

Andrew Starr Reply to Preliminary Objections: PECO

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AUG 17 2017

August 17, 2017

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Rosemary Chiavetta, Secretary
PA PUC Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

Ref: PUC Docket No.: C-2017-2615628

Dear Secretary Chiavetta:

Please find the enclosed reply to Preliminary Objections filed by PECO. I have also copied the following parties:

Shawane L. Lee
PECO Energy Company
2301 Market St, S-23
Philadelphia, PA. 19103

Respectfully,


Andrew starr

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Reply to Preliminary Objections

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Secretary Chiavetta:

Detailed below are my objections with regards to the Preliminary Objections of Respondent, PECO ENERGY COMPANY prepared by Shawane Lee

1. PECO infers in paragraph 14 that "there are no genuine issues of fact and PECO Energy is entitled to judgement as a matter of law with respect to all of the allegations in the Complaint". For PECO to claim that rulings from the Supreme Court of Pennsylvania and the precedent they must follow, deconstruction of legislation to prove legislative intent and other instances of law do not contain any "genuine issues of fact" could be considered injustice of the highest degree. This leaves me wondering the true intent of forced smart meter installation. It seems as if PECO will, at all costs, force smart meters regardless of professional reputation and with utter contempt for the law.
2. PECO states in paragraph 16 that its Smart Meter installation plan was approved by the PUC and it is this plan that gives them the authority to mandate smart meters.
3. PECO states in 17 that there is no "opt-out" in the Smart Meter installation plan.

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4. In my formal complaint I avered precedent by Supreme Court of Pennsylvania the requirements to identify Legislative Intent. This proved that any reference to mandated smart meter installation was removed before HB2200 or ACT 129 was passed.
5. If there is no mandate in the law, an opt-out would not be required. PECO insists there is a mandate in ACT 129 but it has yet to produce compelling, unambiguous evidence that there is. This in turn means PECO and the PUC are ignoring the intent of the Legislators along with doctrine of stare decisis where it is bound to follow precedence that is established by a higher court. The Superior Court of Pennsylvania acknowledges that it too is bound by stare decisis precedent of the Pennsylvania Supreme Court:

*"13 We observe, and Appellant reminds us, that our Supreme Court has recently granted allowance of appeal in a similar case involving underinsured motorist coverage.^[9] (See Appellant's Brief, at 16). This Court is of course bound by existing precedent under the doctrine of 926*926 stare decisis. See, e.g., Ario v. Reliance Ins. Co., 602 Pa. 490, 980 A.2d 588, 597 (2009)."*

Dixon v. Geico, 1 A. 3d 921 - Pa: Superior Court 2010

PECO and the PUC use previous smart meter rulings as precedent against those who instigate litigation over smart meters, yet will not acknowledge precedent that I have presented.

6. It is clear that the General Assembly eliminated any mandate from ACT 129, therefore it is not possible for the Commission to enact its own mandate as claimed by PECO. As a rule, government bodies created by law derive their powers from that law and cannot assume any powers except those enumerated. The law is clear, therefore the Commission cannot mandate smart meters nor as a subordinate can PECO infer there is a mandate.

In Popowsky v. PA PUBLIC UTILITY COM'N, 910 A. 2d 38 - Pa: Supreme Court 2006, the Court agrees that the PUC has powers but they are limited in nature and regulations must follow the law:

"In Rohrbaugh, this Court recognized that the rule-making power conferred by this provision is legislative in nature. 727 A.2d at 1085.^[15] Therefore, to be binding, the regulations must fall within the power delegated to the PUC, be enacted according to proper procedures, and be reasonable. Id."

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In this same case, the court also clarifies the constraints placed on the PUC when it comes to rules it initiates:

"An interpretative rule on the other hand depends for its validity not upon a Law-making grant of power, but rather upon the willingness of a reviewing court to say that it in fact tracks the meaning of the statute it interprets. While courts traditionally accord the interpretation of the agency charged with administration of the act some deference, the meaning of a statute is essentially a question of law for the court, and, when convinced that the interpretative regulation adopted by an administrative agency is unwise or violative of legislative intent, courts disregard the regulation." See, e.g., United States v. Cartwright, 411 U.S. 546, 93 S.Ct. 1713, 36 L.Ed.2d 528 (1973); Skidmore v. Swift & Co., 323 U.S. 134, 65 S.Ct. 161, 89 L.Ed. 124 (1944)." (A Starr emphasis).

If PECO is making an interpretive rule of the Commission's Smart Meter installation plan, or if the Commission argues that it has the power to mandate smart meter installation under ACT 129 they will be in violation of legislative intent which rightfully will be disregarded by the courts.

It is obvious that PUC is familiar with how regulations must fall within the power delegated to it and interpretive rule, and in a case it won before the Supreme Court of Pennsylvania, set its own precedence on how it must conform to the law. How is it possible that PECO can infer that the PUC can make regulation that falls well outside of the law based on legislative intent bypassing the precedent that they established in the above case, yet will not admonish PECO?

7. PECO argues that the unpassed opt-out bill HB394 proves that there is no opt-out allowed in the legislation. Unpassed bills hold no weight in the court of law and therefore no weight in this Preliminary Objection.

*"Howard Yocum and his associate appellants contend that the zoning board was without authority to issue a zoning permit to the Church because at the time the application was filed, City Council had before it a bill to reclassify the area. This argument is without merit. **An unpassed bill in City Council, as one in the State Legislature, has no more governmental authority than a scribbled note on the back of an envelope in the pocket of a legislator.**"*

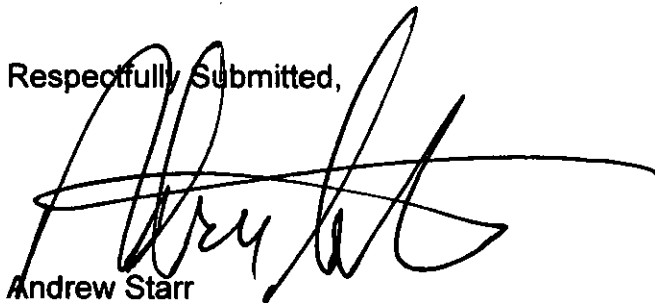
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If all business in a city or state, touched upon by pending bills, had to mark time until final action was taken on the contemplated legislation, chaos would grip City and Commonwealth. Nearly every conceivable subject in human affairs can be found mentioned in the avalanche of bills which descend upon every session of the Legislature. Nearly every type of municipal regulation conceivable can be found in the volume of bills which are introduced in city council. The overwhelming majority of bills in Legislature and Council (fortunately) do not pass. However, if the contention of the appellants here were to prevail, all officials and employees directly or remotely associated with the countless offices, activities and enterprises covered in pending bills would have to sit still until the bills affecting the involved offices, activities and enterprises were approved or rejected or until the legislature adjourned sine die which in recent years seems to have become a rather visionary date." Yocum v. Power, 398 Pa. 223 - Pa: Supreme Court 1960 (A. Starr Emphasis)

8. PECO's argument that ACT 129 mandates the installation of smart meters has no merit based on Legislative intent, stare decisis precedent, construction of the bill, an incorrect interpretive rule and the inability to prove without ambiguity that ACT 129 has a mandate. And regardless of the orders, implementations and tariffs PECO quoted in Preliminary Objections, they hold no merit when based on law when it comes to the perceived mandated smart meter installation.

9. Therefore, I submit with ample proof and without ambiguity, that PECO and the PUC have absolutely no power to force smart meters onto the general public as they have been doing for years. PECO is wrong in their assertion that the Smart Meter implementation plan approved by the PUC gives them the power to force smart meters when the PUC does not have that authority. PECO has no argument in matters at law and therefore the PUC should rule in my favor.

Respectfully Submitted,



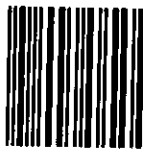
Andrew Starr

Cc: State Representative Todd Stephens

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