



An Exelon Company

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Direct Dial: 215-841-6841

August 7, 2017

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

**RE: Andrew Starr v. PECO Energy Company**  
**PUC Docket No.: C-2017-2615628**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Preliminary Objection of Respondent, PECO Energy Company* with regard to the matter referenced above.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a long horizontal flourish extending to the right.

Shawane Lee  
Counsel for PECO Energy Company

SL/ab

cc: Certificate of Service

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ANDREW STARR** :  
    **Complainant** :  
    **v.** :           **DOCKET NO. C-2017-2615628**  
          :           :  
**PECO ENERGY COMPANY** :  
    **Respondent** :  
                          :

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**NOTICE TO PLEAD**

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

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

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

Dated at Philadelphia, PA, August 7, 2017.



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Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street S-23  
Philadelphia, PA 19103  
215-841-6841  
Shawane.Lee@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>ANDREW STARR</b>	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>DOCKET NO. C-2017-2615628</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**PRELIMINARY OBJECTION OF RESPONDENT,  
PECO ENERGY COMPANY**

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

1. On July 24, 2017, PECO Energy was served with a formal complaint filed by Andrew Starr (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1”.

2. In his Complaint, the Complainant alleges that PECO is threatening to terminate his service for failing to give access to PECO’s meter. See Exhibit “1”.

3. The Complainant alleges in his complaint that Act 129 does not mandate installation of the smart meter.

4. In essence, the Complainant is requesting to “opt out” of smart meter installation at his home and refuses to have the meter installed. The Complainant disputes his pending service termination for failure to give PECO access to install the meter.

5. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.

6. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).

7. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure. Equitable Small Transportation Intervenor, v, Equitable Gas Co., 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

8. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible. Roc v. Flaherty, 527 A.2d 211 (Pa. Cmwlth 1985).

9. A complaint must be able to recover under the law to survive a preliminary objection. Milliner v. Enck, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) (“preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover”).

10. All of the non-moving party’s averments must be taken as true for the sake of deciding the preliminary objection. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (Pa. 1985).

11. The court does not, however, need to accept, “unwarranted inferences from facts, argumentative allegations, or expressions of opinions.” Feingold v. McNulty, 2009 Phila. Ct. Com. Pl LEXIS 167, \*3.

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

13. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm'n, 817 A.2<sup>nd</sup> 593 (Pa. Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

14. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

**I. Legal Insufficiency – Prior Commission Approval of Smart Meter Installation**

15. The Complainant has requested that he be permitted to “opt out” of smart meter installation at his residence because he believes that Act 129 does not mandate installation of the meter.

16. PECO Energy’s Smart Meter installation plan was approved by the Pennsylvania Utility Commission on May 6, 2010, as a part of the Smart Meter Technology Procurement and Installation Plan, (“Smart Meter/Smart Grid Plan”) at docket number M-2009-2123944.

17. By way of background, Governor Edward Rendell signed Act 129 of 2008 into law on October 15, 2008. The Act took effect 30 days thereafter on November 14, 2008, and amended Section 2807 of the Public Utility Code. Among other things, the Act specifically directed that electric distribution companies (such as PECO Energy) with more than 100,000 customers file smart meter technology procurement and installation plans with the Commission for approval. See 66 Pa. C.S. § 2807(f). The statute does not provide customers with an option to “opt out” of smart meter installation.

18. On June 18, 2009, the Commission adopted a Smart Meter Procurement and Installation Implementation Order (“Implementation Order”) to establish the standards each plan must meet and to provide guidance on the procedures to be followed for submittal, review and approval of all aspects of each smart meter plan. See Smart Meter Procurement and Installation Implementation Order, entered on June 24, 2009, at Docket No. M-2009-2092655.

19. Specifically, the Commission’s Implementation Order states:

Act 129 requires EDCs to furnish smart meter technology (1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request, (2) in new building construction, and (3) in accordance with a depreciation schedule not to exceed 15 years. 66 Pa.C.S. § 2807(f)(2).

\*\*\*\*\*

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.”

**THEREFORE,  
IT IS ORDERED:**

1. That the Commission establishes specific smart meter technology minimum capabilities and procedures for submittal, review and approval of all aspects of each smart meter plan to include cost recovery.

2. That electric distribution companies with greater than 100,000 customers adhere to the guidelines for smart meter technology procurement and installation identified in this Implementation Order.

3. That the Director of Operations convene a stakeholder meeting no later than July 17, 2009, to discuss issues related to the costs and benefits associated with the Commission imposed smart meter capability requirements.

4. That all electric distribution companies that are required to file a smart meter technology procurement and installation plan file such a plan consistent with the directives contained in this order by August 14, 2009.

See id.

20. The Commission’s Order does not have a provision for customers to “opt out” of the smart meter installation.

21. Through its Implementation Order and policies, the Commission has approved the smart meter implementation process required by Act 129.

22. Indeed, Pennsylvania PUC Chairman, Robert F. Powelson stated:

Act 129 of 2008 has really paved the way for the rollout of smart meters, also referred to as Advanced Metering Infrastructure (AMI), and the implementation of Act 129 continues to benefit Pennsylvania customers. As I see it, smart meter technology is a “win-win” situation for the Commonwealth – both electricity customers and electricity providers alike reap the benefits of advanced meters.

See PaPUC Chairman Powelson on Smart Meters and Pennsylvania’s Energy Future at <http://www.smartgridlegalnews.com/interviews/papuc-chairman-powelson-on-smart-meters-and-pennsylvanias-energy-future/>

23. On August 14, 2009, PECO Energy filed with the Commission its Petition of PECO Energy Company for Approval of its Smart Meter/Smart Grid Plan.

24. Amongst other things, PECO Energy's Petition requested that the Commission approve the deployment of up to 600,000 smart meters. See PECO Energy's Smart Meter/Smart Grid Petition.

25. As a part of PECO Energy's meter deployment plan, the company committed to deploy 600,000 meters by March 2013, upon receiving American Recovery and Reinvestment Act funding from the Department of Energy. See id.

26. PECO Energy's Implementation plan does not give customers the option to "opt out" of smart meter installation.

27. By Order entered May 6, 2010 at Docket No. M-2009-2123944, the Commission approved PECO Energy's Smart Meter/Smart Grid Plan.

28. The Commission's Order approving PECO Energy's plan does not provide an "opt out" provision.

29. In conjunction with the Commission's Implementation Order; the Commission-approved Smart Meter/Smart Grid Plan and continuing compliance with Act 129, PECO Energy has deployed over 194,000 Advanced Metering Infrastructure ("AMI") meters in customer's homes and businesses.

30. Act 129, the Commission's Implementation Order; and PECO Energy's Commission-approved Smart Meter/Smart Grid Plan do not provide customers the ability to "opt out" of having a smart meter installed in their homes or businesses. See 66 Pa. C.S. § 2807(f). See also Smart Meter Procurement and Installation Implementation Order, at Docket No. M-2009-

2092655. See PECO Energy's Smart Meter/Smart Grid Plan at docket number M-2009-2123944.

31. The absence of an "opt out" provision in the existing statute; Implementation Order; and Smart Meter/Smart Grid Plan is underscored by a recent bill introduced at the General Assembly.

32. House Bill 394, which was introduced on February 9, 2015, seeks to change the existing law by adding a "opt out" provision. Specifically, House Bill 394 reads as follows:

*Section 1. Section 2807(f)(2)(iii) of Title 66 of the Pennsylvania Consolidated Statutes is amended to read:*

*§ 2807. Duties of electric distribution companies.*

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

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

*(iii) In accordance with a depreciation schedule not to exceed 15 years. Customers may opt out of receiving smart meter technology under this subparagraph by notifying, in writing, the electric distribution company. The following shall apply:*

*A) The electric distribution company shall provide an opt-out form to consumers upon request and may provide a method for consumers to opt out electronically through the electric distribution company's Internet website.*

33. House Bill 394 attempts to address individual customer concerns about the smart meter (such as the Complainant's concerns) by allowing individual customers to "opt out" of receiving smart meter technology on the mandatory schedule established by Act 129.

34. The "opt out" provision; however, has not been scheduled for a vote by the General Assembly, and the ability to opt out of smart meter installation is not currently permissible under the law.

35. The issue of PECO's right to install an AMI meter at Mr. Starr's residence was raised in the matter Andrew Starr v. PECO Energy Company, Docket No. C-2015-2516061, Opinion and Order entered September 1, 2016. The Commission determined:

**Based on the factual averments in this particular case, we agree with the ALJ's conclusion that the Complaint was legally insufficient and should therefore be dismissed consistent with prior Commission Orders. *We have rejected similar claims that the installation of smart meters is not mandatory or that an opt-out is permissible under Act 129 and our Orders pertaining to implementation of the statute.***

*(Emphasis added).*

36. Accordingly, the Complainant's formal complaint, requesting the ability to "opt out" of smart meter installation under this basis should be dismissed as a matter of law.

37. The Complainant's formal complaint alleges that he does not want the meter installed because Act 129 does not mandate installation of the meter.

38. Assuming that everything the Complainant alleges in his Complaint is true, PECO Energy is operating under the basis of Act 129 and the specific direction given to the company by the legislature and the Commission through the Commission's Implementation Order.

39. The Complainant's Complaint, objecting to the installation of a smart meter at his residence, does not allege a violation of any order, law or tariff that can be the basis of any finding against PECO Energy.

40. Further, as the law currently stands, pursuant to Act 129 and the Commission's Implementation Order, customers do not have the ability to "opt out" of smart meter installation.

41. Because PECO Energy's smart meters are being deployed in compliance with the Commission-approved Smart Meter/Smart Grid Plan, and the law does not provide for the

Complainant to “opt out” of smart meter installation, there is no legal basis for the Complainant’s Complaint.

42. Further, PECO has the right to terminate a customer’s service for failure to permit access to install the Smart Meter.

43. Pursuant to Section 10.5, PECO Energy has a right to access the premises of a customer at all reasonable times for the purpose of installing, removing or changing any or all equipment belonging to the company. See Section 10.5 of PECO Electric Service Tariff.

44. Section 18.3 of PECO Energy’s tariff, permits the company to terminate a customer for cause if access to the meter is refused. See Section 18.3 of PECO Electric Service Tariff.

45. PECO Energy’s Commission approved tariff is prima facie reasonable and has the full force and effect of law. 66 Pa.C.S. § 316; *Kossmann v. PA PUC*, 694 A.2d 1147 (Pa Cmwlct 1997); *Brockway Glass Co. v. PA. PUC*, 437 A.2d 1067 (Pa. Cmwlct 1981).

46. In this case, the Complainant is refusing the installation of the Smart Meter; therefore, he is subject to termination consistent with Section 10.5 and 18.3 of PECO’s tariff.

47. Therefore, the Complainant is not entitled to relief under the law.

48. For the reasons set forth above, the Complainant’s Complaint should be dismissed as a matter of law.

**REQUEST FOR RELIEF**

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's formal complaint, and all issues which were raised in the Complaint.

Respectfully submitted,



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**Shawane L. Lee**  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-6841  
Fax: 215.568.3389  
Shawane.Lee@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>ANDREW STARR</b>	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>DOCKET NO. C-2017-2615628</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	
	:	

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**VERIFICATION**

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.



Date: August 7, 2017

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Shawane L. Lee

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>ANDREW STARR</b>	:	
<b>Complainant</b>	:	
v.	:	<b>DOCKET NO. C-2017-2615628</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	
	:	

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**CERTIFICATE OF SERVICE**

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

Andrew Starr  
926 Langdon Avenue  
Horsham, PA 19044

Date: August 7, 2017



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Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-6841  
Fax: 215.568.3389  
Shawane.Lee@exeloncorp.com

# **EXHIBIT 1**

**Botak, Amy:(PECO)**

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**From:** eServe@pa.gov  
**Sent:** Monday, July 24, 2017 2:41 PM  
**To:** Lee, Shawane L:(PECO)  
**Cc:** Botak, Amy:(PECO)  
**Subject:** [EXTERNAL] PA PUC eServe Notice

**Importance:** High

Dear Shawane L Lee,

A(n) **Formal Complaint** has been served in this proceeding. This document is docketed as **C-2017-2615628**. You may view this document at **Formal Complaint**

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

Thank You,  
Public Utility Commission  
Commonwealth of Pennsylvania

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

1

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Formal Complaint**

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

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

**1. Customer (Complainant) Information**

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

Name Andrew Starr

Street/P.O. Box 928 Langdon Ave Apt # \_\_\_\_\_

City Horseshoe State PA Zip 19044

County Montgomery

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

(215) 643-4807 (home) ( ) \_\_\_\_\_ (mobile)

E-mail Address (optional): \_\_\_\_\_

Utility Account Number (from your bill) 209800108

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

Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**RECEIVED**

JUL 20 2017

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**2. Name of Utility or Company (Respondent)**

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

PECO

3. Type of Utility Service

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

- |                                              |                                                                               |
|----------------------------------------------|-------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> ELECTRIC | <input type="checkbox"/> WASTEWATER/SEWER                                     |
| <input type="checkbox"/> GAS                 | <input type="checkbox"/> TELEPHONE/TELECOMMUNICATIONS (local, long distance)  |
| <input type="checkbox"/> WATER               | <input type="checkbox"/> MOTOR CARRIER (e.g. taxi, moving company, limousine) |
| <input type="checkbox"/> STEAM HEAT          |                                                                               |

4. Reason for Complaint

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

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

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

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

**6. Requested Relief**

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

**Please see attached**

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

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

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

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

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

YES

NO

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

7. **Prior Utility Contact**

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

YES

NO

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

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

YES

NO

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

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

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

**8. Legal Representation**

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

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

Lawyer's Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (if known) \_\_\_\_\_

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

9. Verification and Signature

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

Verification:

I Andrew Starr, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

  
(Signature of Complainant)

July 20, 2017  
(Date)

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

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

10. Two Ways to File Your Formal Complaint

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

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

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

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

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

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

Keep a copy of your Formal Complaint for your records.

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## Andrew Starr PUC Formal Complaint: PECO

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Andrew Starr  
928 Langdon Ave.  
Horsham, PA. 19044  
H 215-846-6388  
W 215-843-4607

July 20, 2017

Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, Pennsylvania 17120

Re: Rosemary Chiavetta, Secretary, PA PUC

This formal complaint is in response to a 10 day shut off letter post marked 07/14/2017 and received 07/15/2017 for account # 205600103

The stated reason for the 10 day letter is for failure to allow inspection of the meter. PECO is more than welcome to inspect the meter and never communicated their desire for inspection. After calling the 215-841-5850 as prompted on the letter it was revealed that this 10 day notice was for failure to allow the installation of an AMI meter.

HB2200 or ACT 129 does not mandate the installation of an AMI or Smart meter. PECO and the PUC have incorrectly interpreted verbiage in HB2200 in an attempt to bolster their position that it is mandated.

In Margaret H. Heger, M.D. v. PECO Energy Company C-2014-2444881. INITIAL DECISION SUSTAINING PRELIMINARY OBJECTION AND DISMISSING COMPLAINT

**Section 2807:**

**(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 [ ].**

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

## Andrew Starr PUC Formal Complaint: PECO

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(i) Upon the request of 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.

68 Pa.C.S.A. § 2807(f)(2). (Emphasis added).

The use of the word "shall" at (2) indicates that the General Assembly intended every customer to receive a smart meter. The statute is clear, and as noted above, there are no provisions for a customer to opt out.

"Shall" as defined in the law dictionary.

*As used in statutes and similar instruments, this word is generally imperative or mandatory, but it may be construed as merely permissive or directory, (as equivalent to "may,") to carry out the legislative intention and in cases where no right or benefit to any one depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense. Also, as against the government, "shall" is to be construed as "may," unless a contrary intention is manifest. See Wheeler v. Chicago, 24 111. 105, 78 Am. Dec. 738; People v. Chicago Sanitary Dist., 184 111. 597, 58 N. E. 9.": Madison v. Dabry (C. C.) 58 Fed. 753; Cairo & F. R. Co. v. Necht, 95 U. S. 170, 24 L. Ed. 423. SHAM PLEA. See PLEA. SHARE 1082 SHERIFF [A. Starr emphasis]*

Source: <http://thelawdictionary.org/shall/>

In *Hannaberry HVAC v. WCAB (Bryder, Jr.)*, 834 A. 2d 826 - Pa: Supreme Court 2003, the court deems that when ambiguity exist that in order to find the intent of the general assembly the following is employed:

*"The polestar of statutory construction is to determine the intent of the General Assembly. 1 Pa.C.S. § 1921(a) (court's sole objective in construing or interpreting a statute remains to "ascertain and effectuate the intent of the General Assembly"). See P.R. v. Com., Dept. of Public Welfare, Office of Hearings and Appeals, 569 Pa. 123, 801 A.2d 478, 482 (2002). When the words of a statute are clear and free from all ambiguity, they are presumed to be the best indication of legislative intent. Pennsylvania Financial Responsibility Assigned Claims Plan v. English, 541 Pa. 424, 664 A.2d 84, 87 (1995). However, if "the words of the statute are not*

## Andrew Starr PUC Formal Complaint: PECO

*explicit" on the point at issue, "the intention of the General Assembly may be ascertained by considering, among other matters:"*

- (1) The occasion and necessity for the statute.*
  - (2) The circumstances under which it was enacted.*
  - (3) The mischief to be remedied.*
  - (4) The object to be attained.*
  - (5) The former law, if any, including other statutes upon the same or similar subjects.*
  - (6) The consequences of a particular interpretation.*
  - (7) The contemporaneous legislative history.*
  - (8) Legislative and administrative interpretations of such statute."*
- [A. Starr emphasis]*

PECO has defined the word "shall" as its ultimate authority to force the implementation of smart meters onto all residents. The ambiguity of the word "shall" as defined by the PUC and due to the very nature of the force that the PUC claims is granted to PECO bears more scrutiny of the construction of HB2200.

House Bill HB2200 was originally referred to Consumer Affairs on January 15, 2008 under printer's number 3089. Shortly after on February 2, 2008, amendment A05807 was introduced. This amendment among other things mandated PECO under Section 2807 to provide 100 percent meter installation:

- 33 *Amend Bill, page 13, by inserting between lines 22 and 23*  
34 *Section 3. Section 2807(e) of Title 68 is amended by adding*  
35 *a paragraph to read:*  
36 *§ 2807. Duties of electric distribution companies.*

- 1     ...  
2     (e) *Obligation to serve.—...*  
3     (1) *Within nine months after the effective date of*  
4     *this paragraph, electric distribution companies shall*  
5     *file a smart meter technology procurement and*  
6     *installation plan with the commission for approval and*  
7     *make the plan available for public comment for a minimum*  
8     *of 30 days. The plan shall describe the smart meter*  
9     *technologies the electric distribution company proposes*  
10    *to install, how the smart meter technology meets the*  
11    *requirements of this paragraph and how the smart meter*  
12    *technology shall be installed according to this*  
13    *paragraph. In addition, the plan shall ensure that all*  
14    *smart meter technology installation and maintenance work*  
15    *shall be performed by adequately trained and qualified*

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16 personnel and that, to the extent practical, such work  
17 shall be offered initially to employees of the electric  
18 distribution company.

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

21 (A) Customers responsible for 40% of the  
22 distribution company's annual peak demand within four  
23 years after the effective date of this paragraph.

24 (B) Customers responsible for 75% of the  
25 distribution company's annual peak demand within six  
26 years after the effective date of this paragraph.

27 (C) One hundred percent of its customers within  
28 ten years after the effective date of this paragraph. [A. Starr emphasis]

The amendment passed with a 128-73 vote. Its intent was clear and without ambiguity that PECO had the power to force implementation of smart meters to 100 percent of its customers within ten years. The amendment was subsequently inserted in the bill where it remained as passed by the House.

The amendment was not without its critics when it came to mandated smart meter installation and their dissent further confirming mandated installation. In the February 11, 2008 House Journal pp. 388-403 we see the following dissents:

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*PA State Rep. Mr. Hutchinson addresses the Speaker:*

*Mr. Speaker, [...] 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. [...], 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 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.*

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**PA State Rep. Mr. Godshell states:**

*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.*

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**PA State Rep Smith states:**

*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 the 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.*

**PA State Rep. Mr. Saylor states:**

*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. [...], 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 bills.*

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**PA State Rep. Mr. Banningshoff states:**

*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 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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February 12, 2008 House Journal, pp. 430-432

p. 431

PA State Rep. Mr. Hutchinson states:

*Mr. Speaker, I rise in opposition to passage of HB2200, and let me tell you why. I believe 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.*

*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 those smart meters. So after adding that fatal flaw to this bill, I think it is incumbent upon everyone in this chamber to vote against HB2200, and I ask them to join me in that vote. Thank you, Mr. Speaker.*

After passing the House the bill went to the Senate where the mandated verbiage of the bill was stricken. In Senate Legislative notes it was noted that HB2200 no longer allowed for a mandate.

October 8, 2008 Senate Journal, pp. 2626-2631

p. 2628

PA State Senator Mr. Tomlinson states:

*Mr. President, I rise to ask for support for House Bill No. 2200 as amended by the Senate. [...] 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 18 years, and for anyone who wants to purchase a smart meter which they feel will help them manage their electric load better. [A. Starr emphasis]*

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**PA State Senator Mr. Boocola states:**

*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. [...] 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. [A. Starr emphasis]*

**PA State Senator Mr. Fumo states:**

*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. [A. Starr emphasis]*

The amendments passed in the Senate where it was returned to the House for a final vote under printers # 4528 where the House concurred with the Senate amendments with a 188-4 vote. This same version would become law on October 15, 2008.

In the construction of this bill it is plain to see, without ambiguity, that the power of a mandate was stripped from the bill by the Senate and overwhelmingly passed by the House. This overwhelmingly proves the PUC does not have the power to mandate smart meter installation.

For the PUC to not know the construction of this bill including the amendment which granted the mandate and then the loss of that power in the Senate version would not seem possible. Therefore one could easily conclude that the PUC in collusion with PECO has usurped power using legal ease and the word "shall" to illegally threaten to turn off power and to actually turn off power breaking their oath to electric customers in their jurisdiction.

The PUC must immediately cease and desist all illegal activity pertaining to forced smart meter installation including wrongful shut off notices and power stoppage.

Respectfully,



Andrew Starr

**Cc: State Representative Todd Stephens**

