

LAW OFFICES
ARTHUR L. JENKINS, JR.
325 DEKALB STREET
P.O. BOX 710
NORRISTOWN, PA. 19404

ARTHUR L. JENKINS, JR.
EILEEN M. CAIN

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June 6, 2018

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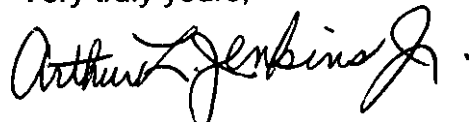
Re: Arthur Larson v. PECO Energy Company
Docket No. C-2017-2615206

Dear Ms. Chiavetta:

I enclose for filing an original and two copies of the Brief of Arthur Larson in Accordance with the Order of May 9, 2018 and an original and two copies of a Certificate of Service for filing in the above matter. Please be kind enough to time-stamp and return copies of each document to me in the enclosed, self-addressed envelope.

Thank you for your consideration.

Very truly yours,



Arthur L. Jenkins, Jr.

ALJ/cz
Enclosures

cc: Ward L. Smith, Esquire (w/enc.)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ARTHUR LARSON
Complainant

DOCKET NO. C-2017-2615206

v.

PECO ENERGY COMPANY

**BRIEF OF ARTHUR LARSON IN ACCORDANCE
WITH THE ORDER OF MAY 9, 2018**

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Arthur L. Jenkins, Jr., Esquire
Attorney for Arthur Larson
Attorney I.D. #09430
325 DeKalb Street
P.O. Box 710
Norristown, PA 19404-0710
Telephone: (610) 275-8222

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HISTORY OF THE CASE

The present matter is before the Administrative Law Judge for a determination of the rights of complainant Arthur Larson to resist the installation of a AMI Meter by respondent PECO Energy Company hereafter referred to as a "smart meter." The complainant Arthur Larson received a ten day shut off notice from PECO effective July 23, 2017 and thereafter filed a timely formal complaint with the Pennsylvania Public Utility Commission. This complaint concentrated upon the safety of the proposed smart meter installation.

On February 20, 2018 a hearing was held before Darlene D. Heep, Administrative Law Judge in order to determine the merits of the complaint of Arthur Larson. Thereafter a briefing schedule was promulgated on May 9, 2018. It is the purpose of this brief to establish that the smart meter installation should not be permitted on the premises owned by Mr. Larson at 176 Hart Avenue, Doylestown, Pennsylvania. Reference to the transcript of the hearing will be made by "T" and the page number.

ARGUMENT SUMMARY

The complainant Arthur Larson has sustained his burden of proof in establishing that the smart meter attempted to be foisted on him by PECO violates Section 1501 of the Pennsylvania Code, 66 Pa. C.S. Section 1501 because the smart meter is unsafe.

ARGUMENT

The Commonwealth Court of Pennsylvania has defined the burden of proof which must be sustained by Arthur Larson in the case at bar. It is clearly stated in Lansberry Inc. v. PUC., 134 Pa. Commonwealth Ct. 218 (1990); to be the production of substantive evidence.

Substantive evidence is 'the relevant evidence that a reasonable mind, without weighing the evidence or substituting its judgment for that of the fact finder, might accept as adequate to support the conclusion reached.' Lansberry Inc. v. PUC. supra.

[S]ubstantial evidence may be somewhat less than a preponderance of the evidence, Forte v. Matthews, 427 F. Supp. 187 (E.D. Pa. 1977). Even assuming that some cases recite the burden of proof to be by a preponderance of the evidence, the complainant has met his burden.

Section 1501 of the Pennsylvania Code, 66 Pa. C.S. Section 1501, requires public utilities in Pennsylvania to maintain adequate, efficient, safe and reasonable service and facilities for their customers. The substantive evidence offered by the parties in this case establishes that the proposed Smart Meter is unsafe.

Unlike Mr. Romeo in Romeo v. PUC, 138 A.3d 119 Arthur Larson was able to qualify as an expert witness as well as a fact witness to testify on his own behalf. (T-33). Mr. Larson has had forty years experience in the field of micro circuitry. (T-29). Mr. Larson testified that he has a reasonable doubt on the safety of the smart meter. (T-35). He further testified that the proposed smart meter measures electricity flow

from the front and the back of the unit, the back being against the home. PECO has failed to produce to the complainant any quality control reports which show the proper monitoring of the power flow through the amp meter closest to the home. (T-33-37).

All of the PECO witnesses called at trial were permitted to sit through and witness the entire case of the complainant. The Administrative Law Judge denied the request for sequestration without advancing a reason. (T-5). Clearly, the defense were well aware of the case of the complainant.

The defense of this case by PECO was comparable to a well-worn play presented over and over again which dramatically failed in its effort to meet and thwart the preponderance of evidence offered by the complainant. The defense offered Glenn Pritchard as its expert witness on safety. Mr. Pritchard was not an independent expert witness but a PECO employee. (T-83). After a long dissertation in direct testimony about the history of electric meters, the PECO employee testified with respect to the proposed smart meter to be installed at the home of Mr. Larson as follows:

Q. You talked about hot sockets being a defect in the customer's equipment. Are there defects that can occur in the meters that would cause them to overheat and catch on fire?

A.. We have not seen any. (T-98).

Mr. Larson has chosen not to be the PECO guinea pig.

During the cross-examination of the PECO employee-expert he admitted that he has an interest in the case as to the outcome. (T-104). He further admitted that he has no quality control report which he can produce showing that the proposed meter for the Larson home meets all safety standards. (T-106-107). Another exchange followed at T-107-108:

Q. Are you able to present to Her Honor today a single quality control report on the Aclara I-210+c meter?

A. No. Such report was not requested.

Q. How long has it been since you knew you were going to go here today to testify?

A. I don't know the exact date.

Q. Could it have been a month ago?

A. Yes.

Q. Two months ago?

A. Yes

Q. Alright. So you know you were scheduled to come here for several months. You are an expert. You're employed by PECO and you didn't bring with you a single quality control report, correct?

A. Yes. (T-109).

Thus, the expert witness-PECO employee with an admitted interest in the case at bar never met the burden of proof sustained by the complainant Arthur Larson. In fact, in the direct and re-direct testimony of Mr. Pritchard he failed to testify that the proposed Smart Meter (the Aclara I-210+c meter) proposed to be installed on the Larson home was safe. The PECO expert failed to testify or opine that this meter in his professional electro-engineering certainty was safe in accordance with 66 Pa. C.S. Section 1501.

In rebuttal, Mr. Pritchard testified that PECO has a department called Distribution System Operations which manages electrical trouble. (T-122). He further admitted in re-cross examination that he has no knowledge about whether or not the proposed

meter has already set off alarms. (T-123). He further admitted:

Q. You cannot testify today that this kind of a meter has not set off alarms?

A. Correct. (T-123).

Thus, the well-worn play presented to defend this complaint has failed in this case.

PROPOSED FINDINGS OF FACT

1. The complainant Arthur Larson received a notice of shut off of his electrical service at the residence he owns at 176 Hart Avenue, Doylestown, Pennsylvania.

(T-8).

2. Mr. Larson filed a timely complaint with the Public Utility Commission about the denial of electrical service. (T-9).

3. The complainant believed and it is his position that a proposed Smart Meter to be installed on his property was unsafe. (T-9).

4. The complainant has a college degree in physics from Temple University which by its nature involves an understanding of electro magnetism. (T-10).

5. The curriculum vitae of Arthur Larson sets forth an extensive biography including a degree with an MBA in finance and management of information systems.

(T-11).

6. His curriculum vitae recites forty years of experience in the field of micro circuitry. (T-29).

7. The complainant is qualified as an expert witness as well as a fact witness. (T-33).

8. The complainant testified that the proposed Smart Meter to be installed by PECO Energy Company is unsafe. (T-35).

9. The testimony of Mr. Larson sets forth that the back of the proposed Smart Meter which abuts the home is not adequately controlled so as to avoid surges of power causing damage. (T-33-37).

10. PECO Energy Company by its expert witness Glenn Pritchard made an admission through Mr. Pritchard that he was employed by PECO Energy Company. (T-83).

11. The sole expert witness presented by PECO Energy Company further admitted that he had an interest in the case as to the outcome. (T-104).

12. The quality control reports on the Smart Meter proposed to be installed on the Larson home by PECO Energy Company were not introduced into evidence at trial. (T-106-107).

13. The quality control reports determine the safety of the proposed Smart Meter. (T-106-107).

14. Glenn Pritchard, the sole expert witness presented by PECO Energy Company, knew or should have known that quality control reports on the proposed Smart Meter were essential evidence and failed to produce such although he knew at least two months in advance that he would be an expert witness at time of trial. (T-109).

15. Mr. Pritchard testified that the proposed Smart Meter (the Aclara I-210+c Meter) would set off alarms if it indicated electrical trouble but he failed to determine whether or not these Smart Meters already installed have set off alarms. (T-122, 123).

16. PECO Energy Company offered no expert witness other than Glenn Pritchard.

PROPOSED CONCLUSIONS OF LAW

1. The complainant Arthur Larson has filed a timely complaint on the proposed termination of electrical service and the proposed installation of a Smart Meter referred to as the Aclara I-210+c Meter.

2. The complainant has sustained his burden of proof in this case challenging the safety of the proposed Smart Meter pursuant to Section 1501 of the Pennsylvania Code, 66 Pa. C.S. Section 1501 which requires public utilities to maintain adequate, efficient, safe and reasonable service and facilities for their customers.

3. In the present case PECO Energy Company has failed to provide adequate evidence of the safety of the Aclara I-210+c Meter by producing only one expert witness, admittedly an employee of PECO and admittedly having an interest in the case (T-83), that he has an interest in the case. (T-104).

4. PECO Energy Company failed to produce quality control reports on the proposed Smart Meter (T-106-107) and has failed to meet its burden of proof in establishing the safety of the meter.

5. The complaint of Arthur Larson must be sustained in this case with an order to be entered preventing PECO Energy Company from shutting off the electrical service of Mr. Larson and ceasing in its attempts to install a Smart Meter on his property.

PROPOSED ORDER

AND NOW this day of June, 2018, it is hereby ordered that PECO Energy Company is to refrain from shutting off the electric service of Arthur Larson and to cease in its attempts to install a Smart Meter on his property.

Administrative Law Judge Heep

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Respectfully submitted,

LAW OFFICES OF ARTHUR L. JENKINS, JR.

By: Arthur L. Jenkins, Jr.
Arthur L. Jenkins, Jr., Esquire
Attorney for Arthur Larson

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ARTHUR LARSON
Complainant

DOCKET NO. C-2017-2615206

v.

PECO ENERGY COMPANY

CERTIFICATE OF SERVICE

I, Arthur L. Jenkins, Jr., hereby certify that I have this day served a true and correct copy of the Brief of Arthur Larson in Accordance with Order of May 9, 2018 in the above matter upon all interested parties via e-mail and United States First Class Mail, postage prepaid to:

Administrative Law Judge Darlene D. Heep
801 Market Street, Suite 4063
Philadelphia, PA 19107

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

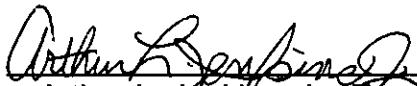
Ward L. Smith, Esquire
Assistant General Counsel
PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103

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By: 
Arthur L. Jenkins, Jr., Esquire
Attorney for Arthur Larson

Dated: June 6, 2018

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