

Via e-filing

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

August 8, 2018

Re: Patti Lynn Caesar vs. Peco Energy Company
Docket No. C-2017-2605462

Dear Ms. Chiavetta,

Patti Lynn Caesar's Reply Brief, in the above matter, is attached for filing. Thank you.

Sincerely,

Patti Lynn Caesar, pro se
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cc: Honorable Darlene D. Heep, ALJ
Attorney Ward L. Smith, Counsel for PECO Energy Company
Certificate of Service

Before the
Pennsylvania Public Utility Commission

| | | |
|----------------------|---|---------------------------|
| Patti Lynn Caesar, | : | |
| Complainant, | : | |
| v. | : | Docket No. C-2017-2605462 |
| PECO Energy Company, | : | |
| Respondent | : | |

CERTIFICATE OF SERVICE

I, Patti Lynn Caesar, pro se, hereby certify that on August 8, 2018, I served a copy of my Reply Brief to PECO Energy Company in the above matter, upon all interested parties via email and mail delivery to:

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Before the

Pennsylvania Public Utility Commission

Patti Lynn Caesar, :

Complainant, :

v. : Docket No. C-2017-2605462

PECO Energy Company, :

Respondent :

Reply Brief of Patti Lynn Caesar, Complainant V. Peco Energy Company, Respondent

Presented to Honorable Administrative Law Judge Darlene D. Heep

August 8, 2018

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INTRODUCTION

This complaint was filed May 16, 2017 because of PECO's repeated threats to shut off Complainant's electricity because I was concerned about my physical health and safety by being forced to have a smart meter installed on my home. Complainant suffers from Environmental Sensitivities, including sensitivities to Radio Frequencies (RF) and Extremely Low Frequencies (ELF), together called Electro Magnetic Frequencies (EMF) or Electromagnetic Hypersensitivity (EHS). I have lived my life avoiding as much EMF as possible as well as environmental and chemical pollutants. I argued in my evidentiary hearing on February 22, 2018 and in my Brief filed on July 16th, 2018 that Electro Magnetic energy (EE) emitted by smart meters is harmful to me as it is to many people diagnosed with EHS. I am also concerned about the potential for smart meters to cause fires. However, my main concern is health and preserving my health, fearful that, if a smart meter is installed, I will become very sick and will have to return to the PUC pleading my case again. Complainant was told that the only way to protect my health and safety as well as the threat of repeated electricity termination by my energy supplier, PECO Energy Company, was to file a formal complaint with the PUC against PECO.

PECO responded in their Brief submitted on July 13, 2018 that I did not prove any of my claims by a preponderance of the evidence. They also state in their Main Brief that PECO provided "substantial, persuasive evidence that its AMI meters will not cause or contribute to any adverse health effects or exacerbate any illness." Additionally PECO claims in their Main Brief that PECO "has provided reasonable accommodations to address concerns about her health. PECO also has demonstrated that Ms. Caesar's privacy concerns are not well founded; and that AMI meter do not impose an unreasonable risk of fires. Therefore, Ms. Caesar's Complaint should be dismissed."

PECO's reference in their Main Brief under "Introduction" to providing me with reasonable accommodations is frankly false. There was never an attempt throughout this complaint process to discuss any acceptable accommodations (of which providing an analog meter is the accommodation I am requesting for medical reasons). Furthermore, expert testimony by Dr. Israel and Dr. Davis presented by

PECO at the evidentiary hearing should be discarded and not considered because it was illegally presented by a non Pennsylvania attorney Thomas Carl Watson. Five months after my evidentiary hearing (and on the day I submitted my Main Brief), PECO attorney Ward Smith served a motion Pro Hac Vice to sponsor and admit Attorney Watson as a non PA attorney in my case which was closed on February 22, 2018. This motion violates PA code and PA Bar admission rules (as outlined in my 8/5/18 Answer to PECO's Motion to Admit Counsel Pro Hac Vice).

I am arguing in this Reply Brief that PECO does not provide substantial, persuasive evidence that Advanced metering Infrastructure (AMI) meter will not cause adverse health effects or exacerbate my illness. According to 66 Pa. C.S. §1501. Public Utilities are statutorily obligated to provide "safe and reliable" service to its customers. PECO has not provided a preponderance of evidence that AMI smart meters are safe.

Furthermore, according to PA Code 56.111 General provision, "A public utility may not terminate service, or refuse to restore service, to a premises when a licensed physician or nurse practitioner has certified that the customer or an applicant seeking restoration of service under § 56.191 (relating to payment and timing) or a member of the customer's or applicant's household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service. The customer shall obtain a letter from a licensed physician verifying the condition and promptly forward it to the public utility. The determination of whether a medical condition qualifies for the purposes of this section resides entirely with the physician or nurse practitioner and not with the public utility. A public utility may not impose any qualification standards for medical certificates other than those specified in this section.

I requested in my Main Brief, my answer to the motion to to admit Counsel Pro Hac Vice, and in this Reply Brief that the court Strike all testimony and omit opinions from the professional expert witnesses presented by PECO (specifically Dr. Christopher Davis and Dr. Mark Israel). Without this testimony, PECO does not prove beyond a preponderance of the evidence that AMI meters do not cause health and

safety harm to me. Furthermore, it is PECO's responsibility to provide safe energy service to their customers and there has not been a preponderance of the evidence by PECO that AMI smart meters are safe. Therefore, I am asking for the court to grant me accommodations for medical necessity to have an analog meter.

Correction to PECO's Background and Procedural History in their Main Brief

On Page 3, PECO states "At approximately midnight on June 1, 2018, Ms. Caesar sent an email to the Administrative Law Judge and PECO requesting an additional extension..." This date is incorrect. This email was sent on July 1, 2018.

Proposed Findings of Fact-Testimony of Patti Lynn Caesar

One of the reasons given for the request to Judge Heep for the extension cited above on July 1, 2018 was "As you may be aware by an earlier e-mail I sent, I was unable to afford to pay for my transcript nor could I leave my work with clients in my counseling practice to drive to Harrisburg to gain access to my case. I have been working on my brief with this handicap, but, alas, I miscalculated how much time this would take to produce my brief under these circumstances. I am working around the clock but, sadly, I wasn't able to finish. I would like to ask for your consideration to give me more time to prepare my brief. Thank you very much and my apologizes to Judge Heep and Peco and Attorney Smith for this last minute request." Therefore, all proposed findings of fact from the transcript presented in PECO's main brief are not available to me to confirm. I will comment, however, on the following citations;

#19 Attorney Smith references one of my exhibits the National Institute of Building Sciences report entitled "Indoor Environmental Quality (IEQ)." He refers to accommodative measures noted in the document to respond to concerns about the possible health effects of EMF's. One of the accommodations

referenced by Attorney Smith is “2) increasing workers’ distance from EMF sources.” This solution was introduced back in 2005. Since that time, there is more available scientific data (which I presented in my Main Brief – asking for authentication from the Frompovitch case) from electrical engineering expert Mr. William Bathgate that proposes a more exact solution to fully remove smart meters and restore analog meters. This research is of particular concern to those of us with EHS. I included this IEQ exhibit to highlight several issues. This information is both critical to the health and safety of people in buildings, but also relevant to people with EHS. The Architectural and Transportation Barriers Compliance Board (U.S. Access Board) who initiated the IEQ study recognizes electromagnetic sensitivity as a real and potential disability requiring specific accommodations. “The Board recognizes that multiple chemical sensitivities and electromagnetic sensitivities may be considered disabilities under the ADA if they so severely impair the neurological, respiratory or other functions of an individual that it substantially limits one or more of the individual’s major life activities.”

#20, 21, 22 Attorney Smith references the letter I received from my medical doctor, Dr. Rakel who stated that I suffer from EHS and should have an analog meter to reduce EMF in my environment. He cites many lines from the transcript in which my medical doctor never performed a diagnostic exam. As stated in my Main Brief

“On July 24 2017, Complainant presents letter to PUC (see attached Exhibits A.1-A.6) from my Physician to reveal my Electromagnetic Hypersensitivity (EHS) and request that PECO make accommodations for me to live free from an AMI smart meter. Complainant has been treated for five years by licensed M.D., Dr. Birgit Rakel, Assistant Professor of Integrative Medicine at the Myrna Brind Center of Integrative Medicine at Jefferson. She is Board Certified in Family Practice. Complainant and Dr. Rakel are both practicing clinicians in their respective fields and are well aware that there are no lab tests to determine EHS. This information is typically elicited through a clinical interview as well as

through the doctor/patient relationship in which the Complainant's health history has become known to Dr. Rakel over the course of 5 years. At the Evidentiary Hearing, PECO's Attorney Smith tried to discredit this medical letter provided by Dr. Rakel because he found a variation of this "form" letter on the internet. There are many students pursuing higher education who have been asked to write their own letters of recommendation by their professors, for example, and the professor will sign it obviously if in agreement. I did present a variation of this letter to Dr. Rakel after a lengthy discussion of my concerns. She held on to the letter for many weeks because she wanted to study the contents and further discuss. She is a busy physician with a very full clinical practice and was more than happy to sign the letter to which she read and agreed was in my best interests and part of the whole healthy and self-protective lifestyle to which she and I work collaboratively to try to achieve. " PECO relied on the expert testimony of Dr. Israel (a researcher who admitted that he is not a clinical practitioner and whose testimony was admitted illegally by a non-PA attorney, Thomas Carl Watson, esq.). There is no validity to the argument that Dr. Rakel cannot render her clinical decision about my condition through a diagnostic interview. Furthermore, as stated in my Main Brief, "Neither a utility company nor the commission has authority nor mechanism to provide medical evaluations. They are not equipped to regulate medical treatments to determine if disease affects individual patient safety considerations. A treating physician with an active medical license who writes a letter and explanation of a medical safety need for their patient is sufficient evidence to document that a patient has a medical reason to invoke a medical safety exception under C.S. § 1501."

Additionally, Dr. Rakel references in her medical letter about my EHS that The Board of the American Academy of Environmental Medicine (AAEM) has adopted a resolution calling for a halt to wireless smart meters. This represents the first national physician's group to look in-depth at wireless health risks; and to advise the public and decision-makers about preventative public health actions that are necessary. The Board of the American Academy of Environmental Medicine (January 19, 2012) "opposes the installation of wireless smart meters in homes and schools based on a scientific assessment

of the current medical literature. Chronic exposure to wireless radiofrequency radiation is a preventable environmental hazard that is sufficiently well documented to warrant immediate preventative public health action. “Hence, we call for:

* An immediate moratorium on smart meter installation until these serious public health issues are resolved. Continuing with their installation would be extremely irresponsible.

* Modify the revised proposed decision to include hearings on health impact in the second proceedings, along with cost evaluation and community wide opt-out.

* Provide immediate relief to those requesting it and restore the analog meters.” (position paper sent to Proposed Decision of Commissioner Peevey BEFORE THE CA PUBLIC UTILITIES

COMMISSION

Additionally, Dr. Rakel presented in her medical letter that the classification of RF exposure as a “possible carcinogen” by The International Agency for Research on Cancer (“IARC”), which is part of the World Health Organization.

#23 Under Proposed Findings of Fact, Attorney Smith references my working at my professional building 20 hours a week. As explained in my Main Brief, I have been meeting with clients in my home since March 1, 2018 until I can secure an acceptable location. Therefore, this is more urgent that I am free of EMF since I am currently living and working from home.

Testimony of Glenn Pritchard

#26 Mr. Pritchard’s testimony of the effect of my office building AMI meters is no longer relevant.

#28 Mr. Pritchard comments on the type of AMR meter at my residence. Although I don't have the opportunity to review the transcript, I took notes and questioned Mr. Pritchard about whether he had access to the serial number of my meter. He did not have that information so he was speaking in generalities, not specifically about my meter. As I explained in my Main Brief "There is some confusion regarding the type of meter and extent of RF power output coming from my current meter that, previously, I thought was an analog meter because of the "look" of the old Landis and Gyr-Cellnet meters (the meter that PECO is trying to replace with an AMI smart meter). I was not able to get this clarified at the Evidentiary hearing nor was I able to get clarity from a phone call on February 22, 2018 I made (from the Evidentiary hearing courtroom during a break) to Dr. Axel Rodriguez from the Chief Equipment authorization and compliance Branch of the FCC. He stated "our records pre-1999 do not contain technical details." I provided this information at the hearing on February 22, 2018. If Dr. Rodriguez from the FCC couldn't give me specific information about my current meter, Mr. Pritchard certainly can't comment about my meter. The only information I was able to discern was that my meter transmits only, and PECO is unable to receive the kind of data that a smart meter would provide them about my personal electricity usage in my home..." I clearly now know that I do not possess an analog meter and am looking to have my current meter replaced with a true analog meter for medical reasons.

Testimony of Christopher Davis, Ph.D.

I requested in my Main Brief and in my Answer to PECO's Motion to Admit Counsel Pro Hac Vice (5 months after the hearing on February 22, 2108 and after which the record was closed) that Dr. Davis' testimony be stricken from the record. Attorney Watson, who is not a practicing PA attorney presented Dr. Davis' testimony which is illegal.

Testimony of Mark Israel, M.D.

I requested in my Main Brief and in my Answer to PECO's Motion to Admit Counsel Pro Hac Vice (5 months after the hearing on February 22, 2108 and after which the record was closed) that Dr. Israel's testimony be stricken from the record. Attorney Watson, who is not a practicing PA attorney presented Dr. Israel's testimony which is illegal.

PECO's Argument

IIB (page 20) Accommodations

Attorney Smith refers to Accommodations in a very different manner than what I am proposing in my request to the PUC. He cites the Kreider Order "It may be possible, for example, for the Respondent to install the smart meter in a different location other than outside of the Complainant's bedroom or to use a different type of smart meter at this Complainant's home."

I cited in my Main Brief The PUC ruled final decision in the Frompovitch v. PECO Energy Company case (C-2015-2474602) in which they said:

"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." I then stated "Therefore, I am asking for the following 3 experts presented or cited in other hearings to authenticate the research/exhibits I submitted at my evidentiary hearing and to support my claim that the smart meter PECO is forcing me to have installed at my house is unreasonable for me to accept the risk given my EHS (and could cause me harm). "One of these professionals is Mr. Bathgate who is a scientific expert in the

areas of electrical engineering and in the design and measurement of power systems and radio design. As cited in my Main Brief, he states “A secondary antenna is created when a primary antenna sends electromagnetic energy to another wire, and the other wire conducts the RF. This is the same antenna design principle used when attempting to design an antenna to have more power directed in a particular direction but can happen as an unintentional effect. (Tr. 4/11 at 389:20-390:1-10). .Mr. Bathgate testified how the antenna of the AMI meter is in close proximity to other wires within the meter box, and this can work to create a secondary antenna effect on other household wires and ground (Tr. 4/11 at 389:17-390:4). Mr. Bathgate testified that he has seen the secondary antenna effect specifically occur with other smart meters, and that removal of the smart meter radio makes the effect go away. (Tr. 4/11 at 391:1-3) Mr. Bathgate testified that simply moving the AMI meter to a pole far from the house will not prevent the secondary antenna effect (Tr. 4/11 at 400:22-25-401:1) (Alexia L. McKnight and Lawrence K McKnight v. PECO Energy Company Docket No. C-2017-2621057, page 9-10). So, accommodations to move an AMI smart meter further from the house is not an acceptable solution to prevent safe service free from EMF that is harmful to me with EHS. This is newer scientific information that wasn’t available to the IEQ recommendations that, like PECO, propose proximity from a smart meter as an acceptable accommodation. This solution does not provide safe service which Peco is required to create for their customers. I am requesting an analog meter as the only solution to resolve my health concerns.

I also introduced the testimony of Dr. Marino (Main Brief of Complainant Laura Sunstein Murphy v. PECO Energy Company C-2015-2475726 Page 27) and Dr. Carpenter (referenced by STATE OF NORTH CAROLINA UTILITIES who is now giving customers who submit notarized Physician’s letters with a medical waiver opt out of AMI smart meters). I included their testimony from these other cases to authenticate my exhibits about the concern of EMF being carcinogenic and posing significant health concerns, especially to people with EHS. Furthermore, the Frompovitch case paved the way for other cases experts to authenticate research I presented in my exhibits that has more credibility than just “hearsay.

Conclusion

I am a 63-year-old woman who is trying to live a healthy life and protect my home environment which is my sacred place now for personal and occupational use. Given my EHS and my environmental and chemical sensitivities, I have created a lifestyle to enhance health. I am entitled to safe and reasonable electrical service without dangerous RF in my home from smart meters that have not been proven to be safe. I have presented a letter from my medical doctor describing my EHS and the need for me to live free of EMF. Through the Frompovitch case to authenticate my exhibits, I have introduced experts presenting in other cases supporting the risk factors and carcinogenic possibilities of AMI meters. Although I have not yet done an exhaustive study on other states practices, the recent North Carolina PUC-OPT out for medical reasons is a viable solution to the increasing number of cases that are coming before the PUC. I request that the PA PUC adopt the same AMI smart meter opt out regulations that North Carolina PUC ordered: any sensitive customer with a physician's letter may opt out of AMI metering and will be provided safe metering for them at no additional fee. I am requesting an accommodation under the American Disabilities Act to have an analog meter for my EHS. It was been presented that EHS is considered a disability under the ADA. Accommodations would be appreciated so that I don't have to get sick. I realize that my situation may be different from some of the other cases before the court. My heart breaks for those people suffering the extreme effects of EHS and know that relief is all that is being asked through deserved medical accommodations. I, however, don't believe I need to be severely ill with my EHS to warrant the accommodations I deserve. EHS occurs on a spectrum. I am just trying to stay as healthy as I can for as long as possible as I am aging.

I am questioning whether a government agency has the authority to expose a person to electromagnetic energy against their wishes and against the recommendation of their physician. This would violate the due process clause of the 14th Amendment of the Federal Constitution as well as the due process protections in Article 1, Section 11 of the Pennsylvania State constitution.

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

The Commission must decide if the smart meters PECO seeks to impose on the Complainants are “safe” and “reasonable” given the Complainants’ states of health and given the medical opinions of the Complainants’ treating physicians.

The other factor to consider is not just “safety” but “reasonable service.” Based on the evidence presented regarding these Complainants and the extent and bases of their concern for their safety, health, and wellbeing, the forced installation of smart meters on our property is unreasonable. The Commission should defer to the judgment of Complainants and their treating physicians. It lacks the authority to override the decision of these medical professionals.

That the Commission compel PECO to provide accommodations for Complainants pursuant to Pa. C.S. 66 Section 1501;

That the Commission compel PECO to provide electrical service to Complainants at their homes without requiring the installation of a device that emits radio frequency electromagnetic energy. A reasonable solution would be to install an analog meter.

Thank you for your consideration.

Respectfully submitted,

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Dated: August 8, 2018