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March 27, 2017

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

**RE: Mary Paul v. PECO Energy Company
Docket No. C-2015-2475355**

Dear Ms. Chiavetta:

Enclosed for filing is the Reply Brief of PECO Energy Company.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ward L. Smith".

Ward L. Smith
Counsel for PECO Energy Company

WS/ab
Enclosure

cc: Darlene D. Heep, ALJ
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mary Paul

v.

PECO Energy Company

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C-2015-2475355

Reply Brief of PECO Energy Company

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Introduction and Summary of Argument

The purpose of this Reply Brief is to respond to arguments raised in the March 6, 2017 Brief filed by Complainant Mary Paul in this proceeding (the “Paul Brief”). PECO already filed an extensive Main Brief setting forth its primary arguments. PECO will not repeat its Main Brief arguments here, but does primarily rely upon them.

On page 12 of her Main Brief, Ms. Paul sets forth ten positions, labelled as arguments A-J, in her Summary of Argument. PECO’s Reply Brief follows the sequence of arguments set forth at page 12 of the Paul Brief. In this Reply Brief, PECO establishes that:

- The Paul Brief impermissibly relies upon extra-record evidence.
- Ms. Paul has not met her burden of proof that PECO’s AMI meter will harm her.
- Ms. Paul’s history of on-time bill payment is not relevant to AMI meter installation.
- Ms. Paul’s due process was not violated in this proceeding. Nor did PECO act with malice toward her.
- The testimony of Dr. Andrew Marino, given in other proceedings, should not be admitted in this proceeding.
- The Paul Brief does not establish a claim under the Americans with Disabilities Act (“ADA”) or the Federal Rehabilitation Act. In addition, the Commission does not have jurisdiction over such claims.
- The accommodation requested by Ms. Paul is not reasonable.
- Ms. Paul must pay for any meter relocation costs.
- Ms. Paul must pay her own teleconferencing costs.

Argument

I. The Paul Brief impermissibly relies on information that was newly introduced in the Paul Brief itself. The Commission should not consider such information in deciding this case.

At the outset, it should be noted that the Paul Brief relies extensively on extra-record information. The Commission should not consider such information in deciding this case.

By way of example only (and not as a comprehensive inventory of all of the extra-record material relied upon by the Paul Brief), the following information was newly introduced in the Paul Brief:

- Dates of installation and removal of HVAC controllers, purportedly determined by reference to Ms. Paul's calendar (p. 3)
- A website called "Freedom Taker" (p. 4)
- A letter from Dr. Peter Prociuk and his testimony in other proceedings (pp. 13, 16, 24)
- A "compilation of stories from EHS sufferers around the world." (p. 15, Exh 8)
- The transcript of the *Kreider* and *Povacz* hearings (pp. 15, 32, 37-39, 47-48)
- A quote from Mary Redmayne (p. 23)
- A claim that the cause of Ms. Susan Kreider's death was EMF exposure in the hospital (p. 24)
- A statement by counsel in the *Van Schoyck* matter regarding the reason for the Van Schoycks' withdrawal of their Complaint (pp. 24-25). It should be noted that, since this is a statement of counsel, it does not even constitute evidence in the proceeding in

which it was transcribed, and certainly should not be accepted as record evidence in this proceeding.

The Commission should not rely upon such extra-record material. PECO understands that Ms. Paul appeared *pro se*, and that some evidentiary latitude is typically granted to *pro se* complainants who are unfamiliar with the Commission's procedural rules. Giving any consideration to this extra-record material, however, is unwarranted in this circumstance. The hearing date was continued several times (at the request of both PECO and Ms. Paul), which gave her ample time to prepare for hearing. The hearing itself was a two-day evidentiary hearing at which she had every opportunity to present information in support of her case. At that hearing, ALJ Heep specifically ruled that "if you have any documents you intend to present to us, they need to be presented today." Tr. 14. Moreover, giving any consideration to the extra-record material would be prejudicial to PECO's due process rights, and would necessitate giving PECO an opportunity to cross-examine the witness sponsoring the testimony and to submit rebuttal evidence.

Under the Commission's regulations for formal proceedings, absent special circumstances, the evidentiary record closes at the end of the evidentiary hearing. 52 Pa. Code §5.431 states:

§ 5.431. Close of the record.

(a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.

(b) After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.

Subpart (a) of this rule is used to allow the introduction of evidence that is specifically identified at hearing, but which is not available in the hearing room. For example, this section allows the record to be kept open to allow a party to answer an on-the-record data request, or to provide a late-filed exhibit when the need for it emerges during testimony. The overriding theme of subpart (a) is that the parties have the opportunity, at the hearing itself, to address what additional evidence or exhibits will later be entered in the record. Importantly, that at-the-hearing discussion gives each party the opportunity to object to the admission of additional evidence – and potentially to cross-examine on the offered evidence or to offer their own testimony at hearing to rebut the evidence that will later be admitted under this rule.

That did not happen in this hearing – the information that is provided in the Paul Brief was not identified at hearing, no request was made to keep the record open for its late submittal, and no ruling was made that the record would be kept open. To the contrary, there was a specific ruling that documents must be presented at hearing in order to be eligible for admission. Tr. 14. For this information: (1) PECO did not have the opportunity to object to the admission of documents now relied upon by Ms. Paul, (2) PECO did not have the opportunity to cross-examine a witness sponsoring the documents, and (3) PECO did not have the opportunity to submit additional evidence to rebut those documents. Consequently, subpart (a) of this rule does not provide a basis to allow the Paul Brief to introduce additional evidence after the close of the record.

Subpart (b) of §5.431 allows the presiding officer or the Commission to re-open the record, upon motion, if good cause is shown. In turn, “good cause” to reopen the record is determined by reference to §5.571 of the Commission’s regulations (Reopening prior to final decision), which states that the record may be reopened to take additional evidence “if there is

reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of the record.”

Ms. Paul has not alleged that there has been a change to the law or facts since the close of the record in this proceeding. Indeed, effectively all of the offered extra-record information predates the date of hearing. The new information in the Paul Brief therefore does not qualify for admission under subpart (b) of the reopener rule.

PECO has basic due process rights to object to the admission of evidence, to cross-examine on that evidence, and to offer contrary evidence. PECO would be denied those basic due process rights if the new information in the Paul Brief were admitted into the evidentiary record in this proceeding or otherwise formed a basis for a Commission decision. PECO therefore respectfully requests that Your Honor hold that the non-record information contained in the Paul Brief is not admitted as part of the record evidence in this proceeding and that it cannot be relied upon for the Commission’s decision.

II. Reply to arguments made in the Paul Brief.

A. The Paul Brief does not establish that PECO’s AMI meter will cause, contribute to, or exacerbate Ms. Paul’s claimed electrohypersensitivity (“EHS”) (reply to Sections III. A, B, and C of the Paul Brief).

Ms. Paul’s health claims are primarily discussed in sections III. A, B., and C. of her Main Brief (pp. 13-19), although she returns to discussion of the health claims in later portions of the Paul Brief. Many of the health claims in the Paul Brief are based, in material part, on the extra-record evidence discussed above. PECO will not attempt to respond to these extra-record

arguments, but instead will rely upon the detailed examination of the health record as set forth in its Main Brief.

Ms. Paul also discusses her testimony, and the testimony of Dr. Hanoch Talmor, in these sections of her brief. PECO has already analyzed and discussed that testimony in its Main Brief, and will rely upon its Main Brief for the issues discussed in that testimony.

There are, however, three issues in these sections of the Paul Brief to which PECO will briefly reply.

First, in these sections of her brief (pp. 13, 16) Ms. Paul relies upon a letter from Dr. Peter Prociuk. Dr. Prociuk did not appear at this hearing, and no letter from him was admitted into the record.

Second, Ms. Paul claims (p. 15) that she submitted her Exhibit 8, which is a “short compilation of stories from EHS sufferers around the world,” as “an exception to the hearsay rule.” She states that “I include this Exhibit to show that I have read this Exhibit, that such stories do exist, and that neither PECO nor the PUC can continue to deny that EHS as a syndrome does exist, and it does cause those who suffer from EHS considerable lifestyle constraints because of the proliferation of microwaves in the world.”

That description does not plead an exception to the hearsay rule. To the contrary, Ms. Paul is clearly stating that she is offering this Exhibit as proof of the matters regarding EHS that are asserted therein. That is precisely the type of out-of-court statement against which the hearsay rule offers protections. Put most simply, PECO had no opportunity to cross-examine the tellers of these stories. Thus, even if this document had been offered at hearing for the purpose described at page 15 of the Paul Brief, it would not have been admissible for that purpose.

In any event, the record is closed. As described earlier in this Reply Brief, any documents were required to be presented at the time of hearing, not in the Paul Brief.

Third, Ms. Paul claims (p. 18) that PECO's witness Dr. Chris Davis did not do his calculations correctly because he used averages rather than peak emissions, and (p. 19) because he did not include the effect of the Zigbee radio when comparing emissions from the AMR and AMI meters.

These arguments are not supported by the record evidence. Dr. Davis presented his transmission calculations based on both averages *and peak* emissions. Ex. CD-2 presented average exposures – Dr. Davis testified that the Federal Communications Commission's standards for radiofrequency transmissions are based on average exposures, and Exhibit CD-2 thus accurately reflects how PECO's meters meet the FCC standards. Tr. 268-69. Dr. Davis also presented peak exposures. *See* Ex. CD-3, Tr. 269-70.

Moreover, for both the average and peak calculations and comparisons, Dr. Davis included the Zigbee radio transmissions in his calculations. *See* Ex. CD-2, Ex. CD-3, Tr. 268-71, 313-14.

Other than those few issues, PECO relies upon its Main Brief for discussion of the health issues, and continues to conclude that Ms. Paul did not meet her burden of proving that PECO's AMI meters will cause her to have adverse health effects.

B. Ms. Paul's history of on-time bill payment does not change the requirement that an AMI meter be installed at her residence (reply to Section III.D of the Paul Brief).

Section III.D. of Ms. Paul's Brief (p. 19) is a single sentence: "My testimony that I always pay my bills on time, via the PECO internet billing procedure was not contested by

PECO.” Ms. Paul also builds on this statement in other sections of her brief. *See, for example,* her due process argument in Section III.E of her Main Brief.

Ms. Paul is correct that she does not have a history of delinquent payments. PECO has never suggested otherwise. But her payment history is not relevant to this proceeding. Act 129 requires the installation of AMI meters and does not create an exception for customers who pay their bills regularly. Put simply, the Act 129 requirement to accept an AMI meter is not affected by the payment history of the customer.

C. Ms. Paul’s due process was not violated in this proceeding. Nor did PECO act with malice (reply to Section III. E. of the Paul Brief).

The Paul Brief (pp. 19-27 and 40-42) claims that her due process has been violated in this proceeding. She also claims that PECO acted with malice.

Ms. Paul’s due process rights were not violated in this proceeding. Her claim of such a violation is based upon the fact that the litigation process is complex, and can be time-consuming and expensive. She notes that PECO has brought substantial resources to make its case in this proceeding and claims that this creates an inherently unfair situation.¹

PECO does take this case seriously, and has devoted significant resources to it. But that did not make the process unfair, nor did it cause Ms. Paul’s due process rights to be violated. To the contrary, the presiding officers were quite rigorous throughout this proceeding in making certain that PECO strictly followed all procedural and evidentiary rules.

Moreover, Pennsylvania follows the normal rule that each civil litigant must pay their own costs of litigating the case. This concept has primarily been established in cases in which litigants request that their legal fees and costs be paid by the Commission or the opposing party.

¹ It should be noted that Ms. Paul requested this hearing, and is now essentially arguing that the Commission violated her due process rights *by granting the hearing that she requested.*

It is well established in the courts of this Commonwealth that legal fees are not generally recoverable except where permitted by statute or other recognized exception to this general rule. *Corace v. Balint*, 418 Pa. 262, 271 (1965); *Becker v. Borough of Schuylkill Haven*, 200 Pa. Super. 305, 312 (1963); 11 *Pa. Law Encyclopedia* Damages § 33 (1970). Nothing in the Commission's statutes, regulations or orders gives the Commission the power to grant attorney fees in the factual setting of the present Complaint. See *Capitol Bus Company v. Leonard M. Smith*, Docket No. 20830, (Final Order entered September 23, 1975) 1975 Pa. PUC LEXIS 24; 49 Pa. PUC 428; see also *Pennsylvania Public Utility Commission v. Duquesne Light Company*, 61 Pa. P.U.C. 495 (1986); *Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corporation*, 63 Pa. P.U.C. 68, 71 (1987) (The Commission does not have jurisdiction to award attorney fees and costs); *Edward Dugas v. PECO Energy Company*, Docket No. Z-01417035, 2004 Pa. PUC LEXIS 50, June 10, 2004, (The Commission was not empowered to award damages, attorney fees or costs); *James H. Joseph v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00924568, 1993 Pa. PUC LEXIS 55 (The Commission is without authority to award attorney fees); *Third Avenue Reality Limited Partners v. Pennsylvania American Water Company*, Docket No. C-2010-2167286, August 16, 2010 Initial Decision.

That has been the primary civil litigation process for hundreds of years in virtually all U.S. courts. Ms. Paul is correct in noting (p. 21) that an indigent criminal defendant would be given counsel at no cost. But that is remarkable in U.S. jurisprudence primarily because it is an exception to the normal rule. The courts have simply not extended the right to state-paid counsel to include administrative proceedings before the Commission, and thus it does not violate due process to require Ms. Paul to pay her own litigation costs.

It also be noted that granting Ms. Paul's request would have significant adverse consequences because she has essentially requested that the Commission rule in her favor *without bothering to have a hearing*. She is fundamentally taking the position that, once she claimed that her EHS would be exacerbated by an AMI meter, no further proceedings were warranted – the Commission should grant her relief on the basis of her *claim* alone. That approach, of course, would be both bad policy and a violation of PECO's due process rights.

At pages 40-42, the Paul Brief makes a related claim that Ms. Paul's rights were violated when the presiding officers struck her First Amended Complaint. The First Amended Complaint was filed on November 9, 2016 – nineteen months after the initial Complaint was filed, and less than a week before the scheduled hearing dates. The First Amended Complaint materially expanded and changed the scope of Ms. Paul's claims.

Ms. Paul claims (pp. 40-42) that it took her until the last minute to file the First Amended Complaint because she was still investigating her claim and that she had "brain fog" and other disabilities during the nineteen months prior to hearing.

PECO filed its Motion to Strike the First Amended Complaint on November 11, 2016 and relies upon that filing as if fully set forth here. In a nutshell, PECO argued that Ms. Paul had nineteen months to prepare, and should not be allowed to wait until the last minute to materially alter the scope of the proceeding. Your Honor ruled in PECO's favor, and PECO sees nothing in the Paul Brief that suggests that this decision was wrong or should be revisited.

Finally, PECO has not acted with malice in this proceeding. Ms. Paul identifies (pp. 21-22) eleven specific actions that, she claims, demonstrate PECO's malice. But the identified

actions are simply examples of PECO following proper procedures and regulations.² For example, utilities are required to send a written 10-day notice before they can terminate service for failure to allow an AMI meter to be installed. PECO sent that notice, thus following the regulations – and Ms. Paul claims (p. 21) that sending that notice was malicious. But following the regulations and providing notice is not malicious.

As a second example, Ms. Paul claims that PECO's Motion to Strike the First Amended Complaint, discussed above, was an act of malice. This was not malice – PECO argued to protect its due process rights, and Your Honor agreed with PECO's arguments.

As a third example, Ms. Paul claims that PECO's cross-examination of her was malicious because Your Honor ruled that PECO's questions regarding Ms. Paul's teleconferencing expenditures were not probative or relevant. Asking these questions was not an act of malice. At the time those questions were asked, PECO presented its good-faith arguments as to why it believed that the questions were probative and relevant – but when Your Honor ruled against PECO, it ceased the line of questions immediately.³

Clearly, these are not malicious acts. PECO was simply litigating the case, within the Commission's rules.

² Ms. Paul includes, as example 5, the claim that PECO was malicious in waiting until the hearing to answer the questions she posed in her formal complaint. PECO addressed this claim in its Main Brief.

³ It is noteworthy that, even though Your Honor ruled that information on the cost to have Dr. Talmor participate by teleconference is not probative or relevant, Ms. Paul has now provided that information in the Paul Brief. In fact, it is one of the lynchpin data points that she uses to support her position that the proceedings are inherently prejudiced against her due to a mismatch of resources between the litigants. PECO is not suggesting that Your Honor was wrong in ruling that the information is not probative or relevant. But Ms. Paul is trying to have it both ways -- claiming that the information is so irrelevant that it was malicious of PECO to inquire about it, and then volunteering that information on an extra-record basis and claiming that it is a relevant basis for her arguments.

Ms. Paul requested that the Commission convene an evidentiary hearing to hear her claims, and the Commission did so, using the well-established rules and procedures for such hearings. PECO participated and followed the Commission's well-established rules and procedures. That is neither malice nor a violation of due process.

D. The testimony of Dr. Marino should not be admitted into the record in this proceeding (reply to Section III. F. of the Paul Brief).

The Paul Brief (pp. 27-29) requests that Your Honor admit into the record the testimony of Dr. Andrew Marino from other proceedings before the Commission. PECO separately filed its reply to this argument on March 20, 2017. PECO incorporates the arguments made in its March 20, 2017 filing as if set forth fully herein.

E. The Paul Brief did not establish a claim under the Americans with Disabilities Act ("ADA") or the Federal Rehabilitation Act. The Commission does not have jurisdiction over ADA claims or Federal Rehabilitation Act claims (reply to Section III. G of the Paul Brief).

The Paul Brief claims (pp. 29-33) that the Americans with Disabilities Act ("ADA") and the Federal Rehabilitation Act provide her with legal bases to refuse installation of an AMI meter.

In her Main Brief, Ms. Paul introduces this issue as follows (p. 29-30):

PECO may allege that I should file a claim in federal court regarding my disabilities and the need for PECO to accommodate me. But the Commission must bear in mind, that I was forced in a huge hurry to file my formal complaint with only 10 days' notice So, in order to "keep the lights on", I had no recourse but to file my formal complaint with the PUC when I did.

Ms. Paul's chronology is incomplete. She filed her PUC formal complaint on April 1, 2015 – and PECO has stayed termination of her account since that time. As of the filing date of

this Reply Brief, Ms. Paul has thus had two full years (minus a day or two) to investigate, perfect, and file an ADA or Rehabilitation Act claim in the proper forum. She could have pursued that option in parallel with her PUC claim, or used an ADA/Rehab claim as her sole legal path. Given that two-year opportunity, the Commission should reject Ms. Paul's claim that she hasn't had time to pursue an ADA or Rehabilitation Act claim in the proper venue.

The Americans with Disabilities Act generally applies to employment, transportation access, public accommodation, communication, and governmental activities. (See the discussion from the Department of Labor website, below). The Federal Rehabilitation Act has similar scope. (See the discussion from the Department of Justice website, below). PECO respectfully submits that none of those activities are implicated by its installation of AMI meters, and that Ms. Paul therefore has not properly pled a cause of action against it under the Americans with Disabilities Act or the Rehabilitation Act.

However, there is no need for Your Honor or the Commission to become experts in ADA law for purposes of this case, and there is truly no need to determine whether Ms. Paul has properly pled an ADA cause of action, because the Commission simply does not have jurisdiction to resolve ADA claims. On its website, the Department of Labor (which is one of the federal agencies with responsibility to enforce the ADA) outlines the agencies that have enforcement responsibility for the various aspects of the ADA as follows:

The Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities. The ADA also establishes requirements for telecommunications relay services.

The Department of Labor's Office of Disability Employment Policy (ODEP) provides publications and other technical assistance on the basic requirements of the ADA. It does not enforce any part of the law.

In addition to the Department of Labor, four federal agencies enforce the ADA:

- The Equal Employment Opportunity Commission (EEOC) enforces regulations covering employment.
- The Department of Transportation enforces regulations governing transit.
- The Federal Communications Commission enforces regulations covering telecommunication services.
- The Department of Justice enforces regulations governing public accommodations and state and local government services.

Another federal agency, the Architectural and Transportation Barriers Compliance Board (ATBCB), also known as the Access Board, issues guidelines to ensure that buildings, facilities, and transit vehicles are accessible and usable by people with disabilities.

Two agencies within the Department of Labor enforce portions of the ADA. The Office of Federal Contract Compliance Programs (OFCCP) has coordinating authority under the employment-related provisions of the ADA. The Civil Rights Center is responsible for enforcing Title II of the ADA as it applies to the labor- and workforce-related practices of state and local governments and other public entities.

<https://www.dol.gov/general/topic/disability/ada>

There is nothing here that grants *the Commission* the responsibility, authority, obligation, or jurisdiction to hear or resolve a claim under the Americans with Disabilities Act. If Ms. Paul believes that she has an ADA claim against PECO, she must pursue that claim through one of the enforcement agencies listed above, not the Commission.

The same is true for the Federal Rehabilitation Act. In July 2009, the United States Department of Justice (“DOJ”) published “A Guide to Disability Rights Laws,” available online at <https://www.ada.gov/cguide.htm#anchor65610>. In that Guide, the DOJ describes the proper procedure to press a claim under the Rehabilitation Act; the Guide is clear that a litigant has the potential to seek an enforcement action at the appropriate federal agency or in a private civil lawsuit (the Guide’s online pages are not numbered; the following information appears in the discussion of the Rehabilitation Act):

The Rehabilitation Act prohibits discrimination on the basis of disability in programs conducted by Federal agencies, in programs receiving Federal financial

assistance, in Federal employment, and in the employment practices of Federal contractors. The standards for determining employment discrimination under the Rehabilitation Act are the same as those used in title I of the Americans with Disabilities Act.

Each Federal agency has its own set of section 504 regulations that apply to its own programs. Agencies that provide Federal financial assistance also have section 504 regulations covering entities that receive Federal aid. Requirements common to these regulations include reasonable accommodation for employees with disabilities; program accessibility; effective communication with people who have hearing or vision disabilities; and accessible new construction and alterations. Each agency is responsible for enforcing its own regulations. Section 504 may also be enforced through private lawsuits. It is not necessary to file a complaint with a Federal agency or to receive a "right-to-sue" letter before going to court.

The fact that Ms. Paul had to act in a rush in April 2015 does not create Commission jurisdiction to hear claims under these federal statutes. If Ms. Paul believes that she has a ADA or Rehabilitation Act claim against PECO, she must file a civil suit or pursue the claim through one of the federal agencies described above, not the Commission.

Ms. Paul also makes a passing claim (p. 30) that Section 1501 of the Pennsylvania Public Utilities Code is "a requirement much like that of the ADA and the Rehab Act." Her sole support for this claim is her statement (p. 30) that: "I find them each quite similar." PECO respectfully submits that even a brief examination of the respective laws shows that they are not similar – the Public Utilities Code addresses utility service; the ADA and Rehabilitation Act address employment, transportation access, public accommodation, communication, and governmental activities. There is nothing on the face of Section 1501, or any Commission jurisprudence of which PECO is aware, that leads to the conclusion that Section 1501 incorporates the provisions of the ADA or the Rehabilitation Act.

F. The accommodations requested by Ms. Paul are not reasonable (reply to Section III.H of the Paul Brief).

Section III. H of the Paul Brief (pp. 34-39) argues that the accommodations requested by her are reasonable. She requests two accommodations. First, she wants to have a non-transmitting analog meter – neither AMI nor AMR – at her residence. Second, she wants similar non-transmitting analog meters to be installed at her neighbors' homes.

Most of this section of the Paul Brief is supplemental argument on health issues. Effectively, Ms. Paul takes the position that she has proven that she has EHS, and that a non-transmitting analog meter is the only proper accommodation to that condition.

PECO's view, as expressed in its expert testimony, is that its AMI meters will not cause, contribute to, or exacerbate any EHS in Ms. Paul, so it fundamentally disagrees with the premise of her accommodation argument. Nonetheless, as set forth in its Main Brief, PECO offered reasonable accommodation (to relocate her meter about 40 feet way from her residence) to Ms. Paul.

PECO understands that Ms. Paul does not accept or believe that meter relocation will be properly protective of her, but that belief does not make her requested accommodation reasonable. The Commission has consistently and repeatedly ruled that installation of AMI meters at all residences is mandatory. *See, Frompovich v. PECO*, C-2015-2474602 (April 21, 2016 Order); *Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 (Order entered January 24, 2013); *Gavin v. PECO Energy Company*, Docket No. C-2012-2325258 (Order entered January 24, 2013); *Morgan v. PECO Energy Company*, Docket No. C-2013-2356606 (Final Order entered July 23, 2013); *McCarey v. PECO Energy Company*, Docket No. C-2013-2354862 (Final Order entered September 26, 2013); *Thomas v. PECO Energy Company*, Docket

No. C-2012-2336225 (Final Order entered December 31, 2013); *Donnelly v. PECO Energy Company*, Docket No. F-2013-2330663 (Final Order entered March 18, 2014); and *Francis v. PECO Energy Company*, Docket No. C-2014-2451351 (Order entered March 3, 2015).

Given this line of decisions, it is not legally reasonable to request a non-transmitting analog meter. When the law does not allow an option, it is not reasonable to keep requesting it.

PECO notes that a variation of this argument is presented at pages 43-48 of the Paul Brief, in the section labelled “Additional Discussion.” There, Ms. Paul argues that the Commission has misconstrued the legislative history of Act 129, and the statute in fact does not require mandatory installation of AMI meters.

The short answer is that the Commission evaluated these legislative history claims in the *Frompovich* proceeding in 2016, and rejected them. In its April 21, 2016 remand order in *Frompovich* (pp. 8-9), the Commission dismissed this argument as follows:

In Exception No. 1, the Complainant refers to page six of the Initial Decision and quotes the ALJ’s statement that “[t]here is neither an ‘opt-out’ provision nor a requirement to perform onsite broadcasting tests provided for [in] the Commission’s order.” Exc. at 2. In support of this Exception, Ms. Frompovich recites the comments of several state legislators from the February 2008 Pennsylvania House Journal and the October 2008 Senate Journal debating Act 129, which she contends question the mandatory deployment of smart meters without consumer choice in contradiction of what she characterizes as the Commission’s misinterpretation of the Act and overreaching administrative powers. *Id.* at 2-4. The debate, she contends, may and should be considered contemporaneous legislative history evincing legislative intent not to mandate deployment without exception. *Id.* at 5.

The Commission rejected this view, stating (p. 11) that: “PECO is correct that as adopted Act 129 does not provide a general opt out provision.” The same is true for Ms. Paul’s arguments regarding legislative history.

G. Ms. Paul is required to pay for meter relocation costs.

In her Summary of Argument (p. 12), Ms. Paul previews a Section III. I., in which she would argue that: “PECO should, by law, furnish my requested accommodation without further payment from me.” However, the Paul Brief does not contain a Section III. I. The only discussion of this issue that PECO could identify is found at page 36, where the Paul Brief states: “PECO may not, under federal or PUC law, charge a PECO customer who is disabled by EHS, any amount of money in order to accommodate her disability, as discussed above. Not \$4,000, not even one dollar.”

If Ms. Paul is basing this conclusion on the Americans with Disabilities Act or the Federal Rehabilitation Act, then PECO reiterates its position that the Commission does not have jurisdiction to resolve claims under those laws.

As to Commission law, the record in this proceeding clearly demonstrates that, under PECO’s tariff, when PECO moves its facilities to accommodate a customer, the customer must bear the cost of that relocation. PECO’s Tariff Rule 6.2, which was introduced as part of Exhibit GP-3, states in relevant part that:

6.2 SERVICE - SUPPLY ALTERATIONS. Changes related to a service-supply line or a meter owned by the Company, including the installation of protective devices or visual markers to denote safe operating distance from the Company’s facilities, for the accommodation of the customer, shall be at the expense of the customer.

The tariff has been approved by the Commission and has the force of law. Moreover, it is consistent with normal regulatory policy that when costs are being caused by broadly applicable service conditions, the costs are socialized to all customers, whereas when costs are caused by the specific request or requirements of a given customer, those costs are to be paid for by that customer. This general policy, which avoids having the customer base as a whole pay for

individual accommodations, is reflected in PECO's tariff provision. As applied to this situation, it means that Ms. Paul must pay for any relocation costs.

H. The Commission does not have authority to order PECO to pay Ms. Paul \$950 for her teleconferencing costs.

In her Summary of Argument (p. 12), Ms. Paul previews a Section III. J., in which she would argue that: "PECO should reimburse me \$950 for its violations of the ADA and Rehab Act with respect to Dr. Talmor." However, the Paul Brief does not contain a Section III. J. Ms. Paul appears to be discussing the cost of having Dr. Talmor testify via teleconference, which she identifies elsewhere as costing \$950.⁴ She also requests, in her Proposed Ordering Paragraph No. 11 (p. 60), that "PECO [be] ordered to reimburse Mary Paul in the amount of \$950.00 for teleconferencing costs for cross-examination of her expert witness, Dr. Hanoch Talmor."

Given that Ms. Paul states this request as a claim under the Americans with Disabilities Act and the Federal Rehabilitation Act, PECO reiterates its position that the Commission does not have jurisdiction to resolve claims under those laws. This claim must therefore be denied.

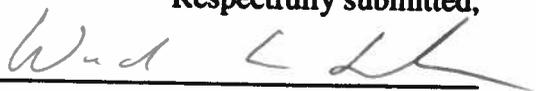
PECO further notes that this request may be characterized as a request for compensation of legal costs, and as discussed earlier in this brief such claims cannot be granted by the Commission. Alternatively, if this is viewed as a claim for damages, such a claim is also beyond the jurisdiction of the Commission. *Terminato v. Pa. National Insurance Co.*, 645 A. 2d 1287 (Pa. 1994); *Elkin v. Bell Tel. Co. of Pa.*, 420 A. 2d 371 (Pa. 1980); *Feingold v. Bell Tel. Co. of Pa.*, 383 A. 2d 791 (Pa. 1977); *Ostrov v. I.F. T., Inc.*, 586 A. 2d 409 (Pa. Super. 1991); *Poorbaugh v. Pennsylvania Public Utility Commission*, 666 A. 2d 744 (Pa. Cmwlth. 1995).

⁴ At hearing, PECO inquired as to the cost of teleconferencing. ALJ Heep terminated that line of questions, stating that she did not find it relevant or probative. Tr. 52-53. The cost of teleconferencing was therefore never established on the record, and Ms. Paul's request is thus based on extra-record information.

III. Conclusion

PECO reiterates the position taken in its Main Brief and respectfully submits that, on the record evidence in this proceeding, the Commission should conclude that there is no reliable medical basis to conclude that radio frequency fields associated with AMI devices could cause, contribute to or exacerbate any health effects or symptoms, including Ms. Paul's claimed EHS. The process in this proceeding has not been unfair, nor has PECO acted with malice. The Commission does not have jurisdiction to evaluate Ms. Paul's claims under the Americans with Disabilities Act or the Federal Rehabilitation Act. Ms. Paul's requested accommodation of a non-transmitting analog meter is not reasonable because Act 129 requires the installation of AMI meters at all residences. PECO's offered accommodation of moving the meter 40 feet from the residence at Ms. Paul's cost is reasonable and consistent with its tariff. PECO therefore submits that the Commission should conclude that the use of an AMI meter to provide service to Ms. Paul is reasonable utility service for purposes of 66 Pa. C.S. §1501.

Respectfully submitted,



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