the limit set by the Federal Communications Commission (FCC) for RF exposure**, and is **well below the level of RFs emitted by other commonly used devices, such as cell phones and microwave ovens**. The smart meters in Pennsylvania must meet the safety and reliability standards established by the FCC, and the PUC remains confident that these standards are sufficient to protect the health and safety of Pennsylvania's electric customers."

#3 - In para. 7 and 8, Mr. Hixson states

"**In supporting universal deployment of smart meters, the PUC maintains that an EDC has the right to access its equipment as part of its mandated mission** to ensure reliable service to homes and businesses within its service territory. Duquesne Light and the other major EDCs that fall under Act 129 are in various stages of deploying smart meters in their respective service territories, all in an effort to ensure full compliance with the law while maintaining the highest standards of electric reliability and customer service through advanced metering.

The Commission believes that it was the intent of the General Assembly to require all covered electric companies to deploy smart meters system-wide, and to do so in a manner that empowers a customer's ability to control their electricity use, as well as their privacy. Thus, the Commission will continue to ensure that the electric utilities implement the universal installation of smart meter technology in a manner that meets the intent of the General Assembly."

Concerning #1 - "...empowering customers to take control of their electricity usage, reducing outage times, saving customers money, and increasing overall system reliability."

This statement is always made and is always accepted at face value; but, it does not hold up under even cursory examination. The grandiose benefits that are claimed are found to be nothing more than a "pipe dream" to sell this scheme to the general taxpaying public.

In testimony that Duquesne Light Company gave before the PUC on August 14, 2009, concerning Duquesne Light's Smart Meter Procurement and Installation Plan, Docket No. M-2009-2123948, the following question was asked of Duquesne Light by a member of the PUC:

...

Line 22 **Q. Does Duquesne expect to achieve significant cost savings with the**
Line 23 **implementation of Smart Meters?**

Page 8

Line 1 **A. No.**

Page 9

In testimony given before the British Columbia Utilities Commission in the Matter of the Utilities Commission Act R.S.B.C. 1996, Chapter 473 And Re: FortisBC Energy Inc. Application for a Certificate of Public Convenience and Necessity for the Advanced Metering Infrastructure Project; Kelowna, B.C.; March 11, 2013; the following question was asked:

Mr. Flynn: **Q: In a typical -- well, let's discuss mod appliances. How many smart appliances do you envision each home having?**

Mr. Warren: **A: So, I think we talked about this on a previous day, that we're estimating that over time that we're hoping that 30 percent of -- or our best guess is that 30 percent of homes will have an in-home display.**

What Mr. Warren is admitting here is that their best hope is that maybe 30 percent of homes would even consider using this "empowerment". And, that number is clearly pulled right out of the air.

(A point to note here: This is in reference to deploying the SK9AMI7 Smart Meter that Duquesne Light is currently deploying in the Pittsburgh area, where I now live.)

So, has the deployment of Smart Meters in various areas actually lived up to the vaunted claims?

The answer is a resounding no. There have been complaints, after complaints, after complaints, about overbilling, overcharging, rising costs, etc.

Just briefly,

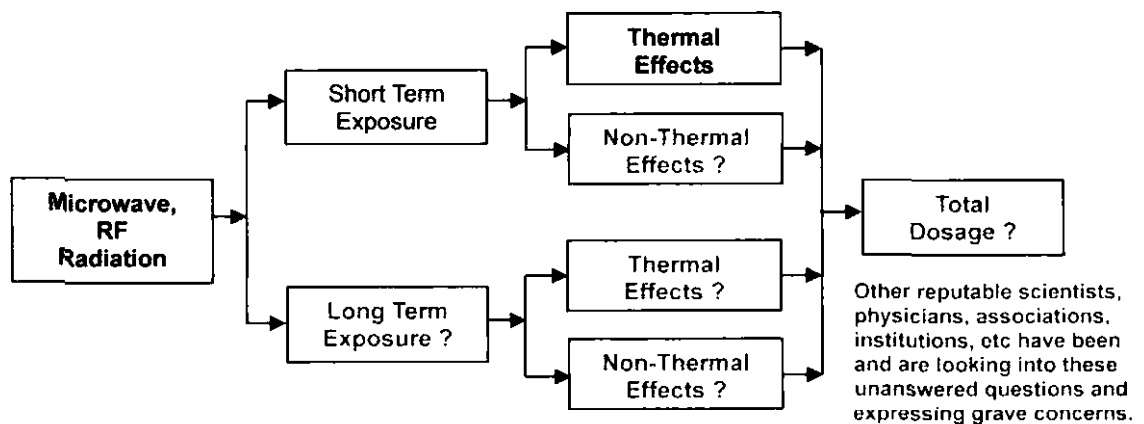
- Palo Alto has been installing Smart Meters since 2009; but stopped because they made **no economic or functional sense to install Smart Meters**.
- **The Attorneys General of at least 3 states** have come out and opposed Wireless Smart Meters because the **costs outweigh any claimed financial benefits to the customer**.
- In Jan of this year, the electric utility company in Ontario decided to **pull the plug on 36,000 Smart Meters, and laid out plans to remove 88,000** that they had already installed, because they were unreliable. Homeowners were frequently overbilled.
- Consumers Digest did an investigative report that indicated that these Smart Meter programs represent little more than a **"boondoggle being foisted on consumers by politically influential companies"** who are looking to make huge profits. And, they found that the **negative consequences outweigh any claimed benefits in cost, in rate changes, and in energy savings**.

So, Mr. Hixson's claims of benefits, which are often repeated and accepted at face value, in truth, are nothing but empty promises. I am not reassured, and neither should you be.

Concerning #2 - "smart meters do emit small amounts of radio frequencies (RF) ... well within the limit set by the Federal Communications Commission (FCC) for RF exposure ... well below the level of RFs emitted by other commonly used devices, such as cell phones and microwave ovens"

Again, these statements are always made and they are always taken at face value; but, they do not hold up under close scrutiny and they do not justify the safety of Smart Meters.

First, what did the FCC assess, and what did they not assess to set their RF exposure limit?



They assessed only the thermal effects of short term exposure. They did not assess non-thermal effects, and they did nothing to assess long term exposure.

RF radiation has, in fact, been shown to produce damage by other means than thermal.

So, Mr. Hixson's reference to an outdated FCC limit and his assurance that, because it falls under that limit, it is safe is factually inaccurate and disingenuous.

The PUC, and the Utility Companies and their Smart Meter vendors, say that their "technical advisors" say that it is safe. But, again, if you look closely, you find that either "their data" is outdated, "their methods" are purposely and structurally restrictive, and/or, "their studies" are tailored to produce the outcome that they want.

Contradicting all of this, **there is currently a wealth of evidence that RF radiation, at the range and frequency used in Smart Meters, does do permanent damage to body tissues.** I have already sent you many references substantiating this fact. Furthermore, Smart Meter transmissions have also been shown to **produce harmful LF radiation throughout the home.**

For some people, the effects can be immediate. For others, the effects will build slowly over time. Nevertheless, they are cumulative and will worsen over time. None of us can ultimately withstand, or afford, those deleterious effects. And, the elderly (which I am), the chronically afflicted (which I am), the sick, the young, and the pregnant are especially vulnerable.

Finally, concerning Mr. Hixson's comment about cellphones, etc, recent studies are indicating that cellphones and microwaves are indeed causing or contributing to health problems. But, we are not being forced to buy a cellphone or a microwave. We are free to do so or not. It is our personal choice. And, we are free to turn a cellphone and a microwave off anytime we want.

However, that is not the case here. **WE ARE BEING FORCED TO BUY A SMART METER,** and we are being forced to pay for it and will continue to have to pay for it in every electric bill that we receive. And, **WE CAN NEVER TURN IT OFF. It is there pulsing 100s - 1000s of times a day on our homes, CAUSING HARM, 24 hrs a day, 7 days a week.** You can't see it, you can't touch it, you can't smell it, you can't hear it, and you can't taste it; but, it is there nonetheless.

As much as the PUC and the utility distribution companies (EDCs) would like to continue to ignore them, these findings by the WHO, the AAEM, Harvard University, respected scientists and engineers from around the world, etc, cannot simply be denied or dismissed.

So, Mr. Hixson's claims of safety, are not credible and are contradicted by current science. I am not reassured. On the contrary, I am distressed and concerned for the safety of my family. And, you should be concerned for the safety of all Pennsylvanians. By allowing this to continue unabated, you are harming the state and its residents.

Concerning #3 - "... In supporting universal deployment of smart meters, the PUC maintains that an EDC has the right to access its equipment as part of its mandated mission ... The Commission believes that it was the intent of the General Assembly to require all covered electric companies to deploy smart meters system-wide..."

Here we need to review the actual legislative record and the facts of Act 129.

House Bill 2200 History

(http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?syear=2007&sind=0&body=H&type=B&bn=2200)

((Remarks see House Journal Page 386-403), Feb. 11, 2008)

Bill # PN 3218

(ii) Electric distribution companies shall furnish smart meter technology to:

- (A) Customers responsible for 40% of the distribution company's annual peak demand within four years after the effective date of this paragraph.
- (B) Customers responsible for 75% of the distribution company's annual peak demand within six years after the effective date of this paragraph.
- (C) One hundred percent of its customers within ten years after the effective date of this paragraph.

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Mr. FREEMAN. Thank you, Mr. Speaker.

Mr. Speaker, **this amendment would require that all public utilities, electric utilities, install smart meters for residential and business customers across the Commonwealth.** Smart meters are a very important technology which is available to us, which would save both customers and utilities a considerable amount of money by allowing the customer to be able to opt in – and it is optional – in to a purchasing process where they could purchase their electricity at off-peak hours, thereby saving on cost.

...

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Mr. HUTCHINSON. Thank you, Mr. Speaker

I rise in opposition to this amendment. Mr. Speaker, I think that this amendment makes absolutely no common sense at this time. The consumers of Pennsylvania are about to experience an increase in the electricity costs over the next couple of years because rate caps will be phasing out in various areas over the next 2 or 3 years, and with that, consumers are going to see their electric rates increased.

By passing this amendment, we are going to be piling on the consumers because they will be mandated, although in an indirect way, they will be mandated to pay for these new meters to be installed in their home whether they save on their electric costs or not.

It only makes sense to say smart meters should go to consumers who can save money by installing them. Those who can save by having a smart meter, it would make sense for them to have smart meters in their home. **Mandating it across the board mandates that everybody pays whether they save or not, and that just does not make sense.**

I am very concerned that we continue to ignore the consumers by making more mandates and increasing their costs, whether it is through mandating the meters, through trying to have some kind of a surcharge, all these things at a time when their electric costs are going up anyways.

So although on a case-by-case basis, smart meters might be a good thing to do, making a 100-percent mandate does not make sense. So I am opposing this amendment.

...

Mr. GODSHALL.

In this case are we not taking the choice away from the consumer by saying you have to put this in service in your district rather than you may or you have a choice? Are we not saying that you must do it? We are taking that choice away from the consumer, I believe, and **I would have no problem with this if we do it on a choice basis**, as you used the word "choice" before. We are taking that choice away.

...

p. 391

Mr. FREEMAN.

Well, I would only point out, Mr. Speaker, that we are requiring the utility company to install the meter, not the customer, and it is the utility company. If we are going to see the kind of cost savings that will reduce the price of electricity for consumers throughout the State, it has got to be done on a statewide basis by the utility companies.

...

Mr. GODSHALL.

In looking at this, I totally agree with the gentleman that we need to conserve energy, we need to save energy. I totally agree that smart meters are a big step in doing this.

What I am not in full agreement on in any way is that everyone is mandated to, whether they intend to use it or not, whether they know how to use it or not, everyone is mandated, under this legislation, to go ahead with the smart meter technology.

And again, the gentleman mentioned there were polls taken. If there is a poll taken and said, do you believe in the use of smart meters, my answer to that would be yes. I would have absolutely no problem in answering yes, **but then if there was a question at the bottom that says you are going to be paying \$300 for the installation through your utility bill for this meter and the software that goes with it, I am not sure what the answer would be.**

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Mr. McCALL. Thank you, Mr. Speaker.

...and they are costs that our consumers are going to have to pay unless we start giving them the tools to manage, and the Freeman amendment does precisely that. It gives people the ability to, **voluntarily, by the way – and I think that is the key to this whole debate, is voluntarily –** we are going to allow them to decide whether they want time-of-use pricing.

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The SPEAKER. The Chair recognizes the minority leader, Representative Smith.

If we really want to encourage people to use it, I think we ought to allow them to engage it themselves as opposed to forcing them to pay for something they may not use, and that is really the difference, Mr. Speaker, in what I think is right or wrong with this amendment.

While I certainly appreciate the direction it is trying to go, I think the fact that it forces the cost of the meters onto every consumer of electricity in Pennsylvania, I think that is the wrong direction to go and would ask for a vote against the amendment.

...

Mr. SAYLOR.

Mr. Speaker, I want to make it clear to everybody, **this is a mandate. This is not voluntary; it is a mandate required to use smart meters in Pennsylvania.**

And while I agree, again, with my colleague on the other side of the aisle that this is all great, the Adams Electric, the Rural Cooperatives of Pennsylvania, have been very effective in using smart meter technology to help lower consumers' bills, **the choice is up to the consumer to use that technology and whether they want that smart meter installed on their house. The key is, should we in the General Assembly mandate something on consumers that is going to cost them more dollars in their electric bill?**

...

This issue in particular should be a choice by consumers, not a mandate by the General Assembly onto an additional cost to electric bills in Pennsylvania. So remember, voting for this amendment, while I think it has great goals and where the gentleman wants to get to is very admirable and where we need to get to at some point in time, it still needs to be a consumer choice, not a General Assembly mandate onto consumers that is going to cost them more in their electric bill

p 394

Mr. VITALI

Mr. Speaker, finally, smart metering helps consumers who do not opt for the time-of-use rates in a number of ways. One, even if you do not opt in, the power goes out, if you have a smart meter in your home, even though you did not opt in to the time-of-use rates, your utility company knows that; it can get your power up much more quickly. So even if you do not use the time-of-use rating, having a smart meter in your home will help you.

Also, Mr. Speaker, another reason why it is necessary to do this in a comprehensive way, as the Freeman bill does, is you can capture the economies of scale if all these meters are installed in a systematic program instead of having an installer go out one by one as people volunteer for this. Mr. Speaker, for all these reasons I urge the adoption of the Freeman amendment. Thank you.

p 395

Mr. BENNINGHOFF. Thank you, Mr. Speaker.

And again I thank the maker of the amendment for his time in answering those questions. I **guess my reservation, obviously, is do we want a statewide mandate? Do we want the government telling you that you have to have a meter put in your property?** I think the majority of us appreciate the fact that we want to be more energy conscious, have more efficient appliances, and I think a lot of us are moving that way.

I just struggle with the fact that **there is no other State in the Commonwealth that has done this in the past**, although I would like to see Pennsylvania obviously be a leader.

It gives me some reservations that **if this technology is so accurate and so helpful and such a cost reduction savings for the consumer, why is it not being used unilaterally across this great nation?** I would ask the members to keep that in mind.

I think it is important that we are smart about our energy use, but I also think we have to think about what government's role is in mandating such a thing.

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Mr. GABIG

And so what I am wondering, is each person that lives in an apartment going to be mandated under this Freeman amendment to get a meter or not? Or if there is an apartment building or a townhouse that has many different units in it that has one meter currently, will each individual apartment dweller in such a situation be required to get one of these meters?

...

Mr. GABIG

The problem I am having with the amendment is I think if I were called on the telephone and asked, are you for a smart legislator or a dumb legislator, are you for a smart card or a dumb card, are you for a smart meter or a dumb meter, I would probably answer, I am for the smart legislator, the smart card, the smart meter.

But if they start saying, well, for the smart legislator you are going to pay five times more money and for the dumb legislator you are going to pay five times less money, for the smart card you are going to pay five times more money and for the dumb card you are going to pay five times less money, **for the smart meter you are going to pay we do not know how much more money because we will not tell you, but it is not going to be the utilities that pay for it because we took care of them in our amendment; they are taken care of in this**

Freeman amendment.

The big utility companies and corporations, they are all right with it; they support this, but the customer, well, you are going to pay the freight for this mandate, this State mandate.

...

I think that the gentleman from York, Stan Saylor, mentioned that Adams Electric Co-op has a similar program, but it is not forced on people; it is a voluntary program, and they can use the market to decide whether they want to do it or not.

Bill # PN 3233

- (ii) Electric distribution companies shall furnish
 - 3 smart meter technology to:
 - 4 (A) Customers responsible for 40% of the
 - 5 distribution company's annual peak demand within four
 - 6 years after the effective date of this paragraph.
 - 7 (B) Customers responsible for 75% of the
 - 8 distribution company's annual peak demand within six
 - 9 years after the effective date of this paragraph.
 - 10 (C) One hundred percent of its customers within
 - 11 ten years after the effective date of this paragraph.

((Remarks see House Journal Page 430-432), Feb. 12, 2008)

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Mr. HUTCHINSON. Thank you, Mr. Speaker.

Mr. Speaker, **I rise in opposition** to passage of HB 2200, and let me tell you why. I believe that in its original, unamended form, before it came to the House floor, there were a lot of redeeming qualities in the bill. It did promote conservation, and that is a laudable goal for Pennsylvania, to try to conserve energy use.

However, by the amendments passed yesterday, which mandated universal smart meters across Pennsylvania, that is a fatal flaw that makes this bill a bad idea for Pennsylvania. It is bad for the consumers of Pennsylvania who will have to pay for those smart meters, whether they save on their electric bills or not. It makes no sense whatsoever to force people to pay for those smart meters and then, in addition, still pay higher and higher utility bills.

It was said yesterday that if only 1 percent of the people used smart meters, we would have huge savings in energy use in Pennsylvania, and, Mr. Speaker, I agree with that statement. But my idea is, let us get the smart meters only to those 1 percent of the people and get this same savings in energy use. That is the smart way to move forward to promote energy conservation, to use technology like smart meters in a targeted and commonsense way instead of a mandated, across-the-board consumer tax – that is what it is, a couple hundred dollars per person – that will have to be paid to pay for these smart meters.

So after adding that **fatal flaw** to this bill, I think it is incumbent upon everyone in this chamber to vote against HB 2200, and I ask them to join me in that vote. Thank you, Mr. Speaker.

(A version of the bill eventually made it through the House, and went to the Senate for their consideration, and more amendments...)

(The record in the Senate.)

Bill # PN 4429

- (2) ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART
28 METER TECHNOLOGY AS FOLLOWS:
29 (I) UPON REQUEST TO A CUSTOMER THAT AGREES TO PAY
30 THE COST OF THE SMART METER.
1 (II) IN THE CONSTRUCTION OF A NEW RESIDENCE OR NEW
2 BUILDING TO BE USED BY A COMMERCIAL CUSTOMER.
3 (III) IN ACCORDANCE WITH A SCHEDULE OF REPLACEMENT
4 OF FULL DEPRECIATION OF EXISTING METERS.

Bill # PN 4526

- (2) ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART
23 METER TECHNOLOGY AS FOLLOWS:
24 (I) UPON REQUEST FROM A CUSTOMER THAT AGREES TO PAY
25 THE COST OF THE SMART METER AT THE TIME OF THE REQUEST.
26 (II) IN NEW BUILDING CONSTRUCTION.
27 (III) IN ACCORDANCE WITH A DEPRECIATION SCHEDULE NOT
28 TO EXCEED 15 YEARS.

(Bill # PN 4526 meets with final approval in the Senate...)

((Remarks see Senate Journal Page 2626-2631), Oct. 8, 2008)

p 2626

Senator TOMLINSON.

Mr. President, I rise to ask for support for House Bill No. 2200 as amended by the Senate. I think this is very, very important legislation for our consumers today who consume power and energy in Pennsylvania. House Bill No. 2200 is, I think, a large step forward.

The Governor of the State of Pennsylvania, Ed Rendell, has been a leader in a new energy policy, and this legislation contains many of those items in there. It includes demand-side reduction, conservation, that I think is going to help the consumer, in the long run, to reduce the demand on power. We are requiring a reduction of 3 percent by the year 2013 and 4 1/2 percent for peak power, and I think that is extremely important as we go forward with an energy policy, Mr. President.

It also contains language in there that we will have smart meters. It is not mandated, but it allows for the deployment of smart meters through a depreciation process, through new home construction process, and through the depreciation of 15 years, and for anyone who wants to purchase a smart meter which they feel will help them manage their electric load better.

Senator BOSCOLA.

So-called **smart meters** by themselves are not magically -- **anyone's monthly electric bill is not going to go down just because you are getting a smart meter. That will not happen.** But this new technology will reward customers who are smart enough to realize that they can use electricity when it is cheapest during off-peak hours and pay a lower rate.

We also made sure that smart meters would not be mandated for every single ratepayer. Not only is that a smarter approach to smart meter deployment, but it will also save electric customers hundreds of millions of dollars paying for something that will not provide a real benefit in their own households.

Senator FUMO

In addition, we did not mandate smart meters, but we made them optional. We did say in new construction, where they really are practical, they will be put in.

(It then goes back to the House. The discussion there does not mention anything more about whether the meters are mandated or not. The journal is at this link if you want to read them. (Remarks see House Journal Page 2323-2328), Oct. 8, 2008)

Finally, HB 2200 is signed into law as Act 129 by Governor Edward G. Rendell

§ 2807. Duties of electric distribution companies.

(f) Smart meter technology and time of use rates.—

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a smart meter technology procurement and installation plan with the commission for approval. The plan shall describe the smart meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

(2) Electric distribution companies shall furnish smart meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

APPROVED--The 15th day of October, A. D. 2008. EDWARD G. RENDELL

(As passed and signed, there is NO MANDATE; Pennsylvanians have FREEDOM to OPT-IN.)

An Implementation Order is then written by the PUC.

Smart Meter Procurement and Installation Implementation Order – Adopted at June 18, 2009, Public Meeting. Entered June 24, 2009. Docket No. M-2009-209655.

The Commission believes that it was the intent of the General Assembly to require all covered EDCs to deploy smart meters system-wide when it included a requirement for smart meter deployment “in accordance with a depreciation schedule not to exceed 15 years.”

(Here the Commission has inappropriately stretched the true meaning of the word “depreciation”, contrary to the will and intent of the legislature, and inserted a “mandate.” You can see this by simply reviewing the history and the General Assembly discussions summarized on the previous pages in which statement after statement is made in opposition to any kind of a mandate.)

One does not need a degree from M.I.T. or Harvard to understand what “depreciation” is. “Depreciation” is a merely and simply a financial tool. It is the gradual charging to expense of a fixed asset’s cost over its useful life. In the United States, you can only depreciate an asset if the situation meets all of the following five tests:

1. The asset is property the business owns
2. The asset is used in an income-producing activity
3. The asset must have a determinable useful life
4. You expect it to last more than one year
5. The asset cannot be certain types of property specifically excluded by the IRS

In the law signed by Governor Rendell, this was clearly intended to require the electric distribution companies (EDCs) to expense their costs over no more than 15 years.

It was not intended for the Commission to pervert this meaning, in the writing of the Implementation Order, and insert a mandate requirement for Pennsylvania as it did.

This is an inappropriately structured Implementation Order that, in actuality, violates the law it was intended to execute, which still stands as signed by Governor Rendell. The charter of the PUC is to implement the law, not change, modify, or usurp that law. Yet, this is what the PUC has done.

And as such, it has imposed an onerous burden and a flawed, and dangerous, program on the residents of Pennsylvania. The General Assembly recognized this fact, as you can see from the recorded General Assembly discussions in the Legislative Journal, and passed a law with the intent of helping, not hurting, Pennsylvanians.

The Commission continues to maintain that its Implementation Order is structured to carry out the “intent” of the General Assembly; yet,

1. **it is contrary to the actual written language of the bill as signed by Governor Rendell, and any reasonable interpretation of that bill,**
2. **it is contrary to the discussions in the General Assembly before the law was passed, that is documented in the Legislative Journal**

There is nothing in the legislative record that supports the Commission's "belief" and the Implementation Order as the Commission has written it. On the contrary, the Implementation Order grossly exceeds the law as intended and passed.

I ask you, since when is an Implementation Order allowed to supplant the law it was intended to execute?

This process was started before you came into office. But, it continues to fester and grow under your administration. So, to the degree that you continue to allow it to continue, unabated, you are responsible.

And, there have been many unjust consequences as a result of this "Implementation Order."

For example, in January of 2013, the PUC determined that a customer complaint against PECO was invalidated by the PUC's interpretation of Act 129.

Povacz v. PECO

PUC Administrative Law Judge (ALJ) Joel H Cheskis.

ALJ Cheskis's Decision

ALJ Cheskis began his analysis by citing Section 2807 of the Code, 66 Pa.

C.S. § 2807, which provides, in pertinent part, as follows:

(f) Smart meter technology and time of use rates.—

...

(2) Electric distribution companies shall furnish smart meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa. C.S. § 2807(f) (2).

ALJ Cheskis stated that

the use of the word "shall" in the statute indicates the General Assembly's direction that all customers will receive a smart meter.
I.D. at 6-7.

Furthermore, ALJ Cheskis "ruled",

there is no provision in the statute that allows customers to "opt out" of smart meter installation, as the Complainant desires to do. Id. at 7.

ALJ Cheskis continued that

neither the Commission's Orders implementing this provision of Act 129, nor PECO's specific implementation plan, allow customers to "opt out" of smart meter installation. Id. PECO relies, in part, on the following language from the Commission's Smart Meter Implementation Order, supra, to support its argument that the Complainant cannot opt out

of the smart meter installation:

The Commission believes that it was the intent of the General Assembly to require all covered [Electric Distribution Companies] to deploy smart meters system-wide when it included a requirement for smart meter deployment 'in accordance with a depreciation schedule not to exceed 15 years.'

Preliminary Objection at 5, quoting Smart Meter Implementation Order at 14. PECO adds that

"the Commission's Order does not have a provision for customers to 'opt out' of the smart meter installation." Preliminary Objection at 6.

Based on the above, the ALJ concluded that,

even accepting as true all of the Complainant's well pleaded material facts, and every reasonable inference from those facts, the Complaint does not demonstrate a violation of the Code, any Commission Order or Regulation, or any Commission-approved Company tariff. I.D. at 6-7. Accordingly, since the Complainant has not carried her burden of proof in this matter, PECO's Preliminary Objection should be granted and that the Complaint should be dismissed. Id.

Finally, ALJ Cheskis noted that

a bill has been introduced in the General Assembly that, if passed, would allow customers to opt out of smart meter installation. See, House Bill 2188 (introduced on February 8, 2012). I.D. at 8.

ALJ Cheskis reiterated that,

unless and until such legislation is passed, or some other provision is put in place that specifically allows customers to opt out of smart meter installation, PECO has not violated any provision of the Code, any Commission Order or Regulation or any Commission-approved Company tariff by prohibiting the Complainant from opting out. Id.

Finally, ALJ Cheskis added

to the extent that she desires the ability to opt out of the smart meter installation, she should advocate for such ability before the General Assembly.

So, the PUC "believes" that the word "depreciation" in C.S. § 2807 (f) (2) (iii) of Act 129 justifies its insertion of a mandate in its Implementation Order to force the installation of a Smart Meter on everyone;

and a PUC ALJ "believes" that word "shall" in C.S. § 2807 (f) (2) of Act 129

indicates the General Assembly's direction that all customers will receive a smart meter.

There is not even common agreement at the PUC what "word" justifies its mandate. It is obvious that almost any "word" will do as far as they are concerned. If this game of semantics wasn't so harmful, these word contortions would be humorous.

The recorded discussions of the legislature do not support any of this, and the actual wording of the law, which Governor Rendell signed, does not support this. What is clear is that it is the PUC, not the legislature, that wants this mandate.

Mr. Huxsin stating what the PUC "believes" is the "intent" of Act 129 and the General Assembly is not convincing at all, to say the least. It is a complete mischaracterization of the legislative record.

So, here we have the actual written content of Act 129 and the documented intent of the General Assembly on the one hand, and the PUC's contrived "belief" and its contrary Implementation Order on the other. They are at odds on the issue of requiring universal installation of Smart Meters in PA.

Act 129 and the Implementation Order written by the PUC should not be confused; but, the PUC does everything it can to make sure that they are viewed as equivalent. They are not.

Here, the PUC is being completely disingenuous. It created an Implementation Order that fabricated a mandate which supplants Act 129. And, when this mandate is questioned or challenged, it then points to Act 129 and says that there is no Opt-Out provision there.

I ask you, in all honesty, why would there be language for an Opt-Out provision in Act 129, when it was clearly intended and written to provide Pennsylvanians with an Opt-In provision?

Act 129 was written and signed, with language that Pennsylvanian homeowners not only had to request to get a Smart Meter, furthermore, they had to agree to pay for the cost of that Smart Meter at the time of their request.

So again, Mr. Hixson's statements about what the PUC "believes" is not reassuring in the least. They are blatantly contrary to the facts. This whole situation is absurd to anyone with any measure of common sense.

What the Commission has done, and is doing, is hurting Pennsylvanians, and it is putting our residences and our health at risk, as well as raising concerns about safety, privacy, and security.

As stated in C.S. § 2807 (f) (2) (i) of Act 129 signed by Governor Rendell, I ask you, does not

"Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request."

mean exactly what it says?

I have never requested an Opt-in to this ill-advised program.

I have never requested a Smart Meter.

I have never agreed to pay the cost of a Smart Meter.

I never requested any of this.

And, I now am faced with the forced installation of a device and technology,

that I don't want,

that I will still have to pay for,

that, with my technical background, I judge to be questionable and of little true benefit,

and that many independent reputable experts, associations, and institutions have indicated will jeopardize the health, safety, financial resources, privacy, security, and the well-being of my family.

The numbers don't add up. The logic doesn't add up. The science doesn't add up.

The fact that I and other Pennsylvanians have been put in this onerous position is intolerable and inexcusable.

My Formal Complaint is currently before the PUC. But, I ask you, how can I or anyone expect to receive a fair and impartial hearing there, when those who will be doing the judging are responsible for writing the Implementation Order that fabricated "the mandate" in the first place, contrary to the intent of the General Assembly?

There is a clear conflict of interest here, because the PUC is invested in maintaining its "belief" and its policy. They will point to any "word" that they want to in Act 129, and will "apply any meaning that they want to" to continue to enforce "their imposed mandate," which "they wrote" into their own Implementation Order. And, they will point to Act 129, and say, it does not have an Opt-Out provision.

In good conscience, how can you allow something like this to stand? This cannot be allowed to stand. **You must do something.**

Governor Wolf, and Attorney General Beemer, you are the highest authorities in the state. In your capacities as Governor and Attorney General, it is your joint responsibility to step in when a program goes as terribly wrong as this one has.

It is both of your responsibilities to protect us all from this kind of reckless treatment. It is both of your responsibilities to "reset the course, when the ship goes astray."

You are not fulfilling your mandates if you remain indifferent, turn a blind eye, and continue to allow this ill-advised program to continue to steamroll over Pennsylvanians unabated. Doing nothing is the easy thing. Leadership is not doing the easy thing; it is doing the right thing.

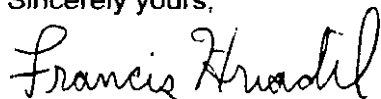
Governors and Attorneys General in other states have recognized these issues, and have stepped in to protect their residents. They had the courage to do the right thing for their residents. State legislatures have done this. Counties have done this. Even local city governments have done this. Why is this so hard to do in Pennsylvania? It is simply the right thing to do.

So, I appeal to both of you again, to **please use your authority to intervene and help the residents of Pennsylvania.**

Governor Wolf you can correct this injustice by Executive Order if you so desire. You simply need to direct that the PA PUC follow the true letter and intend of Act 129, with its clearly stated voluntary Smart Meter Opt-In provision, and which is supported in the legislative record. And, you need to direct that the PUC instruct all utility distribution companies (EDCs) to replace any Smart Meters, or any kind of Transmitting Meters, that have already been installed, with Non-emitting Analog Meters, that are acceptable to and preferred by the homeowner, at the request of those homeowners.

Simply referring my concerns to the PUC is not helpful or constructive.

Sincerely yours,



Francis Hriadil
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M.S. Aeronautics and Astronautics, M.I.T

Cc: Attorney General Beemer; PA Representative Markosek; PA Representative Reese; PA Senator Brewster; PA Senator White; Monroeville Mayor Erosenko; Monroeville City Council Members: Gaydos, Gresock, Harvey, Johns, Caliari, Duncan, and Wilson