

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

**Susan Kreider**

v.

**PECO Energy Company**

**Public Meeting May 4, 2017**

**2469655-OSA**

**Docket No. C-2015-2469655**

**JOINT MOTION OF CHAIRMAN GLADYS M. BROWN AND  
COMMISSIONER JOHN F. COLEMAN, JR.**

The above-captioned Formal Complaint involves a dispute over the attempted installation of a smart meter at the Complainant's residence. Procedurally, exceptions to the Initial Decision (ID) and replies to exceptions have been filed and are pending. The Commission has since learned that the Complainant unfortunately has passed away.

We see no provision in the Public Utility Code or the Commission's regulations that specifically addresses the circumstance where a Complainant dies following the filing of exceptions. Nor did we find any Commission cases addressing such a circumstance. However, we note that in civil actions, it appears that the death of a party divests a court of subject matter jurisdiction over claims brought by that party until such time as the deceased's personal representative is substituted in his or her place.<sup>1</sup>

We believe we should follow the rule from civil court and find that the Commission does not have subject matter jurisdiction to rule on the merits of Ms. Kreider's Complaint, absent a personal representative substituting for Ms. Kreider.<sup>2</sup> To date, no such substitution has occurred. Therefore, we propose to dismiss the Complaint for lack of jurisdiction.<sup>3</sup>

However, we propose to dismiss the Complaint via a tentative order that provides the personal representative a period of time to substitute for Ms. Kreider. If no substitution is filed with the Commission within forty-five (45) days after entry of the tentative order, the order shall become final, and the Complaint shall be dismissed with prejudice.<sup>4</sup> Otherwise, if a substitution

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<sup>1</sup> *Grimm v. Grimm*, 149 A.3d 77 (Pa. Super. 2016).

<sup>2</sup> Here, the personal representative would be the administrator of the decedent's estate.

<sup>3</sup> We do not believe the Complaint should be dismissed as moot. We acknowledge that even if a substitution is filed, the Commission would be unable to provide personal relief to Ms. Kreider. However, the primary issue in the case, which is whether PECO's attempts to install a smart meter at the Complainant's property constituted unsafe or unreasonable service under Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, would remain. Moreover, we believe that a proceeding is not solely a private matter between the parties following the issuance of an Initial Decision. See *Kaufmann v. Verizon Pennsylvania, Inc.*, C-20055680 (Order entered November 19, 2008). The public has an interest that must be protected. In our view, it would not be in the public interest to dismiss the Complaint as moot, considering the time and resources the parties and the Commission have invested in this case.

<sup>4</sup> With such a dismissal, the Commission would not rule on the merits of the exceptions and replies filed in this case, and the ID issued in this case would not have any precedential value.

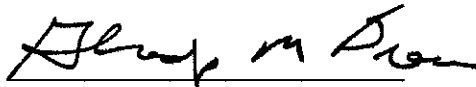
is timely filed, the tentative order does not become final, and the Commission retains jurisdiction to proceed with a decision on the merits of the Complaint.<sup>5</sup>

A dismissal via a tentative order serves several important objectives here. A dismissal in this manner reflects that the Commission does not have specific rules governing the substitution of a personal representative for a deceased party. A dismissal in this manner also puts the personal representative formally on notice of the dismissal on jurisdictional grounds and provides the personal representative formally with an opportunity to substitute for Ms. Kreider and receive a ruling on the merits of the Complaint. Thus, the proposed dismissal via tentative order ensures that all interested parties or their representatives are afforded due process.

**THEREFORE, WE MOVE THAT:**

1. The Formal Complaint filed by Susan Kreider, deceased, at the above-captioned docket be dismissed for lack of jurisdiction consistent with this Joint Motion.
2. The Office of Special Assistants prepare a Tentative Opinion and Order consistent with this Joint Motion.
3. A copy of the Tentative Opinion and Order be served on the personal representative of Susan Kreider, deceased.
4. If the personal representative does not file with the Commission a request to substitute for Susan Kreider, deceased, in this proceeding within forty-five (45) days after entry of the Tentative Opinion and Order, the Order shall become final, and the Formal Complaint filed by Susan Kreider, deceased, at the above-captioned docket shall be dismissed with prejudice.

**DATE: May 4, 2017**

  
**GLADYS M. BROWN**  
**CHAIRMAN**

  
**JOHN F. COLEMAN, JR.**  
**COMMISSIONER**

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<sup>5</sup> We note that if a substitution occurs, no further action by the parties would be required, and the Commission would proceed with an order addressing the exceptions and replies filed in this proceeding.