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May 14, 2018

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

**RE: Maria Povacz v. PECO Energy Company**  
**Docket No. C-2015-2475023**

Dear Secretary Chiavetta:

On March 20, 2018, the Commission issued the Initial Decision in this matter. By Secretarial Letter issued on April 27, 2018, the Commission stated that Exceptions, if any, must be filed by May 14, 2018.

The *Exceptions of PECO Energy Company* in the above-referenced proceeding are attached for filing.

If you have any questions about this filing, please do not hesitate to contact me at 215.841.6863.

Very truly yours,



Ward L. Smith  
Assistant General Counsel

WLS/adz  
Attachment

c: Honorable Darlene D. Heep, ALJ  
Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Maria Povacz**

**v.**

**PECO Energy Company**

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**C-2015-2475023**

**Exceptions of PECO Energy Company**

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## Introduction

On March 20, 2018, the Commission issued the Initial Decision (“I.D.”) of Administrative Law Judge (“ALJ”) Darlene Heep in this matter. By Secretarial Letter issued on April 27, 2018, the Commission established a due date for Exceptions of May 14, 2018 (with Reply Exceptions due June 3, 2018). Pursuant to 52 Pa. Code §5.533, PECO hereby files its Exceptions to the I.D.

In this proceeding, Complainant Maria Povacz argued that she had been harmed, or would be harmed, by exposure to electromagnetic fields (“EMF”) or radio frequency (“RF”) transmissions – which the I.D. collectively refers to as “EFs”<sup>1</sup> -- from PECO’s AMI meters. The I.D. correctly concluded (p. 28) that “[T]here is no showing that EFs from smart meters are causing this problem, and PECO successfully rebutted any such claim.” *See also*, I.D., p. 31, Conclusion of Law 6: “The Complainant has not established that electromagnetic fields that may emanate from the smart meters are unsafe to her. 66 Pa.C.S. § 332(a).”

However, the I.D. then went on to conclude (p. 28) that Ms. Povacz *had* demonstrated by a preponderance of the evidence that “some other aspect” of PECO’s AMI meters is “contrary to [her] health and well-being.” *See also*, I.D., p. 31, Conclusion of Law 7: “The Complainant has established that installation of a smart meter attached to her home would exacerbate ill health effects. 66 Pa. C.S. §701; 66 Pa. C.S. §1501; 52 Pa. Code §57.194.”

As described in these Exceptions, the record evidence does not support a conclusion that “some other aspect” of PECO’s AMI meter has harmed or will harm Ms. Povacz.

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<sup>1</sup> *See* I.D. p. 5, fn. 2. “The experts testifying used the terms ‘electromagnetic fields’ and ‘Radio Frequency’ interchangeably to address the emissions concerns of the Complainants. EF will be used to reference these emissions.”

**I. Exception 1: The I.D. incorrectly concluded that there is a preponderance of evidence that “some other aspect” of PECO’s AMI meter is “contrary to the health and well-being” of Ms. Povacz**

PECO excepts to the following Conclusion of Law, Ordering Paragraph, and relevant supporting discussion from the Initial Decision:

Conclusion of Law 7: “The Complainant has established that installation of a smart meter attached to her home would exacerbate ill health effects. 66 Pa. C.S. §701; 66 Pa. C.S. §1501; 52 Pa. Code §57.194.”

Ordering Paragraph 2: “That Maria Povacz’s claim that her health would be adversely affected by the installation of a smart meter attached to her home is granted.”

Initial Decision, p. 28 (emphasis added): “While there is no showing that EFs from smart meters are causing this problem, and PECO successfully rebutted any such claim, *the preponderance of the evidence does suggest that some other aspect of the PECO smart meters is inimitably perceptible by and contrary to the health and well-being of the individual Ms. Povacz. This conclusion is supported by medical and circumstantial evidence which included her credible testimony regarding the [confidential medical condition], her testimony that her ill health is worse when in her yard near the smart meters of her neighbors, her consultation with physicians, including Dr. Talmor, who specializes in treating patients with exceptional sensitivities, and her relief when moving away from smart meters or traveling. Testimony of Maria Povacz Hearing Transcript at. 22-27; Direct Testimony of Hanoch Talmor, M.D. Although not EFs, Dr. Talmor recognized that some aspect of the smart meters causes Ms. Povacz health problems and recommended that she not install a meter in her home. Direct Testimony of Hanoch Talmor at 5:10-13; (JA002656).*”

The I.D. thus identifies two evidentiary sources that it claims support the conclusion that harm has been or will be caused by “some other aspect” of PECO’s AMI meters: (1) Ms. Povacz’s testimony that her health improves or declines when her proximity to AMI meters changes; and (2) testimony of her treating physician, Dr. Hanoch Talmor. PECO will begin its analysis by reviewing the testimony of Dr. Talmor.

**A. The testimony of Complainant’s treating physician Dr. Talmor was exclusively focused on EF, and does not provide any evidentiary support for the conclusion that “some other aspect” of AMI meters is contrary to the health and well-being of Ms. Povacz**

The I.D. alleges (p. 28) that the testimony of Ms. Povacz’s treating physician, Dr. Hanoch Talmor, supports the conclusion that “some other aspect” of PECO’s AMI meters is harmful, stating: “Although not EFs, Dr. Talmor recognized that some aspect of the smart meters causes Ms. Povacz health problems and recommended that she not install a meter in her home. *Direct Testimony of Hanoch Talmor* at 5:10-13; (JA002656).”

The cited sentence from Dr. Talmor’s written direct testimony<sup>2</sup> reads as follows: “Specifically, with regard to a smart meter, I have recommended that the utility company abstain from installing a smart meter in her home because of the negative health effects such a device would have on my patient.”

PECO recognizes that this sentence, standing in isolation, does not specifically mention EFs as being the source of Dr. Talmor’s concern. When the sentence is read as part of his full testimony, however, it is abundantly clear that Dr. Talmor’s sole concern was EF, not “some other aspect” of PECO’s AMI meter. For example, he stated (emphasis added):

**6. Q. What is the purpose of your testimony?**

A. I am submitting this testimony to provide *information regarding* my diagnosis and treatment of Maria Povacz in connection with her severe *sensitivity to electromagnetic fields (EMFs) and radiofrequency (RF)*.

**9. Q. Based on these symptoms, did you arrive at a diagnosis for Ms. Povacz’s condition?**

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<sup>2</sup> Although the I.D. cites to page 5, lines 10-13, of Dr. Talmor’s testimony, his written testimony is only four pages long. PECO therefore believes that the I.D intended to cite the sentence quoted above, which is found at page 4, lines 10-13.

A. Yes. I diagnosed Ms. Povacz with severe electromagnetic hypersensitivity or EHS. She is extremely *sensitive to electromagnetic and radiofrequency radiation*.

**14. Q. Do you continue to consult with Maria Povacz regarding her EHS?**

A. Yes. We hold consultations over the phone because my practice is in Florida. Maria continues to suffer from EHS and only *reports diminished symptoms when she avoids exposure to EMF and RF radiation. Her condition worsens when she is exposed to EMF and RF radiation*.

**15. Q. What do you recommend with regard to the installation of a smart meter at Maria Povacz's home?**

A. I recommend that Maria *limit her exposure to all electronic devices that emit EMF and RF radiation*. Specifically, with regard to a smart meter, I have recommended that the utility company abstain from installing a smart meter in her home because of the negative health effects such a device would have on my patient. I sent a letter to PECO to that effect on April 9, 2015. The letter is attached as Appendix C. *Smart meters are known to emit EMF and RF radiation and they would be harmful to my patient's fragile health*.

This testimony does not suggest that “some other aspect” of PECO’s AMI meters is harmful. Rather, this testimony solely and exclusively claims that exposure to EFs is harmful.

Moreover, even the sentence cited by the I.D. is clearly about exposure to EFs. The sentence cited by the I.D. is followed by direction to review Dr. Talmor’s April 9, 2015 letter for more detail on the concerns set forth in the cited sentence: “Specifically, with regard to a smart meter, I have recommended that the utility company abstain from installing a smart meter in her home because of the negative health effects such a device would have on my patient. I sent a letter to PECO to that effect on April 9, 2015. The letter is attached as Appendix C.” The April 9 letter, in turn, underscores that Dr. Talmor was concerned about EFs, not “some other aspect” of the AMI meters. The letter states (emphasis added):

Mrs. Povacz is suffering from *severe sensitivity to electromagnetic fields. This includes radio frequencies emitted from Smart Meters, Wi Fi, etc*. Installing a smart meter on her house or in its vicinity is likely to cause her severe health problems. In conclusion: she should not have a Smart meter installed on or around the house.

Further evidence that Dr. Talmor was concerned with EF exposure, and not “some other aspect,” can be found in the fact that he cited only one supporting document in his Direct Testimony – a World Health Organization (“WHO”) publication entitled “Electromagnetic Fields and Public Health, the Present Evidence” – which, as its title suggests, is solely a review of EF issues.<sup>3</sup>

In sum, the I.D. correctly concluded that Ms. Povacz failed in her attempt to prove her EF claim. Dr. Talmor’s testimony was solely concerned with the EF claim; he *did not testify* that “some other aspect” of AMI meters would harm her. Dr. Talmor’s testimony does not support a conclusion that “some other aspect” of PECO’s AMI meters is harmful.

**B. Ms. Povacz’s testimony that she felt worse when near AMI meters was also specifically related to EF exposure; her claim is that she felt worse near AMI meters because, she alleges, she has electromagnetic hypersensitivity (“EHS”) to exposure to EF**

The I.D. also states (p. 28) that Ms. Povacz’s testimony supports the conclusion that “some other aspect” of PECO’s AMI meters is harmful. The I.D. states (emphasis added): “This conclusion is supported by medical and circumstantial evidence which included her credible testimony regarding the [confidential medical condition], *her testimony that her ill health is worse when in her yard near the smart meters of her neighbors*, her consultation with physicians,

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<sup>3</sup> Dr. Talmor initially testified, Direct Testimony, p. 3, Q 11, that the WHO had stated that exposure to EMFs may be a health hazard. On cross-examination, June 7, 2016 Tr. at 109-115, PECO demonstrated that Dr. Talmor had misquoted the WHO publication. In fact, the WHO publication concluded (p. 7) that: “Concerning radiofrequency fields, the balance of evidence to date suggests that exposure to low level *RF* fields (such as those emitted by mobile phones and their base stations) does not cause adverse health effects. Some scientists have reported minor effects of mobile phone use, including changes in brain activity, reaction times, and sleep patterns. In so far as these effects have been confirmed, they appear to lie within the normal bounds of human variation.”

including Dr. Talmor, who specializes in treating patients with exceptional sensitivities, *and her relief when moving away from smart meters or traveling. Testimony of Maria Povacz Hearing Transcript at. 22-27.*”<sup>4</sup>

Ms. Povacz’s testimony on this issue does not establish that there is “some other aspect” of PECO’s meters, other than EF transmissions, that is of concern. In fact, Ms. Povacz specifically attributed her symptoms to EF, stating (June 6, 2016 Tr., p. 77, lines 16-25) (emphasis added):

*. . . I was internally in parallel doing the research and trying to personally find out what's wrong with me, I did come across studies --- medical studies, peer-reviewed studies that specifically correlate the RF frequency from devices to thyroid issues. So I made the connection. And again, I made that connection that this is what's been happening to me all along. Almost it was a self-diagnostic if I may say that. A diagnostic which was then concurred by a medical professional, so . . .*

As noted in the prior section of these Exceptions, the medical professional who later “concurred” with Ms. Povacz’s self-diagnosis was Dr. Hanoch Talmor – and his testimony was also specifically a concern about EF exposure. Indeed, Dr. Talmor testified that, in his opinion, the reason that Ms. Povacz reports diminished symptoms when she moves away from AMI meters is because, when she does so, “she avoids exposure to EMF and RF radiation. Her condition worsens when she is exposed to EMF and RF radiation.” Povacz Statement No. 1, Direct Testimony of Hanoch Talmor, p. 4, Q. 14. There is nothing in any of this testimony that suggests that “some other aspect” of the AMI meters was of concern to these witnesses. Ms. Povacz’s “proximity claim” was specifically an EF claim, and the I.D. correctly concluded that she failed to prove her EF claim.

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<sup>4</sup> Ms. Povacz testified on June 7, 2016. Pages 22-27 of the June 7, 2016 Transcript, which were cited in the I.D., actually discuss an issue having to do with PECO’s business records that is unrelated to Ms. Povacz claim that she felt worse near neighbors’ homes or better when travelling. The testimony on that issue appears in the June 7 transcript at pages 65-66, 70-74, 77-78, and 128-132.

PECO further notes that, in the Second Amended Complaint filed in this matter on April 8, 2016, Complainant also made quite clear that her concern was exposure to EF. In the Second Amended Complaint, she stated (emphasis added):

9. On April 9, 2015, Dr. Hanoch Talmor wrote a letter to PECO indicating that a smart meter should not be installed on or near Complainant's home because *she suffers from "severe sensitivity to electromagnetic fields."* Attached as Exhibit 3.

10. Complainant suffers from severe *sensitivity to electromagnetic fields* and experiences a number of serious symptoms *when exposed to electromagnetic fields*.

11. As a result of her severe *sensitivity to electromagnetic fields*, Complainant experiences many physical symptoms, including but not limited to [confidential medical symptoms].

12. Complainant's severe electromagnetic sensitivity makes her *uniquely susceptible to Electro Magnetic Field (EMF) and Radio Frequency (RF) radiation*.

13. *Exposure to EMF and RF radiation* is known to exacerbate a number of medical conditions, including Complainant's severe electromagnetic sensitivity.

14. Wireless smart meters are known to emit *indeterminate amounts of EMF and/or RF emissions*.

15. Complainant requested that PECO abstain from installing a wireless smart meter at their residence *because the device would adversely affect Complainant's severe sensitivity to electromagnetic fields*.

33. PECO should be compelled by the Commission to install only an analog meter or a similar *device that does not produce EMF or RF emissions* at or near Complainant's residence.

In her Main Brief (p. 14, Proposed Findings of Fact 53-55), Ms. Povacz reiterated that the basis of her concern was EF exposure, including a specific claim that the variability in her symptoms (worse when near an AMI meter; better when away from an AMI meter) is due to the attendant variations in EF exposure (emphasis added):

53. Dr. Talmor has opined that Ms. Povacz's symptoms are fully consistent with *electromagnetic hypersensitivity syndrome*. *Id.* at 4:13; (JA002655).

54. According to Dr. Talmor, Ms. Povacz only reports diminished symptoms when her *exposure to electromagnetic and radio frequency waves decreases*. *Id.* at 5:4-7; (JA002656).

55. Conversely, her symptoms are worse when she is *exposed to electromagnetic and radio frequency wave radiation*. *Id.*; (JA002656).

In sum, there is nothing in the testimony or pleadings that suggests that Ms. Povacz was raising a concern with or had proved that “some other aspect” of PECO’s AMI’s meters is harmful. To the contrary, it is very clear that her concern was with EF exposure. And the I.D. correctly concluded that she did not prove her case with respect to EF exposure. There is no “other aspect” to discuss.

**C. Ms. Povacz’s expert witness, Dr. Andrew Marino, testified that subjective self-diagnosis of electromagnetic hypersensitivity is not sufficient to establish that the person has electromagnetic hypersensitivity.**

The I.D. gives great weight to Ms. Povacz’s testimony that, while she was in the presence of AMI meters, she subjectively felt worse, and while she was away from AMI meters, she subjectively felt better. It should therefore be noted that Ms. Povacz’s expert witness, Dr. Andrew Marino, testified that “a person’s subjective self-diagnosis of electromagnetic hypersensitivity is not sufficient to establish to establish that the person has electromagnetic hypersensitivity.” September 16, 2016 Transcript, pp. 786-87:

Q. Dr. Marino, if a person reports that she or he has electromagnetic hypersensitivity symptoms, do you agree that that does not mean that the person has electromagnetic hypersensitivity?

A. Yes.

Q. Okay. So a person’s subjective self-diagnosis of electromagnetic hypersensitivity is not sufficient to establish that the person has electromagnetic hypersensitivity?

A. Yes

Moreover, while Dr. Talmor “concurred” in the diagnosis of electromagnetic hypersensitivity, he was quite clear that he did not perform any independent diagnostic tests before reaching that diagnosis; he simply asked Ms. Povacz what symptoms she was experiencing and accepted her self-diagnosis that the symptoms were worse when she was near an AMI meter. June 7, 2016 Transcript at 101-08.

At its core, therefore, the I.D. has simply accepted Ms. Povacz’s testimony that she felt worse when near meters, *even though her own expert said that such self-diagnosis is not sufficient to establish* that a person is suffering from electromagnetic hypersensitivity. That is far from a preponderance of evidence that “some other aspect” of the AMI meters is harmful to Ms. Povacz.

**D. PECO’s witness Dr. Christopher Davis testified that Ms. Povacz is exposed to EF from many other sources. This testimony demonstrates that Ms. Povacz’s reports of symptom variability with changing proximity to AMI meters should not be accepted**

In the prior sections of these Exceptions, PECO demonstrated that Ms. Povacz’s reports of system variability with changing proximity to AMI meters was based on her view (and Dr. Talmor’s view) that, as her proximity to the AMI meters changed, she experienced a material change in EF exposure. PECO’s expert witness, Dr. Christopher Davis, testified that Ms. Povacz’s exposure to EF from an AMI meter is quite small in relation to background sources of EF (PECO Statement No. 3, pp. 17-19, Q. 39-43:

39. Q. Did you compare the level of radio frequency fields from PECO's AMI meters to the level of fields that people are commonly exposed to from other sources?

A. Yes, my exhibit CD5 shows the following: 1) people are and have been commonly exposed to radio frequency fields from a number of sources for many years and they are much higher than the exposure from the PECO AMI radios; 2) compared to the exposure from PECO's AMI radios, exposures from cell phone towers are 14.7 times larger, exposures from radio and TV broadcast transmitters are 18.4 times larger, exposures from standing 30 feet away from a cell phone are 5,700 times larger, exposures from using cell

phones can be up to 1.9 million times larger, and exposures from microwave ovens can be up to 6 million times larger. It is notable that the exposure from PECO's AMI radios is 5,700 times smaller than the exposure a person gets standing 30 feet away from somebody talking on a cell phone.

40. Q. How does the exposure from a PECO AMI compare to the exposure in New Hope, Pennsylvania from UHF television broadcasting?

A. My exhibit CD6 shows that the radio frequency fields at 1 meter from a PECO AMI are 240 times smaller than the background radio frequency exposure from UHF TV broadcasting in New Hope, Pennsylvania.

41. Q. Dr. Pall testified (page 21) that "Maria Povacz reports being very healthy until approximately September 2012 when AMI smart meters were installed at her neighbor's house (10-12 feet away), near her home and throughout her neighborhood" (page 21) and Ms. Povacz says that meter is "located only 10-15 feet away from my bed" (page 18). How does the radio frequency exposure at Ms. Povacz's bed from the PECO AMR that she says has been installed at her house "since February 17, 2001" compare to the radio frequency exposure from the AMI meter that was subsequently installed at her neighbor's house in 2012?

A. My exhibit CD7 shows that the average exposure 1 meter away from the PECO AMR radio at Ms. Povacz's house is 59 times larger than the exposure from the PECO AMI that was subsequently installed at her neighbor's house.

42. Q. How do the radio frequency exposures from PECO's old AMR meter and its new AMI meter compare?

A. The radio frequency exposure from PECO's new AMI meter is 6.4 times smaller than the radio frequency exposure from PECO's old AMR meter, as shown on my exhibit CD7.

43. Q. Will the installation of a PECO AMI meter at Ms. Povacz's house increase the radio frequency exposure at her house?

A. No. In fact, as my exhibit CD8 shows, if the PECO AMR meter at Ms. Povacz's house is replaced with a PECO AMI meter the radio frequency exposure at Ms. Povacz's house will be reduced by 83%.

Given this testimony, it is not plausible to conclude that EF from the AMI meter is "inimitably perceptible by" Ms. Povacz, as the I.D. concluded. The background levels of EF are simply too high for such perception to occur.

PECO notes that, in the case of *Frompovich v PECO*, C-2015-2474602 (Opinion and Order issued May 3, 2018), the Commission highlighted the similar testimony from Dr. Davis as a basis for denying Ms. Frompovich's claim, stating (pp. 57-58; emphasis added) that:

However, the *overwhelming evidence presented by PECO*, in rebuttal to Ms. Frompovich's direct case, showed that some of the emissions of concern to Ms. Frompovich do not emanate from AMI meters and that *any actual emissions from AMI meters are miniscule and harmless and measure significantly less than those to which the average person is exposed daily*. Accordingly, we affirm the ALJ's conclusion that the Complainant did not satisfy her burden of proving that the type of AMI meter to be installed at her home would be unreasonable or unsafe in violation of PECO's duty under 66 Pa. C.S. § 1501.

PECO believes that the Commission concluded correctly in *Frompovich*, and respectfully recommends that it should make a similar finding here. The EF from PECO's AMI meters is miniscule compared to background levels, and is harmless. Ms. Povacz's claim that she can perceive those fields and that she thus feels worse in proximity to AMI meters should be denied.

**E. PECO's witness Dr. Mark Israel testified that Ms. Povacz's reports of symptom variability with changing proximity to AMI meters does not demonstrate that AMI meters will cause her harm**

PECO also notes that its medical expert, Dr. Mark Israel, provided extensive testimony that directly addresses Ms. Povacz's report that her symptoms were worse when she was near an AMI meter, and better when she was away from an AMI meter (PECO Statement No. 4, Rebuttal Testimony of Dr. Mark Israel, pp. 15-17, Q 26):

Q. Ms. Povacz says that she was healthy "at the beginning of September 2012" (page 11), but after the PECO AMI meters were installed in her neighborhood and at her neighbors house in the "summer months of 2012" (page 8), by "mid-September [2012]" (page 11) she had "[Confidential medical symptoms] (page 13). What does her testimony about her symptoms appearing after the AMI meters were installed tell you about the cause of her symptoms?

A. I considered the sequence and timing of the events but unfortunately it was of no help in determining the cause of Ms. Povacz s symptoms. When one event occurs shortly after

another, that does not prove that the first event caused the second event. An example of that point is recently, right after I ate breakfast it started raining, but that does not prove that my eating breakfast caused it to rain. In practicing medicine, we often get reports from patients about the sequence and timing of events and the onset of their symptoms. If the symptoms occurred before the event, we can logically rule out the event as the cause of the symptoms. If the symptoms occurred after the event, it would be medically irresponsible to our patient to conclude that the event caused the symptoms because that would lead us to not proceeding with trying to determine the medical cause of the symptoms and thus failing to identify the cause and treat it rather than just the symptoms.

I understand that from Ms. Povacz's perspective she did not have the symptoms she now has, then the AMI meters were installed and shortly after the symptoms appeared so the meters must be the cause of the symptoms. The sequence and timing of those 2 events does not establish that the AMI meters caused her symptoms. To determine the actual or most likely cause of symptoms, in medicine we take a careful medical history, conduct a thorough physical examination, and oftentimes perform relevant imaging and laboratory studies before seeking a unifying diagnosis that accounts for as many of the abnormal findings as possible.

Sometimes the identification of a single diagnostic entity is not possible, but in any case, the outcome of this investigation is a differential diagnosis, a list of illnesses prioritized by the likelihood that one (or more) of these disorders are more likely than others on the list to account for the patient's illness. The first step in forming a differential diagnosis is to consider and rule out things that have not been shown to cause the symptoms and then focus our efforts on plausible causes because, once identified, they can be treated. To do that, we must look at reliable medical and scientific studies. If those studies as a whole do not consistently show that an event, such as exposure [to] radio frequency fields, causes a symptom or symptoms, we proceed to analyze plausible causes.

Many things could have caused Ms. Povacz's symptoms. It could be many things such as 1) other events that occurred about the same time the AMI meters were installed (in medicine when trying to ascertain the cause of symptoms we are sensitive to confounding factors, causes which are unrecognized and sometimes unrecognizable), 2) an ongoing, but undiagnosed medical condition, or 3) the development of symptoms because of a sincere belief that one or another sources of personal concern, like AMI meters, can cause specific symptoms (in medicine we call that the nocebo effect, which is the development of symptoms as the result of a negative perception).

I do not know what caused Ms. Povacz symptoms. But based on the medical and scientific studies and my education, training and experience, I [am] confident they were not caused by radio frequency fields from the AMI meters.

PECO respectfully suggests that this testimony persuasively explains that, even though Ms. Povacz subjectively believed that her symptoms were worse near AMI meters and better

when away from AMI meters, that in no way proves that the AMI meters were the cause of the variation in her symptoms. Given such testimony, Ms. Povacz's subjective reaction to being close to or further away from AMI meters does not create a "preponderance of evidence" that "some other aspect" of the AMI meters will cause harm to her.

**F. The conclusion that "some other aspect" of the PECO AMI meters is harmful was reached in a manner that violates PECO's due process rights**

One of the fundamental precepts of due process in an evidentiary hearing is that, to satisfy due process, a party must be provided with notice regarding the arguments and claims made against them, and must be given the opportunity to be heard in response to those claims. *See, for example, Fiore v. Bd. of Fin. & Revenue*, 633 A.2d 1111, 1114 (Pa. 1993).

In this proceeding, PECO was not given notice and the opportunity to be heard with respect to claims that "some other aspect" of its AMI meters is harmful. As described in Section I.B. of these Exceptions, the Complaint did not raise the issue of "some other aspect;" there was no testimony on "some other aspect;" and the Complainant did not raise the argument in her brief. Indeed, the first time that phrase or argument was raised was in the I.D. itself. Clearly, PECO was not given the opportunity to present an evidentiary response to the claim that "some other aspect" of its AMI meters is harmful.

PECO notes that, when the Complainant in this proceeding identified subsidiary claims, PECO provided an evidentiary response to the claims. For example, when the subsidiary issue of "dirty electricity" was raised by Ms. Povacz, PECO provided an evidentiary response. *See* PECO Statement No. 2, Rebuttal Testimony of Glenn Pritchard, p. 13: ("all sources of electricity create harmonics, . . . the harmonics will exist regardless of the form of meter and whether there is any meter at all, and . . . any fields created by the AMI meter will be

vanishingly small next to the fields and harmonics that are created by the electric service that is being measured by the AMI meter. . . . PECO's AMI meters do not create 'dirty electricity.'"); PECO Statement No 3, Rebuttal Testimony of Dr. Christopher Davis, pp. 11-12: ("The electricity we use has always been produced by rotating generators at power stations and those generators produce the electricity that is transmitted to us at 60 Hz (in the United States) with harmonic waves at multiples of 60 Hz (120 Hz, 180 Hz, 240 Hz, etc.). Harmonics are a natural byproduct of generating electricity so in electrical engineering we do not use the term "dirty electricity." AMI meters do not generate electrical power; they measure the electrical power flowing into and being used in a house. They do not produce additional harmonics over and above what is coming into the meter. Typical household appliances can generate radio frequency fields that are much larger than those generated by AMR or AMI meters. Switching-mode power supplies generate radio frequency fields at up to about 10 MHz at very low levels. Many modern electrical appliances use switching mode power supplies.")

Because the claim regarding "some other aspect" of PECO's AMI meters was not raised until the I.D., PECO was not given an opportunity to similarly respond to the claim that "some other aspect" of its AMI meters is harmful. It would thus violate PECO's due process rights to allow the finding regarding "some other aspect" to stand.

**G. It would be bad public policy to adopt the I.D. on this issue**

PECO believes that it has demonstrated, throughout these Exceptions, that Ms. Povacz's case was focused on, and limited to, a claim that exposure to EF from PECO's AMI meters would cause her harm. Moreover, the I.D. correctly concluded that Ms. Povacz had failed to meet her burden of proving that claim. Unfortunately, the I.D. concluded Ms. Povacz proved, by a preponderance of the evidence, that "some other aspect" of PECO's AMI meters – an "aspect"

that was not claimed, not talked about in testimony or briefs, which is not named anywhere, and which is not known – will cause her harm.

PECO believes that the prior sections of these Exceptions have demonstrated why that conclusion should not be accepted as a matter of the record evidence in this proceeding. In addition, there is a policy consideration that the Commission should consider. Put most bluntly, the rule used by the I.D. would allow a complainant to prevail if they truly believe that they are being harmed by a utility facility, and subjectively and sincerely testify that they feel sick when they are near the facility and feel better when they are away from it –even if they never scientifically or medically prove that they utility facility is causing their illness. Indeed, the I.D. found that just such a claim meant that PECO had provided unreasonable utility service, in violation of Section 1501.

If the Commission were to adopt this rule, complainants could *fail to meet their burden of proving* that there is a scientific/medical basis for their concern, *but still win their case* merely by testifying that they experience a variance in good and bad feelings with changing proximity to utility facilities. And, if the Commission were to adopt that as its evidentiary rule, then the following claims could be won without scientific/medical proof:

- “Every time I walk by your substation, I feel ill. Please move it.”
- “When I am near your transmission line, I feel ill. Please move it.”
- “That transformer makes me sick. Move it.”
- “Those aerial distribution lines make me sick. Put them underground.”
- “When smart meters in my neighborhood transmit, I can feel it and it doesn’t feel good. Stop transmitting.”

PECO does not believe it is being hyperbolic in describing this risk. Over the years, many people have suggested that utilities should reconfigure their utility systems to increase proximity from a given complainant. The controlling factor that keeps such claims from causing a wholesale reconfiguration of the utility system is the requirement that such complainants must prove that the harm they fear will actually occur (by a preponderance of the evidence). The approach suggested by the I.D. largely or wholly eliminates that controlling factor. If adopted by the Commission as a rule of the necessary level of evidentiary proof, it would allow the claims set forth above to prevail simply on the basis of complainant testimony that they feel sick when in proximity to a utility facility. PECO respectfully, but strongly, urges the Commission not to go down that path.

## II. Conclusion

PECO respectfully submits that the record evidence in this proceeding does not support a finding that “some other aspect” of PECO’s AMI meters is contrary to Ms. Povacz’s health and well-being. Indeed, based on the record in this proceeding the Commission should find that there is no reliable medical basis to conclude that EFs associated with PECO’s AMI devices, *or any other aspect of PECO’s AMI devices*, cause, contribute to, or exacerbate any health effects, including Complainant’s health conditions. PECO therefore submits that the Commission should conclude that the use of AMI meters to provide service to Complainant is safe and reasonable utility service for purposes of 66 Pa. C.S. §1501. The Commission should reject the portion of the I.D. to which PECO has excepted, while adopting the remainder of the I.D.

Respectfully submitted,



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May 14, 2018

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Maria Povacz :  
 :  
 v. : Docket No. C-2015-2475023  
 :  
 PECO Energy Company :

CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that I served a copy of PECO Energy Company's  
*Exceptions* upon all interested parties via email and overnight delivery mail to:

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