

Joanne M. Fiorito
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October 24, 2018

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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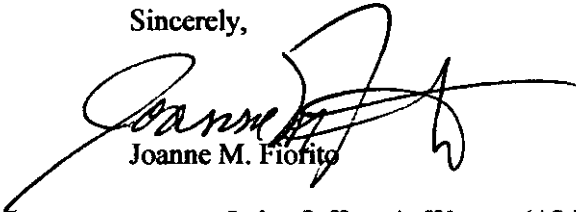
Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA 17120

Re: Submittal of Exceptions to the decision Docket No. C-2017-2610125

Dear Secretary Chiavetta:

Enclosed please find the Exceptions of Joanne M. Fiorito with regard to the above referenced matter.
Copies are being served in accordance with the attached Certificate of Service.

Sincerely,



Joanne M. Fiorito

cc: Judge Jeffrey A. Watson (ALJ)
Office of Special Assistants (OSA)
Margaret A. Morris, Esq.
File

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joanne M. Fiorito

v.

Pennsylvania Electric Company

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:
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:

C-2017-2610125

EXCEPTIONS OF
Joanne M. Fiorito

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OCT 30 2018

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Joanne M. Fiorito, Pro Se
173 Brookside Road
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Date: October 24, 2018

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2. The ALJ defined this hearing as an Administrative Tribunal, which is not a court since the Complainant’s transcript lacks the section where Joanne M. Fiorito was sworn in, no mention of it at all. Furthermore, supposed hearing trial Prima facie evidence was thrown out based solely on the fact that both the judge and Penelec’s lawyer claimed the evidence as hearsay, and lastly, I was denied the right of being considered as an Expert (Complainant Tr. 144 lines 5 – 10, Complainant Tr. 171 lines 16 – 20, Complainant Tr. 178 lines 17 - 22, and Complainant Tr. 158 lines 1 - 7 and Complainant Tr. 171 lines 7 – 9).....6

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I. INTRODUCTION

This proceeding presents the Commission with a great opportunity to correct the way it handles Tribunals while protecting an individual's rights during the process. Achieving this result would create a fair playing field for all concerned.¹ I now urge the Commission to deny the fundamentally flawed recommendations contained in the Initial Decision ("ID") issued on September 8, 2018, adjudicating the Complainant in this case. The two recommendations that should be denied are: (1) rejecting the No Opt Outs policy that the State of Pennsylvania has enforced, which violates citizens' rights, in violation of the law and the State and Federal Constitutions, and; (2) both judging and restricting the right of participants, while siding with the electric company involved in this matter.²

¹ The comments expressed in this filing represent the position of Joanne M. Fiorito (Complainant).

² Although the ID denied some of the positions held by the Complainant on other issues, Complainant has elected to limit the Exceptions at this time.

II. EXCEPTIONS

A. Exception No. 1: The ALJ Erred By Concluding That There Is No Opt Outs In Act 129 (Initial Decision – Findings of Fact (FOF) Numbers 20, Page 6, and page 20 second full sentence at the down at the top of the page)

The Complainant suggests that the State of Pennsylvania adopt the current Federal Standard – Principles of Clear Writing, so that there are no discrepancies in government policy writing.³ The word shall means either “may or must” the latter word “must” is meant to mandate, which cannot be used to negate a person’s rights. The confusion over the word arises again under the heading titled: Smart Meter Mandate page 20 line number 2. This needs to be changed because it violates an individual’s rights.

³ ID FOF Number 20 page 6

1. The ALJ presumed there are No Opt Outs based on his own opinion and that of the Respondent's response.

- (a) Black's Law Definition of the word "Shall" proves otherwise
- (b) Federal Register's Drafting Legal Documents, Principles of Clear Writing

On page 6 of the Exceptions FOF Number 20, Act 129 does not include an "opt out" provision for smart meter installation.⁴

The only place where the words Mandatory and No Opt Outs exists is on the company's Smart Meter Deployment Plan (SMDP), in a box called Assumptions, see Complainant's Exhibit G: SMDP 1.3.2 Assumptions wording, dated Revised June 16, 2014, <http://www.puc.pa.gov/pdocs/1292199.pdf>.

As is noted on ID's page 20: "(2) Electric distribution companies shall furnish Smart Meter Technology" (see footnote for pages), is incorrect, according to Black's Law Definition, <https://thelawdictionary.org/shall/>.

What is SHALL?

As used in statutes and similar instruments, this word is generally imperative or mandatory; but it may be construed as merely permissive or directory, (as equivalent to "may,") to carry out the legislative intention and In cases where no right or benefit to any one depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense. Also, as against the government, "shall" is to be construed as "may," unless a contrary intention is manifest. See *Wheeler v. Chicago*, 24 111. 105, 76 Am. Dec. 736; *People v. Chicago Sanitary Dist.*, 184 111. 597, 56 N. E. 9";: *Madison v. Daley* (C. C.) 58 Fed. 753; *Cairo & F. R. Co. v. Hecht*, 95 U. S. 170, 24 L. Ed. 423. SHAM PLEA. See PLEA. SHARE 1082 SHERIFF

Furthermore, *Drafting Legal Documents, Principles of Clear Writing* states that to impose an obligation the word "must" needs to be used.

<https://www.archives.gov/federal-register/write/legal-docs/clear-writing.html>.

⁴ Respondent's comments T. 283 – 285

B. Exception No. 2: The ALJ Did Not Answer My Question Concerning Jurisdictional Authority And Legislative Power (Complainant Tr. 49 lines 23, 24, 25 and Tr. 50 lines 1 – 19 and Tr. 63 lines 18 - 20 and Tr. 64 lines 1-4, and Complainant Tr. 41 lines 11-16)

I asked the ALJ to explain his jurisdiction but never got a straight answer.

However, he managed to turn the whole question around and made it sound as though I was questioning the entire Public Utilities Commission's (PUC) authority, which may be the case since the Public does not have the right to submit forms that allow the changing of the wording in law, without really changing it. If you were to look at the Act 129's wording, neither "Mandate" nor "No Opt Outs" are written, and that is because it takes a Legislative vote to do so. However, if I and others were industry, and since the House and Senate handed off their powers illegally to the PUC⁵, then the Public would have a chance to submit a Plan form using an Assumptions box to get the Commissions (that are supposed to be protecting the Public) to bend to the will of industry, and violate individuals' rights. This needs to change.

⁵ Complainant Exhibit E: Legislative Journal --- page 2326

I do not understand why we are in such a rush now at this eleventh hour to try to sell our constituency on the idea that we did something big when in fact we have done nothing except turn over our responsibility to the Public Utility Commission. (Mr. Reichely October 8, 2008)

1. **The ALJ dismissed my case (Initial Decision – Exceptions ORDER Page 33)**
 - (a) **Request a copy of his Oath of Office and Bond Paperwork.**
 - (b) **Enclosing an R-T-K form requesting a response to B. 1. (a) above.**
 - (c) **Senatus Consultum, meaning: Having the full force of law, Black’s Law
Definition⁶**

⁶ In Roman law. A decision or decree of the Roman senate, having the force of law, made without the concurrence of the people. These enactments began to take the place of laws enacted by popular vote, when the commons had grown so great in number that they could no longer be assembled for legislative purposes. Mackeld. Rom. Law

2. **The ALJ defined this hearing as an Administrative Tribunal, which is not a court since the Complainant's transcript lacks the section where Joanne M. Fiorito was sworn in, no mention of it at all. Furthermore, supposed hearing trial Prima facie evidence was thrown out based solely on the fact that both the judge and Penelec's lawyer claimed the evidence as hearsay, and lastly, I was denied the right of being considered as an Expert (Complainant Tr. 144 lines 5 – 10, Complainant Tr. 171 lines 16 – 20, Complainant Tr. 178 lines 17 - 22, and Complainant Tr. 158 lines 1 - 7 and Complainant Tr. 171 lines 7 – 9)**

(a) **Title 18 USC §§ 241 and 242, Conspiracy Against Rights
and Deprivation of Rights Under Color of Law**

<https://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/html/USCODE-2011-title18-part1-chap13-sec241.htm>

<https://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/html/USCODE-2011-title18-part1-chap13-sec242.htm>

(b) **US Constitution XIV Amendment, which protects an individual's rights**

<https://constitutioncenter.org/interactive-constitution/amendments/amendment-xiv>

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(c) **Coram Non Judice, meaning: In the presence of a person not a judge, Black's Law
Definition**

<https://thelawdictionary.org/coram-non-jndice/>

In presence of a person not a judge. When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be coram non judice, and the judgment is void. Manufacturing Co. v. Holt, 51 W. Va. 352, 41 S. E. 351

- (d) **Tribunal definition: judicial court by a bench of judges, not a sole individual making a decision. In Roman law, Black's Law Definition**

<https://thelawdictionary.org/tribunal/>

The seat of a judge; the place where he administers justice; a judicial court: the bench of judges. See Foster v. Worcester, 10 Pick. (Mass.) 81. In Roman law. An elevated seat occupied by the pretor. when he judged, or heard causes in form. Originally a kind of stage made of wood in the form of a square, and movable, but afterwards built of stone in the form of a semicircle. Adams, Rom. Ant. 132, 133.

- (e) **Prima Facie, meaning: strong evidence, Black's Law Definition**

<https://thelawdictionary.org/prima-facie/>

Lat. At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure ; presumably. A litigating party is said to have a prima facie case when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it. A prima facie case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced on the other side. In some cases the only question to be considered is whether there is a prima facie case or no. Thus a grand jury are bound to find a true bill of indictment, if the evidence before them creates a prima facie case against the accused; and for this purpose, therefore, it is not necessary for them to hear the evidence for the defense. Mozley & Whitley. And see State v. Hardelein, 109 Mo. 579, 70 S. W. 130; State v. Lawlor, 28 Minn. 210, 9 N. W. 698.

- (f) **Hearsay evidence, meaning: the evidence rests mainly on the veracity and competency of other persons, Black's Law Definition**

<https://thelawdictionary.org/hearsay/>

A term applied to that species of testimony given by a witness who relates, not what he knows personally, but what others have told him, or what he has heard said by others.

Ilopt v. Utah, 110 U. S. 574, 4 Sup. Ct. 202. 28 L. Ed. 202; *Morell v. Morell*, 157 Ind. 170, 00 N. E. 1002; *Stockton v. Williams*, 1 Doug. (Mich.) 570; *People v. Kraft*, 01 Hun, 474, 30 N. Y. Supp. 1034. **Hearsay evidence is that which does not derive its value solely from the credit of the witness, but rests mainly on the veracity and competency of other persons. The very nature of the evidence shows its weakness, and it is admitted only in specified cases from necessity. Code Ga. 1882**

- (g) **Expert, meaning: a person had knowledge and skills over the years in a subject, Black's Law Definition**

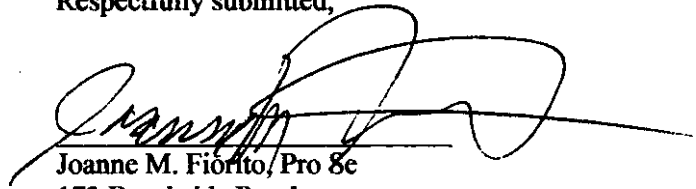
<https://thelawdictionary.org/expert/>

A person that had knowledge and skills learned over years of experience in a subject. Their opinion can be helpful in problem solving. Refer to expert evidence.

III. CONCLUSION

For the reason discussed above, Complainant urges the Commission to: not close my case as the sole "judge" suggests, and inform the electric company that a person's rights are not to be diminished by Penelec or the PUC.

Respectfully submitted,



Joanne M. Fiorito, Pro Se
173 Brookside Road
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(570) 836-1734

Date: October 24, 2018

CERTIFICATE OF SERVICE

I hereby certify that this day I have served a copy of Joanne M. Fiorito's Exceptions upon the persons listed below, in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

Via Email

The Honorable Jeffrey Watson
Administrative Law Judge
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jeffwatson@pa.gov

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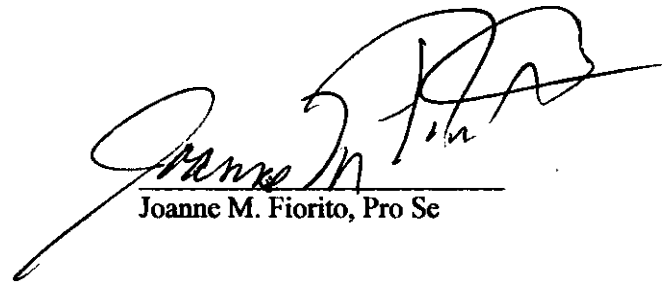
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Dated: October 24, 2018

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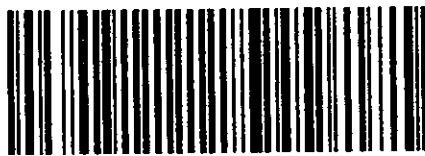
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Joanne M. Fiorito, Pro Se



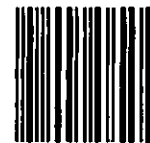
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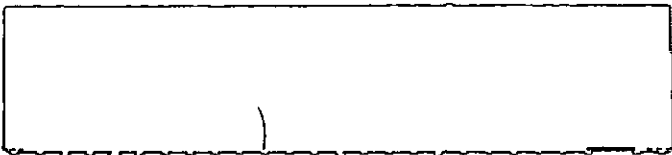


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