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July 9, 2018

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

**RE: Mary Paul v. PECO Energy Company**  
**Docket No. C-2015-2475355**

Dear Secretary Chiavetta:

*PECO Energy Company's Answer to Petition for Reconsideration* in the above-referenced proceeding is attached for filing.

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

Mary Paul :  
v. : Docket No. C-2015-2475355  
PECO Energy Company :

CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that on July 9, 2018, I served a copy of *PECO Energy Company's Answer to Petition for Reconsideration* upon all interested parties via email and overnight delivery via Federal Express:

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Dated: July 9, 2018



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Mary Paul**

**v.**

**PECO Energy Company**

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**C-2015-2475355**

**PECO Energy Company's Answer  
to  
Petition for Reconsideration**

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## Introduction and Summary of Argument

On June 14, 2018, the Commission issued its Opinion and Order in this docket (the “*Paul Opinion and Order*”). On June 29, 2018, Ms. Paul filed a Petition for Reconsideration (the “*Paul Petition*”). The purpose of this Answer is to respond to the arguments raised in the Paul Petition.

On pages 3-6 of the Paul Petition, Ms. Paul lists six arguments in support of reconsideration of the *Paul Opinion and Order*. In its Answer, PECO establishes that:

- None of the events described by Ms. Paul demonstrate any collusion or bias;
- This proceeding was marked closed on June 14, 2018; it was then lawful for PECO to proceed with installation of the AMI meter at the Paul residence;
- The June 22, 2018 North Carolina Utilities Commission Order does not warrant reconsideration; Ms. Paul simply uses it as a vehicle to reiterate her opt out request, which the Commission properly evaluated and rejected;
- Ms. Paul’s references to arguments made in the *McKnight* and *Bachman* proceedings is essentially a request to admit the testimony of their witness William Bathgate into the record of the *Paul* proceeding. The Commission should deny that request for the same reasons it refused to admit the testimony of Dr. Andrew Marino from the *Murphy*, *Povacz*, and *Randall/Albrecht* proceedings;
- The reiterated request to admit the testimony of Dr. Andrew Marino is not new or novel. The Commission properly understood that Ms. Paul requested such admission at hearing (not later), and the *Frompovich Order* does not warrant reconsideration of the Marino ruling;
- *Dinniman v Sunoco Pipeline* does not warrant reconsideration of the *Paul Opinion and Order*; *Dinniman* was an injunctive relief case that looked at the question of when to grant (or deny) interim relief pending development of a full evidentiary record; *Paul* already has a full evidentiary record.

## Argument

### I. The *Duick* Standard

The Paul Petition (pp. 2-3) correctly identifies the Commission's standard for reconsideration, as set forth in *Duick v. Penn. Gas & Water Co.*, 56 Pa. PUC 553, 1992 WL 993412, 51 P.U.R. 4<sup>th</sup> 284 (1982). Petitions for reconsideration must be based upon "new or novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." PECO notes that, while the presentation of a new or novel argument (or overlooked consideration) is a condition precedent for reconsideration, such argument also must "convince the commission that it should exercise its discretion" to rescind or amend a prior order. *Id.*

As described in detail below, many of the arguments in the Paul Petition simply repeat arguments previously presented to (and fully considered by) the Commission; those arguments do not meet the *Duick* standard for "new and novel" arguments (or overlooked considerations). (For example, Ms. Paul repeats the argument, previously made in her briefs, that the Commission should have admitted Dr. Marino's testimony from other cases.) Some of the arguments in the Paul Petition do raise new information – for example, the North Carolina Utilities Commission's June 22, 2018 Order is new – but the new information does not provide convincing reason that the Commission should exercise its discretion to rescind or amend its prior order. The Paul Petition therefore should be denied.

## II. Reply to arguments made in the Paul Petition

### A. Bias and collusion

Ms. Paul's first argument in support of reconsideration (pp. 5-29) is that she "recently uncovered" evidence that the Commission and its ALJs are biased against her, and are in "collusion" with PECO (and with PP&L). Throughout this lengthy section of her Petition, Ms. Paul also claims that the Commission and its ALJs engaged in illegal *ex parte* communications and admitted evidence that is variously referred to as "perjured," "tainted," and "false."

Ms. Paul claims that the following events are proof of bias and collusion: (1) she believes that the Commission mischaracterized the position she took in her proposed First Amended Complaint; (2) in 2015, PECO argued in the *Kreider* proceeding that evidentiary hearings should not be allowed; (3) Ms. Paul believes that there have been "irregularities" in *Pro Hac Vice Orders* issued in cases other than her own; (4) she thinks there is inconsistency in PECO's testimony; and (5) none of the Complainants in AMI cases in Pennsylvania have prevailed.

### First Amended Complaint

Ms. Paul attempted to materially amend her complaint a few days before hearing. The ALJ did not allow her to do so, and the *Paul Order and Opinion* affirmed this disallowance. *Paul Opinion and Order*, pp. 18-20. The Paul Petition (pp. 8-10) claims that the Commission demonstrated bias in this dismissal because: "It appears that the Commissioners believe that granting me an accommodation for my disability (and for other disabled Pennsylvanians) would tear down the whole smart grid. That is what PECO has stated in its Motion to Strike my Amended Complaint. Nothing could be further from the truth."

But Ms. Paul's First Amended Complaint requested the following relief:

Complainant is now requesting . . . that PECO *cease and desist all activity of wireless transmission to or from all of PECO's smart meters . . .* (First Amended Complaint, ¶24, emphasis added)

Complainant asks that the Commission order PECO to *modify the microwave emissions from its deployed AMI meters and from its Tower Gateway Basestations . . .* (First Amended Complaint, ¶44, emphasis added)

Here is how the *Paul Opinion and Order* characterized Ms. Paul's filing (p. 20, emphasis added):

For relief, the Complainant requested, *inter alia*, that PECO remove her AMR meter and replace it with an analog meter and that *PECO modify its deployed AMI meters in her neighborhood.*

The Commission's characterization is correct; Ms. Paul did request that PECO be required to modify its deployed AMI meters in her neighborhood. Indeed, the Commission could have gone a great deal further than it did, because Ms. Paul in fact *did request* that PECO stop *all* wireless activity from *all* of its AMI meters. The Commission chose to use a more understated characterization of Ms. Paul's request for relief; in doing so, it showed restraint in her favor, not bias against her.

PECO also notes that this argument is an extension of Mr. Paul's First Exception, and thus is not "new or novel" or "recently uncovered."

### **PECO's Kreider Pleadings**

On September 3, 2015, the Commission issued an Order in *Kreider v PECO*, P-2015-2495064, in which it confirmed that it would allow an evidentiary hearing on Susan Kreider's AMI/health claims. On September 18, 2015, PECO filed a Petition for Reconsideration (docketed in both the P-docket and the underlying complaint docket at C-2015-2469655), in which it argued that, for legal and policy reasons, the Commission should not allow such

evidentiary hearings. On January 28, 2016, the Commission issued an order denying PECO's Petition and confirming that the *Kreider* complaint would be set for evidentiary hearing.

In support of her claim of bias and collusion, Ms. Paul refers extensively to the arguments that PECO made in its 2015 filings related to its *Kreider* Petition. She claims that, because PECO argued against evidentiary hearings, this is proof that the Commission has colluded with PECO to conduct biased hearings. *See* Paul Petition, pp. 11-14, 23-25.

There was nothing wrong with PECO making legal and policy arguments, in 2015, against holding evidentiary hearings. PECO made its arguments in a public filing, and Ms. Kreider (and Ms. Murphy as an *amicus*) had a full opportunity to respond. And, once PECO lost its Petition, it turned its energy to fully participating in the evidentiary hearings. No bias or collusion is shown by PECO making a public filing in which it argued that hearings should not be held, losing that request, and then participating in evidentiary hearings.

Of course, this points to the even more obvious and compelling reason to disbelieve the idea that PECO's *Kreider* filings are reflective of a pattern of bias and collusion. *PECO lost the arguments that it made in the Kreider Petition.* One cannot demonstrate bias or collusion in favor of PECO by citing a case in which the Commission completely rejected PECO's arguments and ruled against it.

PECO also notes that this argument is based on public filings made in 2015, and thus is not "new or novel" or "recently uncovered."

### ***Pro Hac Vice Motions***

The Paul Petition also claims (pp. 14-17) that bias and collusion against her are demonstrated by "irregularities" in the *pro hac vice* orders issued by ALJs Heep and Pell in PECO's cases, and by ALJ Barnes in the PP&L cases.

The claim of “irregularities” in the PP&L *pro hac vice* Orders was considered and denied by ALJ Barnes in her June 9, 2018 *Second Interim Order in Sunstein v PPL Electric Utilities Corporation*, C-2018-3000078. PECO refers the Commission to that *Second Interim Order* for resolution of the claimed “irregularities” in the PP&L cases; PECO will discuss only the claims related to the PECO cases.

Ms. Paul does not claim any “irregularities” in the *pro hac vice* admission in the *Paul* docket itself. On May 11, 2016, PECO filed and served a Motion to Admit its outside counsel, Thomas Carl Watson, *pro hac vice*. Ms. Paul did not reply or object. On June 21, 2016, ALJs Heep and Pell issued an *Order Granting Motion for Admission Pro Hac Vice*.

The “irregularities” that Ms. Paul perceives all have to do with *pro hac vice* appearances in proceedings *other than her own*. Ms. Paul does not have standing to pursue arguments on behalf of other Complainants; this issue is relevant to her docket only insofar as she demonstrates that the orders in these other proceedings reflect collusion or bias *against her* in the instant docket. PECO notes that, in the Paul Petition, Ms. Paul’s claims are all about “global” bias; she does not even attempt to make a showing of specific bias against her. It is noteworthy that Ms. Paul did not raise any issues with Mr. Watson’s *pro hac vice* participation in reply to PECO’s Motion – nor at her evidentiary hearing, in her Main Brief or Reply Brief, or in her Exceptions. (A further demonstration that Ms. Paul’s arguments are global in nature, and not specific to her, can be found in the fact that her arguments were basically “cribbed” from the *Sunstein v PP&L* filing noted above).

Ms. Paul’s basic argument with respect to *pro hac vice* Orders is that she was not able to find copies of certain Orders on the Commission’s website, and that her inability to find such

orders must be explained by a great Byzantine web of deceit, bias, collusion and *ex parte* communications.

The real answer is much simpler: not all procedural orders get posted to the Commission's website.

Ms. Paul identifies eight cases in which she believes that she should be able to locate an Order granting *pro hac vice* status on the Commission's website, but was unable to do so. Here is the status of those eight Motions; copies of the supporting documents and Orders are attached to this Answer:

- *Kreider v PECO*, C-2015-2469655, *Order Granting Motion for Admission Pro Hac Vice* (February 29, 2016)<sup>1</sup>
- *Murphy v PECO*, C-2015-2475726, Feb. 24, 2016 email showing that the Motion was served on her counsel; Transcript showing that the Motion was verbally granted during the March 15, 2016 Prehearing Conference in which Ms. Murphy participated, March 15, 2016 Tr. at 5-6<sup>2</sup>; Prehearing Order #1 (April 4, 2016)
- *Povacz v PECO*, C-2015-2475023, Feb. 24, 2016 email showing that the Motion was served on her counsel; Transcript showing that the Motion was verbally granted

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<sup>1</sup> Ms. Paul claims (p. 16) that "Susan Kreider did not know anything about *pro hac vice* motions, so she did not know she should have objected." In fact, Ms. Kreider did know about PECO's *pro hac vice* Motion and that she could oppose it, as demonstrated by the fact that she sent a fax to the ALJs stating that she opposed it. See *Kreider Order Granting Motion for Admission Pro Hac Vice* (Feb. 29, 2016) at 1. ("Complainant has advised us that she opposes PECO's Motion.")

<sup>2</sup> Ms. Paul claims (pp. 16-17) that Ms. Murphy never "received notice of any orders granting any the *pro hac vice* motions of PECO. The PUC ALJs Heep and Pell may have apparently communicated the granting of some of these motions to PECO lawyers, but orders granting those motions were not posted on the Commission's website, nor were the Complainants or their lawyers informed of those orders granting *pro hac* motions."

In fact, Ms. Murphy, Ms. Povacz, Mr. and Mrs. Tucker, and the attorney representing all of them, participated in a March 15, 2016 telephonic Prehearing Conference at which the *pro hac vice* Motions were granted. The relevant pages of the transcript are included in the attached materials.

during the March 15, 2016 Prehearing Conference in which Ms. Povacz participated, March 15, 2016 Tr. at 50-51; Prehearing Order #1 (April 6, 2016)<sup>3</sup>

- *Tucker v PECO*, C-2015-2515592, Feb. 24, 2016 email showing that the Motion was served on their counsel; Prehearing Order #1 (April 6, 2016)<sup>4</sup>
- *Polite v PECO*, F-2015-2514570 Prehearing Order (April 12, 2016)<sup>5</sup>;
- *Randall and Albrecht v PECO*, C-2016-2537666, May 11, 2016 email showing that the Motion was served on their counsel; *Order Granting Motion for Admission Pro Hac Vice* (May 16, 2016) (The *Order* references an email from Randall and Albrecht’s counsel stating the they do not oppose the *pro hac vice* motion; a copy of that email is also attached);
- *Van Schoyck v PECO*, C-2015-2478239, May 11, 2016 email showing that the Motion was served on their counsel *Order Granting Motion for Admission Pro Hac Vice* (May 16, 2016)<sup>6</sup>. (The *Order* references an email from the Van Shoyck’s counsel stating the they do not oppose the *pro hac vice* motion; a copy of that email is also attached);
- *Frompovich v PECO*, C-2015-2474602, *Order Granting Motion for Admission Pro Hac Vice* (June 21, 2016).

As demonstrated above, there were no “irregularities” in any of these cases.

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<sup>3</sup> Ms. Paul claims (p. 17) that: “Ms. Povacz never received notice the *pro hac* motion was granted any time before or after May 2016. She was surprised, however, to note that an Interim Order dated May 26, 2016 states in the history of the case, contrary to the actual history of the record, that Mr. Watson’s *pro hac vice* admission was granted on April 6, 2016. This is highly irregular and further indicates collusion between Judge Heep and Ward Smith, against another disabled PECO customer.”

As noted in the prior footnote, Ms. Povacz and her attorney participated in the March 15, 2016 telephonic Prehearing Conference at which the *pro hac vice* Motion was discussed and granted.

<sup>4</sup> The transcript of the March 15, 2016 Prehearing Conference in the *Povacz* case, described in a prior footnote, indicates that the Tuckers and their attorney also participated in that call and were aware that the *pro hac vice* Motion in their case was granted. (*Povacz* Transcript, March 15, 2016, Tr. at 50.) Although PECO sought and obtained *pro hac vice* admission in *Tucker*, no hearing ever occurred and Mr. Watson thus did not appear on PECO’s behalf in that docket.

<sup>5</sup> Although PECO sought and obtained *pro hac vice* admission in *Polite*, no hearing ever occurred and Mr. Watson thus did not appear on PECO’s behalf in that docket.

<sup>6</sup> Although PECO sought and obtained *pro hac vice* admission in *Van Schoyck*, no hearing ever occurred and Mr. Watson thus did not appear on PECO’s behalf in that docket

PECO notes that all of the *pro hac vice* Orders listed above were issued in 2016, well before Ms. Pal filed her Main Brief in this matter on March 16, 2017. This argument is therefore not “new or novel” or “recently uncovered.”

Ms. Paul correctly identifies three latter PECO cases in which PECO did not file a *pro hac vice* Motion (*Caesar*, *Bachman*, and *McKnight*), but incorrectly assigns nefarious motives of bias and collusion. In fact, nearly two years into the litigation of this body of cases, and with no objections to any *pro hac vice* motion after the *Kreider* case, counsel for PECO simply overlooked the filing of additional, iterative, versions of *pro hac vice* motions in some of the latter cases. This oversight will be corrected as needed with *nunc pro tunc* filings.<sup>7</sup>

#### **Claimed Inconsistency in PECO’s Testimony**

Ms. Paul also claims (pp. 21-22) that bias and collusion are demonstrated by claimed inconsistencies in the testimony of PECO’s witness Dr. Christopher Davis.

When PECO is able to elicit information about cell phone use by a Complainant, their family members, and at work, Dr. Davis will typically compare the Complainant’s radiofrequency exposure to cell phones with the radiofrequency exposure that they will get from a PECO AMI meter. Ms. Paul expressed concern that, when she read the transcripts of cases other than her own, she sees inconsistencies in Dr. Davis’s cell phone/AMI comparisons. Her concern is that she thinks he “made up his so called ‘calculations’ on the spot.”<sup>8</sup>

Of course, this is not an argument of bias or collusion; Ms. Paul just thinks the witness is wrong. But she did not establish such inconsistency through cross-examination during the

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<sup>7</sup>The McKnight’s have requested that PECO make such a filing. The *Bachman* case is settled and the docket is closed. Ms. Caesar has not expressed a preference.

<sup>8</sup>Dr. Davis does use a computer program to do these calculations and can perform them quickly.

hearing in her case. Instead, her argument completely relies upon extra-record evidence from other proceedings, and thus should not be allowed as a basis for reconsideration in this docket.

Moreover, Ms. Paul cannot just read the transcripts and claim that she sees an inconsistency and that an inconsistency thus exists. Pennsylvania Rule of Evidence 613(b) provides a clear procedure that must be used when a litigant wishes to impeach a witness through use of prior inconsistent statements: such claimed prior inconsistent statements may be used to impeach a witness only if the claimed prior inconsistent statement is shown to the witness, the witness is given an opportunity to explain or deny the claimed inconsistency, and the party who is sponsoring the witness is given the opportunity to ask rehabilitating questions. None of that happened here: neither Ms. Paul, nor any of the other Complainants, have posed questions to Dr. Davis regarding his calculations and whether there is any inconsistency in them.<sup>9</sup>

PECO does not wish to engage in debate of extra-record materials, but since Ms. Paul made this argument using extra-record materials, it will reply with this proffer: There are several inputs to the cell phone/AMI calculation that affect the comparison. One such input is the brand of the Complainant's cell phone (different cell phones produce different radiofrequency levels); another input is whether the person holds the cell phone to their ear, uses earphones, or uses the

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<sup>9</sup> Ms. Paul claims (p. 21) that Dr. Davis was asked about this issue on cross-examination in the *McKnight* hearings. In fact, when Mrs. McKnight suggested during cross-examination of Dr. Davis that there was an inconsistency in his testimony in this case and prior cases, Dr. Davis replied: "I think you're mischaracterizing testimony that I provided on an earlier occasion." Ms. McKnight then insisted that there was an inconsistency, but was unable to locate the prior statement that she claimed proved the inconsistency. The ALJ thus sustained a motion to strike her characterization of inconsistency, and Dr. Davis was never given any opportunity to discuss how the various pieces of testimony relate to one another. Apr 13 McKnight Tr. at 156-58. In other words, Mrs. McKnight did not meet the requirements of Rule of Evidence 613(b), and her assertion of inconsistency was thus disallowed at her hearing. That sequence and related testimony cannot now be used by Ms. Paul as proof of inconsistency in her docket.

phone on speaker at arm's length or greater distance. The same minutes' usage combined with a different cell phone brand and different usage style results in a different comparison.

### **Consistency of Commission Decisions**

The Paul Petition also notes that none of the Complainants in Pennsylvania AMI/health cases have prevailed, and attributes this consistency to bias and collusion, which she describes (p. 12) as “a compact to ensure that the decisions in each and every one of those hearings have to be that we cannot be accommodated whatsoever for our disabilities.” Later (p. 26), she states that “after the Kreider hearing, no one who proceeded to a hearing was granted an accommodation by an ALJ for their sensitivity or disability . . . . The PUC and its ALJs have universally ruled against us . . . It is obvious to all that there is a pattern and practice of the PUC along with PECO, to disenfranchise us, to demean us, to disbelieve us and to cause us harm, even when we present cogent evidence of the harm that we suffer from the smart metering in our neighborhoods. . . .”

PECO respectfully submits that the reason that no Complainant has succeeded in an AMI/health case is that the decisions in those cases are based upon the record evidence in those proceedings, and none of the Complainants has proved, by a preponderance of evidence, that AMI meters cause, contribute to, or exacerbate adverse human health effects. Each Initial Decision and Order and Opinion in the PECO cases has carefully analyzed the record evidence and reached the conclusion that the Complainants did not meet their burden of proof. This consistency is not due to bias or collusion; it is a reflection of the evidence presented in each of these cases.

PECO also would like to refer the Commission to its March 6, 2017 Main Brief in this matter, pp. 36-38, where PECO provided detail on the investigations and conclusions on AMI

and health from other state commissions. As PECO demonstrated by quoting the conclusions of numerous state investigations:

[T]here have been numerous evidentiary investigations into [whether radio frequency fields from AMI meters cause or contribute to adverse health effects] conducted by state utility commissions in the United States. Those other state commission investigations variously concluded that radiofrequency fields from smart meters fall well under established guidelines, are not a threat to human health, and do not warrant additional state utility commission regulation – in other words, that the use of such meters is reasonable.

It is not just Pennsylvania regulators who consistently conclude that Complainants have not met their burden of proof. Regulators across the nation have reached a similar conclusion. PECO recognizes that one possible reaction to this information might be to simply expand the claim of bias and collusion and allege that all utility regulators in all states are members of the supposed “compact to ensure.” But PECO respectfully submits that such a view should be rejected. Instead, the fact that so many state regulators have come to similar conclusions should be seen as dispositive proof that Pennsylvania’s conclusion are not due to bias and collusion, but instead are a reasoned conclusion based on the evidence presented to the Commission. Given that view, the Commission should not reconsider the *Paul Opinion and Order*.

## **B. Meter installation**

Ms. Paul’s second argument for reconsideration (pp. 29-34) is that, after the Commission issued the *Paul Opinion and Order*, PECO “forcibly attached” an Aclara AMI meter to her residence.

The *Paul Opinion and Order* was issued on June 14, 2018. The Ordering Paragraphs (¶ 2) adopted the Initial Decision, including Conclusion of Law 7 (p. 21, emphasis added):

*7. Complainant did not meet her burden of establishing that installation of a Smart Meter at her home would be unsafe or unreasonable or that PECO was unreasonable in responding to her concerns and questions. 66 Pa.C.S. § 1501.*

The Ordering Paragraphs (¶¶ 3-4) also dismissed the Complaint, and marked the proceeding closed. The *Paul Opinion and Order* was thus a final Commission determination that allowed PECO to proceed with installation of an AMI meter at the Paul residence.<sup>10</sup>

Sometimes, customers attempt to interfere with PECO's field personnel as they implement lawful Commission orders. When that happens, it is PECO's practice to call local law enforcement and follow the officers' instructions on whether and how to proceed. Unfortunately, PECO had to make such a call from the Paul residence. As Ms. Paul, notes, the local officers responded quickly and supported installation of the AMI meter.

Ms. Paul also makes the point that, at the time of her evidentiary hearing, PECO was only offering a Landis + Gyr meter (which has both a FlexNet communication module and a ZigBee radio), but it installed an Aclara meter (which has a FlexNet communication module that is identical to the module on the Landis + Gyr meter, but which does not have a ZigBee radio). PECO installed an Aclara at the Paul residence because, in its interactions with other refusal customers, they have uniformly expressed a preference for the Aclara because it does not have a ZigBee radio.

PECO recognizes that, in the Paul Petition, Ms. Paul has stated that she finds the Aclara unacceptable.<sup>11</sup> PECO believes that Ms. Paul is not truly expressing a preference for or against

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<sup>10</sup> Ms. Paul stated, at the hearing, that she is not interested in relocating her meter board and having the AMI meter installed at a more distant location. See *Paul Initial Decision*, p. 20, fn 10.

<sup>11</sup> The Paul Petition alleges (p. 38) that the Aclara meter is unacceptable because, she says, Mr. Bathgate's testimony in the *McKnight* proceeding proves her health claims. PECO feels compelled to reiterate the argument that it made at page 45 of its Main Brief in *McKnight*:

The most critical aspect of Mr. Bathgate's testimony is that it had nothing to do with health or safety of PECO's AMI meters. He stated that the standards about which he

any specific AMI meter, but instead is actually stating that she does not want *any* AMI meter – Aclara or Landis + Gyr. But if PECO is reading it wrong and Ms. Paul actually prefers that PECO install a Landis + Gyr meter, PECO will install a Landis + Gyr meter at her request.<sup>12</sup>

In any event, there is nothing in the subsequent installation events that adds any new information to the evidentiary record in this proceeding on the core question of whether Ms. Paul has met her burden of proving that a PECO AMI meter will cause, contribute to, or exacerbate adverse health. It thus remains the case that Ms. Paul “did not meet her burden of establishing that installation of a Smart Meter at her home would be unsafe or unreasonable.”

### **C. North Carolina Utilities Commission**

Ms. Paul’s third argument for reconsideration (pp. 34-37 and Exhibit A) is that, on June 22, 2018, the North Carolina Utilities Commission (“NCUC”) issued an Order in which it stated that customers who provide a letter from their physician will be allowed to opt out of having an AMI meter deployed to their North Carolina residence. Ms. Paul requests that the Commission issue a similar order to allow opt outs in Pennsylvania.

Ms. Paul’s request for an opt out is not new or novel; it has already been fully considered and properly dismissed by the Commission. Indeed, she presented a nearly identical opt out proposal in her Main Brief (pp. 26-27). Ms. Paul even proposed a Finding of Fact 80 (p. 55) in support of that argument in which she asked the Commission to recognize that North Carolina,

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testified, and the concerns that he raised about PECO’s AMI meters, are related to whether operation of the AMI meters will interfere with the operation of other radio services. Apr 11 Tr. 328-331. Indeed, he was not recognized as an expert in any health field and was not allowed to express opinions on issues of health. Apr 11 Tr. 352-53. Thus, even if Mr. Bathgate’s testimony were to be accepted on its face, it would provide no evidence in support of the McKnight’s health claims.

<sup>12</sup> If Ms. Paul does wish for PECO to install a Landis + Gyr meter, she should contact PECO’s counsel.

among other states, allows customer opt outs. The Initial Decision (p. 12) correctly rejected Ms. Paul's request for an opt out. The Commission's Opinion and Order (p. 27) also correctly rejected Ms. Paul's opt out request.

The June 22, 2018 NCUC Order does not add anything new to the discussion that would warrant the Commission reconsidering Ms. Paul's opt out request, for the simple reason that North Carolina allows opt outs,<sup>13</sup> and Pennsylvania does not. That distinction is explicitly recognized in the NCUC Order (p. 2, emphasis added):

The Commission asked DEC to provide a [spreadsheet comparing opt out charges in various states.] The spreadsheet [provided information on various fees and] also indicated that the State of Vermont had passed legislation forbidding opt-out fees, while *the State of Pennsylvania had passed legislation requiring the installation of smart meters and precluding opt outs altogether.*

The NCUC Order thus does not ask whether opt outs should be allowed (that decision was made in North Carolina several years ago); the NCUC Order looks at the question of who should pay the costs of providing an opt out system: the customers who request an opt out or the customer base as a whole? (The NCUC decided to socialize the costs to the customer base as a whole.) That is not a relevant question in Pennsylvania because the Pennsylvania General Assembly "preclude[ed] opt outs altogether." The NCUC evaluation of how to allocate opt-out-driven costs is thus simply not relevant to this proceeding, and it does not warrant reconsideration of the Commission's *Paul Opinion and Order*.

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<sup>13</sup> Unlike Pennsylvania, North Carolina does not have a statutory limitation on opt outs. The NCUC rules on smart meters were initiated as part of regulatory rulemaking docket in 2009, in which the NCUC declined to adopt the federal standards on smart grid investments and instead required North Carolina utilities to file smart grid technology plans as part of the Commission's existing integrated resource planning review. *See* NCUC Docket No. E-100, SUB 123, Dec. 18, 2009 Order Declining to Adopt Federal Standards, p. 7, FOF 8.

#### D. The *McKnight* and *Bachman* proceedings

Ms. Paul's fourth argument for reconsideration (pp. 37-42 and Exhibit B) is that information relevant to Ms. Paul's health claim<sup>14</sup> was developed during the testimony of William Bathgate, an expert witness who testified in *McKnight v PECO* (C-2017-2621057) and *Bachman v PECO* (C-2017-2623504) in April 2018.

Although she doesn't use these words, Ms. Paul is essentially requesting that she be allowed to admit the testimony of Mr. Bathgate into her proceeding. This argument is virtually identical to Ms. Paul's request to admit the testimony of Dr. Marino from the *Murphy, Povacz, and Randall/Albrecht* proceedings. The Commission rejected that request as to Dr. Marino (Paul Opinion and Order, pp. 21-22) because admitting the testimony would have violated PECO's due process rights:

Thus, we agree with the ALJ that admission of Dr. Marino's testimony would violate PECO's due process rights under the circumstances, as PECO did not have adequate time and the opportunity to conduct discovery or to prepare a response to Dr. Marino's testimony as it applied to the Complainant in this proceeding.

The same due process considerations apply to Mr. Bathgate's testimony. Admitting Mr. Bathgate's April 2018 testimony into the Paul record would violate PECO's due process rights because it had no opportunity to conduct discovery on Mr. Bathgate as it might apply to Ms. Paul and no opportunity to prepare a response to Mr. Bathgate's testimony as it might apply to Ms. Paul. This request does not warrant reconsideration of the *Paul Opinion and Order*.

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<sup>14</sup> The Paul Petition alleges (p. 38) that Mr. Bathgate's testimony is relevant to Ms. Paul's health claims. Mr. Bathgate's testimony had nothing to do with health or safety of PECO's AMI meters. See fn 15, above.

### **E. Testimony of Andrew Marino**

Ms. Paul's fifth argument for reconsideration (pp. 42-47) is that the Commission should have granted her request to admit the testimony of Dr. Marino, who had testified in the *Murphy*, *Povacz*, and *Randall/Albrecht* cases.

This is not a new or novel argument. Ms. Paul originally made this request at her evidentiary hearing, at which time PECO objected on numerous grounds. See Nov. 15, 2016 Tr. at 89- 93. The Paul Brief (pp. 27-29) made this request in detail; PECO filed its reply on March 20, 2017. In the Initial Decision (pp. 12-13), the ALJ reiterated her ruling that Dr. Marino's testimony is not admissible. Ms. Paul's second exception made this same request, and the Commission considered and rejected it. *Paul Opinion and Order*, pp. 21-22.

The Paul Petition argues that the Commission should reconsider this ruling for two reasons.<sup>15</sup> First, Ms. Paul argues that the Commission incorrectly described the timeline for her request. Ms. Paul appears to be referencing<sup>16</sup> the following passage for the Paul Opinion and Order (p. 22, emphasis added, footnote omitted):

Although our Regulation at 52 Pa. Code § 5.407 allows for admission of the records of other proceedings, *we stand by our previous pronouncement that in instances where a party seeks to admit evidence after the hearing, "admission of such extra-record testimony violates the principle of fundamental fairness and violates the due process rights of other parties who have no opportunity to cross examine a witness in a separate hearing." Thus, we agree with the ALJ that admission of Dr. Marino's testimony would violate PECO's due process rights under the circumstances, as PECO did not have adequate time and the opportunity to conduct discovery or to prepare a response to Dr. Marino's testimony as it applied to the Complainant in this proceeding.* For this reason, we shall deny Complainant's second Exception.

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<sup>15</sup> In this section of her Petition, Ms. Paul also continues her arguments, begun in her fourth basis for reconsideration, that the record and arguments in *McKnight* and *Bachman* warrant reconsideration in her case. PECO refers the Commission to its reply to Ms. Paul's fourth argument.

<sup>16</sup> Ms. Paul did not provide a page reference or quote to support her argument.

Ms. Paul points out that she made her request to admit Dr. Marino's testimony during the evidentiary hearing, not after it. She therefore thinks that the Commission's reference to making such a request "after the hearing" should cause the Commission to reconsider its ruling on the admission of Dr. Marino's testimony.

The pleadings were quite clear that Ms. Paul's request occurred at the hearing, and PECO is confident that, when the Commission made its ruling, it was aware that Ms. Paul had made her request at the hearing. Indeed, PECO's argument, as made at hearing and in its March 30, 2017 filing on this issue, was that its due process rights would be violated by allowing Dr. Marino's testimony to be admitted *at hearing* because the deadline for expert witness identification had passed and the attempt to identify Dr. Marino as an expert witness *at hearing* prejudiced PECO's preparation.

In previous cases, the Commission had ruled that a party's due process rights are prejudiced "*where a party seeks to admit evidence after the hearing*" because doing so violates the other party's due process by impermissibly interfering with their right to cross-examine the witness. In the *Paul Opinion and Order*, the Commission applied the prior ruling to disallow a late offer of expert testimony *at hearing* because allowing the testimony at hearing, without prior notice or opportunity to prepare, would have violated PECO's due process rights because "PECO did not have adequate time and the opportunity to conduct discovery or to prepare a response to Dr. Marino's testimony as it applied to the Complainant in this proceeding."

The Commission did not misunderstand when Ms. Paul made her request; the Commission knew she made the request at hearing. The Commission had previously ruled that similar requests made after the hearing violate due process; in *Paul* it held that Ms. Paul's request, made at hearing, also violated due process.

It should also be noted that Initial Decisions have been issued in the three proceedings in which Dr. Marino testified: *Murphy*, *Povac*, and *Randall/Albrecht*. In those proceedings, PECO had its full due process opportunity to conduct a full cross-examination of Dr. Marino and to elicit expert testimony that specifically rebutted Dr. Marino's opinions. After weighing all of that evidence, the ALJ concluded that the Complainants for whom Dr. Marino testified did not meet their burdens of proof. *See, e.g., Murphy I.D.*, p. 30. "This was effective rebuttal by PECO. The burden then is upon the Complainant to rebut the utility's evidence by a preponderance of the evidence. Complainant did not meet this burden."

PECO's argument in *Paul* is that Dr. Marino's testimony should not be allowed in "piecemeal" because allowing it in piecemeal prevents a full evaluation of that testimony. Now we know that Dr. Marino's testimony -- when fully evaluated, cross-examined, and rebutted -- was not sufficient to carry the burden of proof in the cases in which he actually appeared. This underscores the importance of not allowing parts of his testimony to be admitted piecemeal in the *Paul* proceeding.

Ms. Paul's second argument for reconsidering the Marino ruling is that, Ms. Paul believes, the May 3, 2018 Opinion and Order in *Frompovich v PECO*, C-2015-2474602 warrants doing so. Ms. Paul states (p. 47) that "the PUC Commissioners ruled in the Frompovich Final Order, that a complainant could authenticate a scientific article without hiring her own expert witnesses, because she could use scientific literature which an expert witness in another PUC case had already authenticated. Which is exactly what I asked to do. . . ."

Ms. Paul appears to be referring<sup>17</sup> to the following discussion in the *Frompovich Opinion and Order* (p. 38) (emphasis added):

First, the ALJ was correct in stating that the breast cancer studies required authentication in order to be relied upon as competent evidence in this case. To be admissible as competent evidence, the studies needed to be authenticated by “evidence sufficient to support a finding that the item is what the proponent claims it is.” Pa. R.E., Rule 901. We note here that the ALJ’s instruction to Ms. Frompovich during the hearing that the writers of the studies would need to appear at the hearing in order to authenticate the studies is stricter than the Rule permits. While having the authors present at the hearing to authenticate the studies is one acceptable way to satisfy the authentication requirement of Rule 901, we recognize that there may have been an additional way(s) to authenticate the studies. *For example, a comparison by the ALJ of an offered study with an authenticated study admitted in another proceeding would have been sufficient.* In our view, however, the ALJ’s strict instruction was harmless error because ultimately the ALJ did provide a more general explanation of the requirement for authentication to Ms. Frompovich at the hearing, but Ms. Frompovich made no attempt to present any evidence to authenticate the studies even after having had this requirement explained to her.

This passage does not support the admission of Dr. Marino’s testimony in the *Paul* proceeding. The *Frompovich* passage deals solely with authentication of documents under Rule 901, and none of PECO’s arguments regarding the inadmissibility of Dr. Marino’s testimony had anything to do with authentication or Rule 901. Indeed, the word “authentication” and the phrase “Rule 901” do not appear in the transcript – including the pages where admission of Dr. Marino’s testimony was being discussed. (Nov. 15 Tr. 89-93.) Nor can the word “authentication” or the phrase “Rule 901” be found in Ms. Paul’s Main Brief (in which she argued for the admission of Dr. Marino’s testimony), PECO’s March 20, 2017 Reply to Ms. Paul’s request to admit Dr. Marino’s testimony, Ms. Paul’s Reply Brief, PECO’s Reply Brief, the *Paul Initial Decision*, Ms. Paul’s Exceptions, PECO’s Reply Exceptions, or the *Paul Opinion and Order* – including the section that affirms the exclusion of Dr. Marino’s testimony (pp. 21-

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<sup>17</sup> Again, Ms. Paul did not provide a page citation to or quote from the *Frompovich Opinion and Order* to support her argument.

22). In other words, the Rule 901 authentication issue discussed in *Frompovich* is not “exactly what [Ms. Paul] asked to do.” The *Frompovich Opinion and Order* does not address the due process arguments made by PECO – arguments that were the basis of the ALJ and Commission Marino ruling -- and it thus does not provide a basis for reconsideration of the Marino ruling.

F. *Dinniman v Sunoco Pipeline*

Ms. Paul’s sixth argument for reconsideration (pp. 47-51) is that the Commission’s recent decision in *Dinniman v Sunoco Pipeline*, P-2018-3001453, C-2018-3001451<sup>18</sup> warrants reconsideration of the Order in her case because “the Pipeline safety issues are similar to my AMI safety issues.”<sup>19</sup>

*Dinniman v Sunoco Pipeline* does not provide any basis for reconsideration of the *Paul Opinion and Order*. *Dinniman* was a request for preliminary injunctive relief. In that case, the evidentiary record was not fully developed, and the Commission was called upon to decide whether to provide emergency interim relief *pending the development of a full evidentiary record in the underlying complaint proceeding*. The Commission determined that it would not grant emergency relief as to Mariner 1 operations *because the evidentiary record on Mariner 1*

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<sup>18</sup> Ms. Paul’s Petition does not state whether her arguments are based on ALJ Barnes’ Interim Emergency Order issued on May 24, 2018 or on the Commission’s Opinion and Order, which was entered on June 15, 2018. PECO’s references in text are to the June 15 Opinion and Order.

<sup>19</sup> In this section of her Petition, Ms. Paul also re-submits her argument that the Commission’s Order in *West Penn v Mattu* should be grounds for relief in this proceeding. This argument was fully examined in Ms. Paul’s Exceptions (p. 18) and PECO’s Reply Exceptions (pp. 14-15), and was addressed by the Commission in its Order (p. 27). Ms. Paul’s *Mattu* argument thus does not meet the *Duick* standard of presenting a “new or novel” issue to the Commission, and does not warrant reconsideration.

In this section of her Petition, Ms. Paul also continues her arguments, begun in her fourth basis for reconsideration, that the record in *McKnight* and *Bachman* warrant reconsideration in her case. PECO refers the Commission to its reply to Ms. Paul’s fourth argument.

*operations was already fully developed and operations had been demonstrated to be safe, but that it would order the cessation of Mariner 2 and Mariner 2X construction pending the development of additional record evidence to allow full resolution of the safety claims made with respect to such construction.*

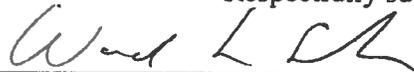
In *Paul*, the evidentiary record was fully developed over a two-day evidentiary hearing. After reviewing that evidence, the Initial Decision correctly concluded (p. 21, Conclusion of Law 7) that: “Complainant did not meet her burden of establishing that installation of a Smart Meter at her home would be unsafe or unreasonable.” The Commission adopted the Initial Decision through its June 14, 2018 *Paul Opinion and Order*.

*Dinniman* looks at the question of when interim emergency relief should (and should not) be granted pending the development of a full evidentiary record. *Paul* already has a full evidentiary record. *Dinniman* therefore does not warrant reconsideration of the June 14, 2018 *Paul Opinion and Order*.

### III. Conclusion

None of the arguments presented in the Paul Petition warrant reconsideration of the Commission's June 14, 2018 *Paul Opinion and Order*. Many of the arguments presented in the Paul Petition are not new or novel; the few that are new or novel do not present material issues that warrant reconsideration. The Commission should therefore deny the Paul Petition.

Respectfully submitted,



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Romulo L. Diaz, Jr.  
Vice President and General Counsel  
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Counsel to PECO Energy Company

July 9, 2018

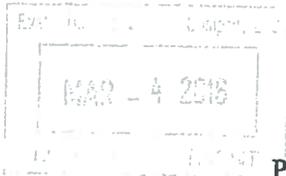
**Mary Paul v PECO, C-2015-2475355  
PECO Answer to Petition for Reconsideration  
Attached Materials**

**Kreider v PECO**

**C-2015-2469655**

**Order Granting Motion for Admission Pro Hac Vice**

**February 29, 2016**



BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Susan Kreider

v.

PECO Energy Company

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C-2015-2469655

**ORDER GRANTING MOTION FOR ADMISSION PRO HAC VICE**

On February 24, 2016, Ward Smith, Assistant General Counsel for PECO Energy Company, filed a Motion For Admission *Pro Hac Vice* (Motion), pursuant to 52 Pa. Code §§ 1.22 and 1.23 and Pa. B.A.R. 301(a), on behalf of Thomas Carl Watson, Esquire requesting that he be admitted for purposes of representing PECO Energy Company in this proceeding.

Complainant has advised us that she opposes PECO's Motion. On February 27, 2016, we received from the complainant a copy of a fax that she sent to PECO attorney Shawanee Lee. In that fax, the complainant advised Ms. Lee of the following: "I received your voicemail 4:30 p.m. yesterday and do not grant permission for your proposed New Motion. I am sorry that you missed your Deadline." The complainant did not provide any other reason for her objection to PECO's Motion.

Title 231 Pa. Code § 1012.1(e) provides that a motion for *pro hac vice* admission should be granted unless there is good cause for denial. Good cause may include:

- (1) the admission may be detrimental to the prompt, fair and efficient administration of justice,
- (2) the admission may be detrimental to legitimate interests of the parties to the proceedings other than the client whom the candidate proposes to represent,

- (3) the client who the candidate proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk,
- (4) the candidate is not competent or ethically fit to practice law,
- (5) the candidate is, in effect, practicing as a Pennsylvania attorney, in light of the nature and extent of the activities of the candidate in the Commonwealth, without complying with the Pennsylvania requirements for the admission to the bar. The court may weigh the number of other admissions to practice sought and/or obtained by the candidate from Pennsylvania courts, the question of whether or not the candidate maintains an office in Pennsylvania although the candidate is not admitted to practice in Pennsylvania courts, and other relevant factors,
- (6) the number of cases in all courts of record in this Commonwealth in which the Pennsylvania attorney is acting as the sponsor prohibits the adequate supervision of the candidate,
- (7) failure to comply with this rule, or
- (8) any other reason the court, in its discretion, deems appropriate.

231 Pa. Code § 1012.1(e) (Official Note).

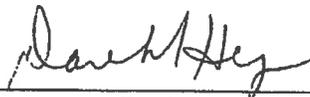
Here, the complainant has not supplied any reason that would amount to good cause for denying PECO's Motion. No new evidence or parties will be introduced that will require additional preparation by Ms. Kreider. Also, there is no risk to inadequate representation of PECO by this provisional admission of Mr. Watson, an experienced attorney who is familiar with the subject matter. Under the circumstances, we find that there is no detriment or prejudice to Ms. Kreider by admission *pro hac vice* of Mr. Watson. Accordingly, we will grant PECO's Motion.

THEREFORE,

IT IS ORDERED:

1. That the Motion For Admission *Pro Hac Vice* filed on February 24, 2016 by Ward Smith, Esquire, on behalf of Thomas Carl Watson, Esq. is granted. Thomas Carl Watson, Esq. is admitted *pro hac vice* to represent PECO Energy Company in this proceeding pursuant to 52 Pa.Code §§ 1.22 and 1.23 and Pa. B.A.R. 301(a).

Date: February 29, 2016



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Darlene D. Heep  
Administrative Law Judge



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Christopher P. Pell  
Administrative Law Judge

C-2015-2469655 - SUSAN KREIDER v. PECO ENERGY COMPANY

SERVICE LIST

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Accepts E-service  
Representing PECO Power Company

Mary Paul v PECO, C-2015-2475355  
PECO Answer to Petition for Reconsideration  
Attached Materials

Murphy v PECO

C-2015-2475726

Email service of Pro Hac Vice Motion, Feb. 24, 2016

Prehearing Conference Transcript, March 15, 2016

Prehearing Order #1, April 4, 2016

## Smith, Ward L:(PECO)

---

**From:** Smith, Ward L:(PECO)  
**Sent:** Wednesday, February 24, 2016 4:18 PM  
**To:** dheep@pa.gov; cpell@pa.gov; Edward Lanza  
**Cc:** Lee, Shawane L.:(PECO)  
**Subject:** Laura Sunstein Murphy v PECO, C-2015-2475726  
**Attachments:** C2475726\_Mtn Pro Hac Vice.pdf; C2475726\_COS Rogs.pdf

Dear ALJs Heep and Pell and Mr. Lanza:

This matter is scheduled for a telephonic prehearing conference on March 15, 2016. Today, PECO filed two documents in this docket:

- PECO's Certificate of Service demonstrating the service of Discovery, Set I (Qs 1-2), and
- PECO's Motion to Admit Counsel Pro Hac Vice

Courtesy copies of these filings are attached; hard copy to you will follow by overnight delivery. (In Mr. Lanza's case, because he takes mail service at a PO Box, we will provide hard copy service by first class mail.)

We will separately send Mr. Lanza an email with the substance of the two discovery questions being posed.

Please contact me if you have any questions.

Ward Smith  
215-841-6863  
[Ward.smith@exeloncorp.com](mailto:Ward.smith@exeloncorp.com)

Mary Paul v PECO, C-2015-2475355  
PECO Answer to Petition for Reconsideration  
Attached Materials

Transcript pages removed from Web-version of this filing to meet Commission rules on posting of transcripts. Transcript pages are included in hard copy filed with the Secretary's Bureau

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Laura Sunstein Murphy

v.

PECO Energy Company

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:  
:  
:  
:  
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C-2015-2475726

**PREHEARING ORDER #1**

**History**

On April 7, 2015, Laura Sunstein Murphy (complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission against PECO Energy Company. In the Complaint, Ms. Murphy contends that the smart meter installed by PECO at her West Chester, Pennsylvania home has caused health problems for her and her husband and she wants the meter removed.

On April 23, 2015, PECO Energy Company (PECO or respondent) filed an Answer and New Matter.

On May 1, 2015, the complainant filed a Reply to PECO's New Matter.

By Hearing Notice dated June 11, 2015, a telephonic hearing was scheduled for August 19, 2015 before Pittsburgh Administrative Law Judge (ALJ) Jeffrey Watson.

Also on June 11, 2015, ALJ Watson issued a Prehearing Order to the parties.

On July 22, 2015, PECO filed a Motion for Judgment on the Pleadings (Motion). In that Motion, PECO argued that the matter should be dismissed because Act 129 does not

allow a customer to opt out of smart meter installation and, therefore, the complainant failed to state a claim upon which relief could be granted.

On July 13, 2015, the complainant filed a request for change of venue and an in person hearing. On July 17, 2015, ALJ Watson granted the complainant an extension of time to respond to the Motion for Judgment on the Pleadings because the complainant was undergoing surgery.

On July 22, 2015, Edward Lanza, Esq., filed a Notice of Appearance as counsel of record for Complainant.

On July 28, 2015, the complainant filed an Amended Complaint.

On July 31, 2015, PECO filed an Answer to the Amended Complaint and Preliminary Objections. Similar to its Motion, PECO maintained in its Preliminary Objections that Act 129 does not allow a customer to opt out of smart meter installation.

On August 5, 2015, the complainant filed an Answer to the Motion for Judgment on the Pleadings.

On August 13, 2015, ALJ Watson continued the hearing scheduled for August 19, 2015.

On August 27, 2015, the complainant filed an Answer to the Preliminary Objection.

On October 21, 2015, Ward Smith, Esq., PECO's Assistant General Counsel, filed a Notice of Appearance with the Commission's Secretary.

On February 9, 2016, this matter was reassigned to Administrative Law Judges Darlene D. Heep and Christopher P. Pell.

On February 11, 2016, a Prehearing Conference Order was issued setting a telephonic Prehearing Conference for March 15, 2016.

On February 24, 2016, PECO filed a Motion to admit Thomas Carl Watson, Esq. Pro Hac Vice.

On March 15, 2016, the telephonic prehearing conference convened as scheduled. Edward Lanza, Esq. appeared on behalf of Complainant; Ward Smith, Esq. and Shawane Lee, Esq. appeared on behalf of PECO.

During the conference, Mr. Smith indicated that he intended to file a Motion to Dismiss the Complaint. We informed the parties that, since PECO intends to file a Motion To Dismiss, we would not issue a ruling on PECO's Preliminary Objections.

This order sets forth the procedural matters addressed at the prehearing conference.<sup>1</sup>

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That any dispositive motions should be filed no later than April 18, 2016;
2. That if PECO does not intend to file a Motion to Dismiss, PECO should notify the court within ten days of the date of this Order;

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<sup>1</sup> During the March 15, 2016 Prehearing Conference, the parties informed us that they wanted to pre-serve testimony in this matter but needed additional time to develop a schedule for submission of this testimony. The parties notified us, via email received on March 18, 2016, that they had agreed to a schedule for the submission of testimony as well as to several modifications to the discovery rules. As we find the parties' proposed schedule and discovery rule modifications to be agreeable, they will be adopted in this Order.

3. That the Motion to admit Thomas Carl Watson, Esq. Pro Hac Vice, being unopposed, is granted;

4. That the hearings in this matter will be held on Tuesday, June 14, 2016 and Wednesday, June 15, 2016 in Philadelphia;

5. That the parties have agreed to, and will adhere to, the following exchange of written testimony schedule:

Friday, April 22 – Murphy Direct  
Friday, May 13 – PECO Rebuttal  
Friday, June 3 – Murphy Surrebuttal

6. That the parties may arrange service amongst themselves as they agree;

7. That the parties may serve documents electronically by 4:30 p.m. to meet any required due date, with hard copy to follow by regular first class mail;

8. That our informal e-mail distribution list is as follows. Any changes or corrections should be communicated to us, via e-mail (cpell@pa.gov and dheep@pa.gov) as soon as possible. Please include our legal assistant, Ms. Kathy Niesborella (kniesborel@pa.gov), on anything you send to us.

Party	Counsel	e-mail
Complainant	Edward Lanza, Esq.	ed@lanzafirm.com
PECO	Ward Smith, Esq.	ward.smith@exeloncorp.com
PECO	Shawane Lee, Esq.	Shawane.Lee@exeloncorp.com
PECO	Thomas Carl Watson, Esq.	tw@w-r.com
ALJ	ALJ Heep	dheep@pa.gov
ALJ	ALJ Pell	cpell@pa.gov
ALJ	Kathy Niesborella	kniesborel@pa.gov

9. That discovery shall be conducted according to the Commission's rules and regulations (52 Pa.Code § 5.321 *et seq*), subject to the following modifications:

a) Answers to written interrogatories shall be served in-hand within ten (10) calendar days of service. Discovery propounded after 12:00 noon on a Friday shall be deemed served on the next business day for purposes of determining the due date of the responses.

b) Objections to interrogatories shall be communicated orally within three (3) days of service; unresolved objections shall be served on the ALJ in writing within five (5) days of service of interrogatories. Objections to interrogatories served on a Friday shall be communicated orally within four (4) calendar days, and unresolved objections shall be served to the ALJ in writing within six (6) days of service of the interrogatories.

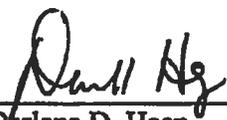
c) Motions to dismiss objection and/or compel responses to interrogatories shall be filed within three (3) days of service of written objections.

d) Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) days of service of such motions.

10. That the parties are to confer amongst themselves in an attempt to resolve all or some of the issues associated with this proceeding. The parties are reminded it is the Commission's policy to encourage settlements. 52 Pa.Code §5.231(a). The parties are strongly urged to seriously explore this possibility; and

11. That the parties shall comply with the procedural rules and regulations discussed herein.

Date: April 4, 2016

  
\_\_\_\_\_  
Darlene D. Heep  
Administrative Law Judge

  
\_\_\_\_\_  
Christopher P. Pell  
Administrative Law Judge

Laura Sunstein Murphy v. PECO Energy Company  
Docket Number C-2015-2475726

SERVICE LIST

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Ward Smith, Esquire  
Shawane Lee, Esquire  
Thomas Carl Watson, Esquire  
Exelon Business Services Company LLC  
Legal Department  
2301 Market Street, S23-1  
Philadelphia, PA 19103

Mary Paul v PECO, C-2015-2475355  
PECO Answer to Petition for Reconsideration  
Attached Materials

Povacz v PECO

C-2015-2475023

Email service of Pro Hac Vice Motion, Feb. 24, 2016

Prehearing Conference Transcript, March 15, 2016

Prehearing Order #1, April 6, 2016

## Smith, Ward L:(PECO)

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**From:** Smith, Ward L:(PECO)  
**Sent:** Wednesday, February 24, 2016 4:22 PM  
**To:** dheep@pa.gov; cpell@pa.gov; Edward Lanza  
**Cc:** Lee, Shawane L:(PECO)  
**Subject:** Maria Povacz v. PECO, C-2015-2475023  
**Attachments:** C2475023\_COS Rogs.pdf; C2475023\_Mtn Pro Hac Vice.pdf

Dear ALJs Heep and Pell and Mr. Lanza:

This matter is scheduled for a telephonic prehearing conference on March 15, 2016. Today, PECO filed two documents in this docket:

- PECO's Certificate of Service demonstrating the service of Discovery, Set I (Qs 1-2), and
- PECO's Motion to Admit Counsel Pro Hac Vice

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We will separately send Mr. Lanza an email with the substance of the two discovery questions being posed.

Please contact me if you have any questions.

Ward Smith  
215-841-6863  
[Ward.smith@exeloncorp.com](mailto:Ward.smith@exeloncorp.com)

Mary Paul v PECO, C-2015-2475355  
PECO Answer to Petition for Reconsideration  
Attached Materials

Transcript pages removed from Web-version of this filing to meet Commission rules on posting of transcripts. Transcript pages are included in hard copy filed with the Secretary's Bureau

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**WARD L. SMITH  
APR 18 2016**

Maria Povacz

v.

PECO Energy Company

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:  
:  
:

C-2015-2475023

**PREHEARING ORDER #1**

**History**

On March 28, 2015, Maria Povacz (complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission against PECO Energy Company. In her Complaint, Ms. Povacz contends that PECO is threatening to shut off her service and that the smart meter PECO wants to install at her home in New Hope, Pennsylvania will create safety and health risks.

On April 9, 2015, PECO Energy Company (PECO or respondent) filed an Answer and New Matter and Preliminary Objections.

On April 18, 2015, the complainant filed a Reply to PECO's New Matter and an Answer to PECO's Preliminary Objections.

On April 28, 2016, by Motion Judge Assignment, the Preliminary Objections were assigned to Administrative Law Judge Elizabeth H. Barnes.

On June 2, 2015, ALJ Barnes issued an order that the Answer to Preliminary Objections filed by the complainant would be treated as an Amended Complaint and that the Preliminary Objections filed by PECO were dismissed as moot.

On June 18, 2015, PECO filed an Answer to the Amended Complaint.

Also, on June 18, 2015, PECO filed Preliminary Objections to the Amended Complaint, contending that the matter should be dismissed because Act 129 does not allow a customer to opt out of smart meter installation and, therefore, the Complainant failed to state a claim upon which relief could be granted.

On July 1, 2015, ALJ Barnes granted in part and denied in part the Preliminary Objections. She determined:

The Amended Complaint is essentially the same cause of action filed previously on July 13, 2012, *Maria Povacz v. PECO Energy Company*, Docket No. C-2012-2317176, Opinion and Order entered January 23, 2014. The Commission dismissed Complainant's complaint with prejudice on January 23, 2014, finding that PECO's installation of smart meters was consistent with, rather than a violation of, the Public Utility Code, a Commission Regulation or Order. *Id.* at 10. In the instant case, Complainant again requests permission to opt out of a smart meter installation at her residence for health, privacy, and safety reasons. The only difference in the instant Complaint is that Complainant offers evidence of a signed medical certificate showing she is sensitive to electromagnetic waves emitted by smart meters.

ALJ Barnes referred the following issues to the Mediation Unit: a) whether Complainant is entitled to a stay of termination based upon a medical certificate; b) whether PECO Energy Company followed the Commission's regulations and the statutory provisions of Chapter 14 of the Public Utility Code regarding Complainant's medical certificate; and c) whether Respondent's service is reasonable and in compliance with 66 Pa. C.S. §1501.

On July 21, 2015, a telephonic hearing before ALJ Barnes was set for October 5, 2015.

On July 30, 2015, ALJ Barnes issued a Prehearing Order.

**On September 22, 2015, Edward Lanza, Esq., filed a Notice of Appearance as counsel of record for Complainant.**

**On September 30, 2015, Ward Smith, Esq., PECO's Assistant General Counsel, filed a Notice of Appearance with the Commission's Secretary.**

**On October 1, 2015, the complainant filed a request for change of venue for an in-person hearing and a continuance of the hearing date.**

**Also on September 30, 2015, ALJ Barnes issued an order indicating that the hearing was cancelled and would be rescheduled.**

**On October 23, 2015, the matter was transferred to Administrative Law Judge Eranda Vero in Philadelphia for an in-person hearing.**

**On December 3, 2015, PECO filed objections to the complainant's interrogatories, Set 1, Questions 1-22.**

**On December 8, 2015, ALJ Vero set a prehearing conference for December 15, 2015 and issued a Prehearing Conference Order.**

**On December 14, 2015, the complainant filed a Motion to Dismiss Objections to Interrogatories and Compel Answers.**

**On February 9, 2016, this matter was reassigned to Administrative Law Judges Darlene D. Heep and Christopher P. Pell.**

**On February 11, 2016, a Prehearing Conference Order was issued setting a telephonic Prehearing Conference for March 15, 2016.**

On February 24, 2016, PECO filed a Motion to admit Thomas Carl Watson, Esq. Pro Hac Vice.

On March 15, 2016, the telephonic Prehearing Conference convened as scheduled. Edward Lanza, Esq. appeared on behalf of Complainant and Ward Smith, Esq. and Shawane L. Lee, Esq. appeared on behalf of PECO.

During the conference, Mr. Smith indicated that he intended to file a Motion to Dismiss the Complaint. We informed the parties that, in the event that PECO files a Motion to Dismiss, we would not issue a ruling on PECO's Preliminary Objections.

This order sets forth the procedural matters addressed at the Prehearing Conference.<sup>1</sup>

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That any dispositive motions should be filed no later than April 18, 2016;
2. That the Motion to admit Thomas Carl Watson, Esq. Pro Hac Vice, being unopposed, is granted;
3. That the hearings in this matter will be held on Tuesday, June 7, 2016 and Wednesday June 8, 2016 in Philadelphia;

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<sup>1</sup> During the March 15, 2016 Prehearing Conference, the parties informed us that they wanted to pre-serve testimony in this matter but needed additional time to develop a schedule for submission of this testimony. The parties notified us, via email received on March 18, 2016, that they had agreed to a schedule for the submission of testimony as well as to several modifications to the discovery rules. As we find the parties' proposed schedule and discovery rule modifications to be agreeable, they will be adopted in this Order.

4. That the parties have agreed to and will adhere to the following exchange of written testimony schedule:

Monday, April 18 - Povacz Direct  
 Monday, May 9 - PECO Rebuttal  
 Tuesday, May 31 - Povacz Surrebuttal

5. That the parties may arrange service amongst themselves as they agree;

6. That parties may serve documents electronically by 4:30 p.m. to meet any required due date, with hard copy to follow by regular first class mail;

7. That our informal e-mail distribution list is as follows. Any changes or corrections should be communicated to us, via e-mail (cpell@pa.gov and dheep@pa.gov) as soon as possible. Please include our legal assistant, Ms. Kathy Niesborella (kniesborel@pa.gov), on anything you send to us.

Party	Counsel	e-mail
Complainant	Edward Lanza, Esq.	ed@lanzafirm.com
PECO	Ward Smith, Esq.	ward.smith@exeloncorp.com
PECO	Shawane Lee, Esq.	Shawane.Lee@exeloncorp.com
PECO	Thomas Carl Watson, Esq.	tw@w-r.com
ALJ	ALJ Heep	dheep@pa.gov
ALJ	ALJ Pell	cpell@pa.gov
ALJ	Kathy Niesborella	kniesborel@pa.gov

8. That discovery shall be conducted according to the Commission's rules and regulations (52 Pa.Code § 5.321 *et seq*), subject to the following modifications:

a) Answers to written interrogatories shall be served in-hand within ten (10) calendar days of service. Discovery propounded after 12:00 noon on a Friday shall be deemed served on the next business day for purposes of determining the due date of the responses.

b) Objections to interrogatories shall be communicated orally within three (3) days of service; unresolved objections shall be served on

the ALJ in writing within five (5) days of service of interrogatories. Objections to interrogatories served on a Friday shall be communicated orally within four (4) calendar days, and unresolved objections shall be served to the ALJ in writing within six (6) days of service of the interrogatories.

c) Motions to dismiss objection and/or compel responses to interrogatories shall be filed within three (3) days of service of written objections.

d) Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) days of service of such motions.

9. That the parties are to confer amongst themselves in an attempt to resolve all or some of the issues associated with this proceeding. The parties are reminded it is the Commission's policy to encourage settlements. 52 Pa.Code §5.231(a). The parties are strongly urged to seriously explore this possibility; and

10. That the parties shall comply with the procedural rules and regulations discussed herein.

Date: April 6, 2016

  
\_\_\_\_\_  
Darlene D. Heep  
Administrative Law Judge

  
\_\_\_\_\_  
Christopher P. Fell  
Administrative Law Judge

**Maria Povacz v. PECO Energy Company**  
**Docket Number C-2015-2475023**

**SERVICE LIST**

**Maria Povacz**  
**533 Tori Court**  
**New Hope, PA 18938**

**Edward G. Lanza, Esquire**  
**The Lanza Firm**  
**P.O. Box 61336**  
**Harrisburg, PA 17106-1336**

**Ward Smith, Esquire**  
**Shawane Lee, Esquire**  
**Thomas Carl Watson, Esquire**  
**Exelon Business Services Company LLC**  
**Legal Department**  
**2301 Market Street, S23-1**  
**Philadelphia, PA 19103**

Mary Paul v PECO, C-2015-2475355  
PECO Answer to Petition for Reconsideration  
Attached Materials

Tucker v PECO

C-2015-2515592

Email service of Pro Hac Vice Motion, Feb. 24, 2016

Prehearing Order #1, April 6, 2016

## Smith, Ward L:(PECO)

---

**From:** Smith, Ward L:(PECO)  
**Sent:** Wednesday, February 24, 2016 4:17 PM  
**To:** dheep@pa.gov; cpell@pa.gov; Edward Lanza  
**Cc:** Lee, Shawane L.:(PECO)  
**Subject:** Barbara and Charles Tucker v. PECO, C-2015-2515592  
**Attachments:** C2515592\_nwmtans.pdf; C2515592\_PriObj.pdf; C2515592\_Mtn Pro Hac Vice.pdf; C2515592\_COS Rogs.pdf

Dear ALJs Heep and Pell and Mr. Lanza:

This matter is scheduled for a telephonic prehearing conference on March 15, 2016. Today, PECO filed four documents in this docket:

- PECO's Answer and New Matter to the Amended Complaint
- PECO's Preliminary Objection to the Amended Complaint
- PECO's Certificate of Service demonstrating the service of Discovery, Set I (Qs 1-3), and
- PECO's Motion to Admit Counsel Pro Hac Vice

Courtesy copies of these filings are attached; hard copy to you will follow by overnight delivery. (In Mr. Lanza's case, because he takes mail service at a PO Box, we will provide hard copy service by first class mail.)

We will separately send Mr. Lanza an email with the substance of the three discovery questions being posed.

Please contact me if you have any questions.

Ward Smith  
215-841-6863  
[Ward.smith@exeloncorp.com](mailto:Ward.smith@exeloncorp.com)

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

WARD L. SMITH  
APR 18 2016

Barbara and Charles Tucker

v.

PECO Energy Company

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C-2015-2515592

**PREHEARING ORDER #1**

**History**

On November 23, 2015, Dr. and Mrs. Charles Tucker (Complainants) filed a formal Complaint with the Pennsylvania Public Utility Commission against PECO Energy Company. In the Complaint, the Complainants contend that PECO is threatening to shut off their service and that PECO wants to install a smart meter at their home in Oreland, Pennsylvania that will create safety and health risks for Mrs. Tucker.

On December 14, 2015, PECO Energy Company (PECO or respondent) filed an Answer and New Matter.

On December 22, 2015, a Hearing Notice was issued setting an in-person initial hearing for March 4, 2016.

On January 5, 2016, a Prehearing Order was issued.

On January 5, 2016, Ward Smith, Esq., PECO's Assistant General Counsel, filed a Notice of Appearance with the Commission's Secretary.

Also on January 5, 2015, Edward Lanza, Esq. filed a Reply to Answer and New Matter on behalf of the Complainants.

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**On February 3, 2016, Complainants filed an Amended Formal Complaint.**

**On February 9, 2016, this matter was reassigned to Administrative Law Judges Darlene D. Heep and Christopher P. Pell.**

**On February 11, 2016, a Prehearing Conference Order was issued setting a telephonic Prehearing Conference for March 15, 2016.**

**On February 24, 2016, PECO filed a Motion to admit Thomas Carl Watson, Esq. Pro Hac Vice.**

**Also on February 24, 2016, PECO filed an Answer and New Matter to the Amended Complaint.**

**Also on February 24, 2016, PECO filed Preliminary Objections to the Amended Complaint, contending that the matter should be dismissed because Act 129 does not allow a customer to opt out of smart meter installation and, therefore, the Complainants failed to state a claim upon which relief could be granted. Complainants' response to the Preliminary Objections was due on March 15, 2015.<sup>1</sup>**

**On February 29, 2016, Complainants filed a Certificate of Service of Objections to Interrogatories.**

**Also, on February 29, 2016, PECO filed a Motion to Compel Answers to Interrogatories.**

**On March 15, 2016, the telephonic prehearing conference convened as scheduled. Edward Lanza, Esq. appeared on behalf of Complainants and Ward Smith, Esq. and Shawane**

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<sup>1</sup> Complainant's filed an Answer to PECO's Preliminary Objections on March 15, 2016. We will address PECO's Preliminary Objections by separate order.

Lee, Esq. appeared on behalf of PECO. Dr. Charles Tucker and Mrs. Barbara Tucker also appeared by telephone.

During the conference, the parties advised us that they had settled their discovery dispute, and that there was no need for us to rule on PECO's outstanding Motion To Compel.

This order sets forth the procedural matters addressed at the prehearing conference.<sup>2</sup>

**ORDER**

**THEREFORE,**

**IT IS ORDERED:**

1. That the Motion to admit Thomas Carl Watson, Esq. Pro Hac Vice, being unopposed, is granted;

2. That the hearings in this matter will be held on Tuesday, June 21, 2016 and Wednesday June 22, 2016 in Philadelphia;

3. That the parties have agreed to and will adhere to the following schedule for the exchange of written testimony:

Friday, May 6	-	Tucker Direct
Friday, May 27	-	PECO Rebuttal
Friday, June 10	-	Tucker Surrebuttal

4. That the parties may arrange service amongst themselves as they agree;

---

<sup>2</sup> During the March 15, 2016 Prehearing Conference, the parties informed us that they wanted to pre-serve testimony in this matter but needed additional time to develop a schedule for submission of this testimony. The parties notified us, via email received on March 18, 2016, that they had agreed to a schedule for the submission of testimony as well as to several modifications to the discovery rules. As we find the parties' proposed schedule and discovery rule modifications to be agreeable, they will be adopted in this Order.

5. That parties may serve documents electronically by 4:30 p.m. to meet any required due date, with hard copy to follow by regular first class mail;

6. That our informal e-mail distribution list is as follows. Any changes or corrections should be communicated to us, via e-mail (cpell@pa.gov and dheep@pa.gov) as soon as possible. Please include our legal assistant, Ms. Kathy Niesborella (kniesborel@pa.gov), on anything you send to us.

Party	Counsel	e-mail
Complainant	Edward Lanza, Esq.	ed@lanzafirm.com
PECO	Ward Smith, Esq.	ward.smith@exeloncorp.com
PECO	Shawane Lee, Esq.	Shawane.Lee@exeloncorp.com
PECO	Thomas Carl Watson	tw@w-r.com
ALJ	ALJ Heep	dheep@pa.gov
ALJ	ALJ Pell	cpell@pa.gov
ALJ	Kathy Niesborella	kniesborel@pa.gov

7. That discovery shall be conducted according to the Commission's rules and regulations (52 Pa.Code § 5.321 *et seq*), subject to the following modifications:

a) Answers to written interrogatories shall be served in-hand within ten (10) calendar days of service. Discovery propounded after 12:00 noon on a Friday shall be deemed served on the next business day for purposes of determining the due date of the responses.

b) Objections to interrogatories shall be communicated orally within three (3) days of service; unresolved objections shall be served on the ALJ in writing within five (5) days of service of interrogatories. Objections to interrogatories served on a Friday shall be communicated orally within four (4) calendar days, and unresolved objections shall be served to the ALJ in writing within six (6) days of service of the interrogatories.

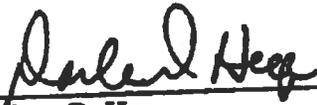
c) Motions to dismiss objection and/or compel responses to interrogatories shall be filed within three (3) days of service of written objections.

d) Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) days of service of such motions.

8. That the parties are to confer amongst themselves in an attempt to resolve all or some of the issues associated with this proceeding. The parties are reminded it is the Commission's policy to encourage settlements. 52 Pa.Code §5.231(a). The parties are strongly urged to seriously explore this possibility; and

9. That the parties shall comply with the procedural rules and regulations discussed herein.

Date: April 6, 2016

  
\_\_\_\_\_  
Darlene D. Heep  
Administrative Law Judge

  
\_\_\_\_\_  
Christopher P. Pell  
Administrative Law Judge

**Barbara and Charles M. Tucker v. PECO Energy Company**  
**Docket Number C-2015-2515592**

**SERVICE LIST**

**Barbara and Charles Tucker**  
**900 Summit Lane**  
**Oreland, PA 19075-2526**

**Edward G. Lanza, Esquire**  
**The Lanza Firm**  
**P.O. Box 61336**  
**Harrisburg, PA 17106-1336**

**Ward Smith, Esquire**  
**Shawane Lee, Esquire**  
**Thomas Carl Watson, Esquire**  
**Exelon Business Services Company LLC**  
**Legal Department**  
**2301 Market Street, S23-1**  
**Philadelphia, PA 19103**

**Mary Paul v PECO, C-2015-2475355  
PECO Answer to Petition for Reconsideration  
Attached Materials**

**Polite v PECO**

**F-2015-2514570**

**Prehearing Order, April 12, 2016**

**WARD L. SMITH**

**APR 18 2016**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elmore W. Polite

v.

PECO Energy Company

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F-2015-2514570

**PREHEARING ORDER**

An Initial Hearing in this case is scheduled for Thursday, July 7, 2016 at 10:00 a.m. in an available hearing room on the 4<sup>th</sup> Floor at 801 Market Street.<sup>1</sup> You should arrive at the hearing room no later than 9:45 a.m. and wait in the hearing room until the Administrative Law Judge calls your case. You must be available in the hearing room when your case is called by the presiding Administrative Law Judges. If the customer is not present and prepared to go forward with the case when it is called, the case will be dismissed by the Administrative Law Judges. When you arrive on the 4<sup>th</sup> Floor, please use the telephone located at the front desk and call 215-560-2105 to be admitted into the hearing room.

**History of the Proceeding**

On November 23, 2015, Elmore W. Polite ("Complainant" or "Mr. Polite") filed a complaint against PECO Energy Company ("PECO"). In that complaint, Mr. Polite states that he has epilepsy and that installation of a smart meter will worsen his condition. He also states that PECO is threatening to shut off his service unless a smart meter is installed.

On December 11, 2015, PECO filed an Answer. In the Answer, PECO avers that Act 129 does not allow a customer to opt out of smart meter installation and that the company's smart meter installation plan was approved by the Commission.

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<sup>1</sup> The entrance to the building is on 8<sup>th</sup> Street.

The matter was assigned to Administrative Law Judge Eranda Vero and on January 14, 2016, a Hearing Notice was issued, setting the hearing for March 8, 2016 at 2:00 p.m.

On February 19, 2016, Judge Vero issued a Prehearing Order.

On February 24, 2016, PECO filed a Motion to admit Thomas Carl Watson, Esq. Pro Hac Vice.

Also on February 24, 2016, PECO filed a document identifying its expert witnesses and summarizing their expected testimony.

On February 26, 2016, Ward Smith, Esq. filed a Notice of Appearance on behalf of PECO.

On March 1, 2016, this matter was transferred to Administrative Law Judges Darlene D. Heep and Christopher P. Pell, and the March 8, 2016 hearing was cancelled.

On April 4, 2016, a Hearing Notice was issued setting an in-person initial hearing for July 7, 2016.

The parties are hereby directed to comply with the following requirements:

1. That the Motion to admit Thomas Carl Watson, Esq. Pro Hac Vice, being unopposed, is granted;

2. That all parties must comply with the following deadlines:

a. ON OR BEFORE May 5, 2016, the parties are to meet by telephone to discuss possible settlement of this matter. Commission policy

promotes settlements. 52 Pa.Code §5.231(a). If an agreement is reached, a formal hearing will not be necessary and the scheduled hearing will be cancelled.

- b. **ON OR BEFORE May 10, 2016**, any party wishing to present expert testimony (medical, technical, etc.) must provide to the other party the name and business address of that expert and a written summary of the expected testimony of that expert.
- c. Any dispositive Motions must be filed **by May 17, 2016.**
- d. **ON OR BEFORE June 20, 2016**, Complainant, Mr. Polite, and Counsel for PECO are directed to provide one another with copies of all exhibits and statements to be presented at the hearing.
- e. Any stipulations should be submitted to us no later than **July 5, 2016.**

3. **THAT YOU MUST SERVE US DIRECTLY WITH ANY DOCUMENTS THAT YOU FILE IN THIS PROCEEDING. IF YOU SEND US ANY DOCUMENT OR CORRESPONDENCE, YOU MUST SEND A COPY TO ALL OTHER PARTIES IN THE CASE. THE CURRENT SERVICE LIST IS ATTACHED TO THIS ORDER.**

4. That a request for a change of the scheduled hearing date must state the agreement or opposition of other parties, and must be submitted in writing no later than five (5) business days prior to the hearing. 52 Pa.Code §1.15(b). Requests for changes of hearing dates must be sent to me and all parties of record. Our correct address is:

Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
801 Market Street, Suite 4063  
Philadelphia, PA 19107  
Telephone: 215-560-2105  
Fax: 215-560-3133

Changes are granted only in rare situations where good cause exists.

5. If you intend to present any documents or exhibits for our consideration, you must bring at least five (5) copies to the hearing. These are the original and one copy for the Commission's records, one copy for us and one copy for every other party. Proposed exhibits should be properly pre-marked for identification.

6. This hearing is a formal proceeding and will be conducted in accordance with the Commission's Rules of Practice and Procedure.

7. Pursuant to 52 Pa.Code §§1.21 & 1.22, you may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you. However, if you are a partnership, limited liability company, corporation, trust, association, or governmental agency or subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. Unless you are an attorney, you may not represent someone else. Attorneys shall insure that their appearance is entered in accordance with the provisions of 52 Pa.Code §1.24(b).

8. If you intend to subpoena witnesses for the hearing, you should review the procedures established in 52 Pa.Code §5.421. You must submit your written application to the Administrative Law Judge sufficiently in advance of the hearing date so that the other parties will have the required ten (10) days' notice to answer or object, and so that you will have enough time to receive the subpoena and serve it.

9. If you, or anyone you plan to call as a witness on your behalf, have a limited ability to speak or understand English or are deaf or hearing-impaired, a qualified interpreter can be provided upon your request. If you want an interpreter, please contact the Scheduling Office at least ten (10) days before the scheduled Hearing to make your request. Scheduling Office: (717) 787-1399. AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

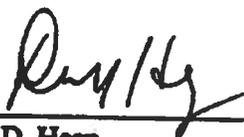
10. The complainant is responsible for payment of current undisputed bills for service pending the resolution of this complaint. 52 Pa.Code §56.181. Failure to make payments may result in the termination of utility service.

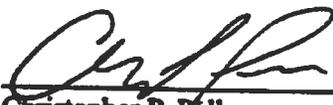
11. **IF ANY MOTIONS ARE PENDING, THE PARTY FILING THE MOTION MUST PROVIDE A COPY OF THAT MOTION TO THE ADMINISTRATIVE LAW JUDGES WITHIN 7 DAYS OF RECEIPT OF THIS ORDER.**

12. **THE COMPLAINT WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.**

13. The complainant bears the burden of proof and must demonstrate by a preponderance of the evidence that respondent violated its tariff, the Public Utility Code or a Commission order or regulation, and that he/she is entitled to the relief requested in the Complaint.

Date: April 12, 2016

  
\_\_\_\_\_  
Darlene D. Heep  
Administrative Law Judge

  
\_\_\_\_\_  
Christopher P. Pell  
Administrative Law Judge

**Elmore W. Polite v. PECO Energy Company**  
**Docket Number F-2015-2514570**

**SERVICE LIST**

**Elmore W. Polite**  
**3739 Fairmount Avenue**  
**Philadelphia, PA 19104**

**Ward Smith, Esquire**  
**Shawane Lee, Esquire**  
**Thomas Carl Watson, Esquire**  
**Exelon Business Services Company LLC**  
**Legal Department**  
**2301 Market Street, S23-1**  
**Philadelphia, PA 19103**

**Mary Paul v PECO, C-2015-2475355  
PECO Answer to Petition for Reconsideration  
Attached Materials**

**Randall/Albrecht v PECO**

**C-2016-2537666**

**Email service of Pro Hac Vice Motion, May 11, 2016**

**“No objection” email from Complainants’ counsel, May 11, 2016**

**Order Granting Motion for Admission Pro Hac Vice, May 18, 2016**

**Smith, Ward L:(PECO)**

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**From:** Smith, Ward L:(PECO)  
**Sent:** Wednesday, May 11, 2016 10:49 AM  
**To:** Heep, Darlene; Pell, Christopher; Edward Lanza  
**Cc:** Lee, Shawane L:(PECO); Tom Watson  
**Subject:** Cynthia Randall and Paul Albrecht v PECO, C-2016-2537666 Pro Hac Vice  
**Attachments:** C2537666\_Mtn\_Pro\_Hac\_Vice.pdf

Your Honors and Mr. Lanza:

Today, PECO filed a Motion to Admit Mr. Watson *pro hac vice* in this docket. A copy of that Motion is attached for your convenience. Hard copies to Your Honors will follow.

Ward Smith

## Smith, Ward L:(PECO)

---

**From:** Edward Lanza <ed@lanzafirm.com>  
**Sent:** Wednesday, May 11, 2016 10:56 AM  
**To:** Smith, Ward L:(PECO); Heep, Darlene; Pell, Christopher  
**Cc:** Lee, Shawane L.:(PECO); Tom Watson  
**Subject:** RE: Cynthia Randall and Paul Albrecht v PECO, C-2016-2537666 Pro Hac Vice

Your Honors & Counsel,  
Complainants will not oppose the motion.

Ed Lanza



THE LANZA FIRM, LLC  
P.O. BOX 61336  
HARRISBURG, PA  
17106  
(717) 576-2696  
(717) 798-9897 (FAX)  
[WWW.LANZAFIRM.COM](http://WWW.LANZAFIRM.COM)

**From:** Smith, Ward L:(PECO) [<mailto:ward.smith@exeloncorp.com>]  
**Sent:** Wednesday, May 11, 2016 10:49 AM  
**To:** Heep, Darlene <[dheep@pa.gov](mailto:dheep@pa.gov)>; Pell, Christopher <[cpell@pa.gov](mailto:cpell@pa.gov)>; Edward Lanza <[ed@lanzafirm.com](mailto:ed@lanzafirm.com)>  
**Cc:** Lee, Shawane L.:(PECO) <[Shawane.Lee@exeloncorp.com](mailto:Shawane.Lee@exeloncorp.com)>; Tom Watson <[tw@w-r.com](mailto:tw@w-r.com)>  
**Subject:** Cynthia Randall and Paul Albrecht v PECO, C-2016-2537666 Pro Hac Vice

Your Honors and Mr. Lanza:

Today, PECO filed a Motion to Admit Mr. Watson *pro hac vice* in this docket. A copy of that Motion is attached for your convenience. Hard copies to Your Honors will follow.

Ward Smith

This Email message and any attachment may contain information that is proprietary, legally privileged, confidential and/or subject to copyright belonging to Exelon Corporation or its affiliates ("Exelon"). This Email is intended solely for the use of the person(s) to which it is addressed. If you are not an intended recipient, or the employee or agent responsible for delivery of this Email to the intended recipient(s), you are hereby notified that any dissemination, distribution or copying of this Email is strictly prohibited. If you have received this message in error, please immediately notify the sender and permanently delete this Email and any copies. Exelon policies expressly prohibit employees from making defamatory or offensive statements and infringing any copyright or any other legal right by Email communication. Exelon will not accept any liability in respect of such communications. -EXCIP

**WARD L. SMITH**

**MAY 27 2016**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Cynthia Randall and Paul Albrecht

v.

PECO Energy Company

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:  
:  
:  
:

C-2016-2537666

**ORDER GRANTING MOTION FOR ADMISSION PRO HAC VICE**

On May 11, 2016, Ward Smith, Assistant General Counsel for PECO Energy Company, filed a Motion for Admission *Pro Hac Vice*, pursuant to 52 Pa.Code §§ 1.22 and 1.23 and Pa. B.A.R. 301(a), on behalf of Thomas Carl Watson, Esquire requesting that he be admitted for purposes of representing PECO Energy Company in this proceeding.

On May 11, 2016, Complainant's attorney, Edward Lanza, Esq., issued an email to the undersigned stating that he would not oppose the motion.

Since PECO's Motion for Admission *Pro Hac Vice* of Thomas Carl Watson is unopposed, it will be granted.

**THEREFORE,**

**IT IS ORDERED:**

1. That the Motion for Admission *Pro Hac Vice* filed on May 11, 2016 by Ward Smith, Esquire, on behalf of Thomas Carl Watson, Esq. is granted; and

2. That Thomas Carl Watson, Esq. is admitted *pro hac vice* to represent PECO Energy Company in this proceeding pursuant to 52 Pa.Code §§ 1.22 and 1.23 and Pa. B.A.R. 301(a).

Date: May 18, 2016



\_\_\_\_\_  
Darlene D. Heep  
Administrative Law Judge



\_\_\_\_\_  
Christopher P. Pell  
Administrative Law Judge

**Cynthia Randall and Paul Albrecht v. PECO Energy Company**  
**Docket Number C-2016-2537666**

**SERVICE LIST**

**Cynthia Randall and Paul Albrecht**  
**700 Shawmont Avenue**  
**Philadelphia, PA 19128**

**Edward G. Lanza, Esquire**  
**The Lanza Firm**  
**P.O. Box 61336**  
**Harrisburg, PA 17106-1336**

**Ward Smith, Esquire**  
**Shawane Lee, Esquire**  
**Thomas Carl Watson, Esquire**  
**Exelon Business Services Company LLC**  
**Legal Department**  
**2301 Market Street, S23-1**  
**Philadelphia, PA 19103**

**Mary Paul v PECO, C-2015-2475355  
PECO Answer to Petition for Reconsideration  
Attached Materials**

**Van Schoyck v PECO**

**C-2016-2478239**

**Email service of Pro Hac Vice Motion, May 11, 2016**

**“No objection” email from Complainants’ counsel, May 11, 2016**

**Order Granting Motion for Admission Pro Hac Vice, May 18, 2016**

**Smith, Ward L:(PECO)**

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**From:** Smith, Ward L:(PECO)  
**Sent:** Wednesday, May 11, 2016 10:49 AM  
**To:** Heep, Darlene; Pell, Christopher; Edward Lanza  
**Cc:** Lee, Shawane L.:(PECO); Tom Watson  
**Subject:** Stephen and Diane Van Schoyk, C-2015-2478239 Pro Hac Vice  
**Attachments:** C2478239\_Motion\_Pro\_Hac\_Vice.pdf

Your Honors and Mr. Lanza:

Today, PECO filed a Motion to Admit Mr. Watson *pro hac vice* in this docket. A copy of that Motion is attached for your convenience. Hard copies to Your Honors will follow.

Ward Smith

## Smith, Ward L:(PECO)

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**From:** Edward Lanza <ed@lanzafirm.com>  
**Sent:** Wednesday, May 11, 2016 10:56 AM  
**To:** Smith, Ward L:(PECO); Heep, Darlene; Pell, Christopher  
**Cc:** Lee, Shawane L.:(PECO); Tom Watson  
**Subject:** RE: Stephen and Diane Van Schoyk, C-2015-2478239 Pro Hac Vice

Your Honors & Counsel,  
Complainants will not oppose the motion.

Ed Lanza



**THE LANZA FIRM, LLC**  
P.O. BOX 61336  
HARRISBURG, PA  
17106  
(717) 576-2696  
(717) 798-9897 (FAX)  
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**From:** Smith, Ward L:(PECO) [<mailto:ward.smith@exeloncorp.com>]  
**Sent:** Wednesday, May 11, 2016 10:49 AM  
**To:** Heep, Darlene <[dheep@pa.gov](mailto:dheep@pa.gov)>; Pell, Christopher <[cpell@pa.gov](mailto:cpell@pa.gov)>; Edward Lanza <[ed@lanzafirm.com](mailto:ed@lanzafirm.com)>  
**Cc:** Lee, Shawane L.:(PECO) <[Shawane.Lee@exeloncorp.com](mailto:Shawane.Lee@exeloncorp.com)>; Tom Watson <[tw@w-r.com](mailto:tw@w-r.com)>  
**Subject:** Stephen and Diane Van Schoyk, C-2015-2478239 Pro Hac Vice

Your Honors and Mr. Lanza:

Today, PECO filed a Motion to Admit Mr. Watson *pro hac vice* in this docket. A copy of that Motion is attached for your convenience. Hard copies to Your Honors will follow.

Ward Smith

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**WARD L. SMITH**

**MAY 23 2016**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephen and Diane Van Schoyck

v.

PECO Energy Company

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C-2015-2478239

**ORDER GRANTING MOTION FOR ADMISSION PRO HAC VICE**

On May 11, 2016, Ward Smith, Assistant General Counsel for PECO Energy Company, filed a Motion for Admission *Pro Hac Vice*, pursuant to 52 Pa.Code §§ 1.22 and 1.23 and Pa. B.A.R. 301(a), on behalf of Thomas Carl Watson, Esquire requesting that he be admitted for purposes of representing PECO Energy Company in this proceeding.

On May 11, 2016, Complainant's attorney, Edward Lanza, Esq., issued an email to the undersigned stating that he would not oppose the motion.

Since PECO's Motion for Admission *Pro Hac Vice* of Thomas Carl Watson is unopposed, it will be granted.

**THEREFORE,**

**IT IS ORDERED:**

1. That the Motion for Admission *Pro Hac Vice* filed on May 11, 2016 by Ward Smith, Esquire, on behalf of Thomas Carl Watson, Esq. is granted; and

2. That Thomas Carl Watson, Esq. is admitted *pro hac vice* to represent PECO Energy Company in this proceeding pursuant to 52 Pa.Code §§ 1.22 and 1.23 and Pa. B.A.R. 301(a).

Date: May 18, 2016



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Darlene D. Heep  
Administrative Law Judge



---

Christopher P. Pell  
Administrative Law Judge

**Stephen and Diane Van Schoyck v. PECO Energy Company**  
**Docket Number C-2015-2478239**

**SERVICE LIST**

**Stephen and Diane Van Schoyck**  
**148 W. Marshal Avenue**  
**Langhorne, PA 19047**

**Edward G. Lanza, Esquire**  
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**P.O. Box 61336**  
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**Thomas Carl Watson, Esquire**  
**Exelon Business Services Company LLC**  
**Legal Department**  
**2301 Market Street, S23-1**  
**Philadelphia, PA 19103**

**Mary Paul v PECO, C-2015-2475355  
PECO Answer to Petition for Reconsideration  
Attached Materials**

**Frompovich v PECO**

**C-2015-2474602**

**Order Granting Motion for Admission Pro Hac Vice, June 21, 2016**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Catherine J. Frompovich

v.

PECO Energy Company

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:  
:  
:  
:

C-2015-2474602

**ORDER GRANTING  
MOTION FOR ADMISSION PRO HAC VICE**

On May 11, 2016, Ward Smith, Assistant General Counsel for PECO Energy Company, filed a Motion for Admission *Pro Hac Vice*, pursuant to 52 Pa.Code §§ 1.22 and 1.23 and Pa. B.A.R. 301(a), on behalf of Thomas Carl Watson, Esquire requesting that he be admitted for purposes of representing PECO Energy Company in this proceeding.

No opposition to the Motion was filed.

Since PECO's Motion for Admission *Pro Hac Vice* of Thomas Carl Watson is unopposed, it will be granted.

THEREFORE,

IT IS ORDERED:

1. That the Motion for Admission *Pro Hac Vice* filed on May 11, 2016 by Ward Smith, Esquire, on behalf of Thomas Carl Watson, Esq. is granted; and

2. That Thomas Carl Watson, Esq. is admitted *pro hac vice* to represent PECO Energy Company in this proceeding pursuant to 52 Pa.Code §§ 1.22 and 1.23 and Pa. B.A.R. 301(a).

Date: June 21, 2016

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Darlene D. Heep  
Administrative Law Judge

---

Christopher P. Pell  
Administrative Law Judge

Catherine J. Frompovich v. PECO Energy Company  
Docket Number C-2015-2474602

SERVICE LIST

Catherine J. Frompovich  
23 Cavendish Drive  
Ambler, PA 19002

Ward Smith, Esquire  
Shawane Lee, Esquire  
Thomas Carl Watson, Esquire  
Exelon Business Services Company LLC  
Legal Department  
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Philadelphia, PA 19103