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February 15, 2019

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

Re: Nancy and James Colbert v. PECO Energy Company
Docket No. C-2016-2561993

Dear Secretary Chiavetta:

By Secretarial Letter dated February 15, 2019, the Commission issued the Initial Decision in this matter. Exceptions are due on or before March 7, 2019.

PECO *Exceptions* are attached for filing.

Very truly yours,



Ward L. Smith
Counsel for PECO Energy Company

WS/adz
Enclosures

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

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Nancy and James Colbert :
 :
 v. : **Docket No. C-2016-2561993**
 :
 PECO Energy Company :

NOTICE TO PLEAD

To: Nancy and James Colbert

Pursuant to the Secretarial Letter issued in this case on February 15, 2019, you may respond to these Exceptions if you wish to do so. If you do wish to respond, you should label your response as your "Reply Exceptions" and file and serve them by March 18, 2019.

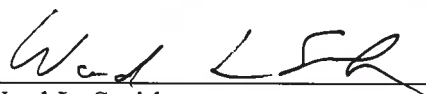
File with:
Rosemarie Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:

Administrative Law Judge Darlene Heep
Pennsylvania Public Utility Commission
801 Market Street
Philadelphia, PA 19107
dheep@pa.gov

Ward L. Smith, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103
ward.smith@exeloncorp.com

Dated at Philadelphia, PA, February 15, 2019


Ward L. Smith

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION


Nancy and James Colbert :
 :
 v. : Docket No. C-2016-2561993
 :
 :
 PECO Energy Company :

CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that on February 15, 2019, I served a copy of PECO Energy Company's *Exceptions*, upon all interested parties via overnight delivery to:

Nancy Colbert
142 Pennsylvania Avenue
Phoenixville, PA 19460

Dated: February 15, 2019



Ward L. Smith
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
Phone: (215) 841-6863
Fax: 215.568.3389
Ward.Smith@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY AND JAMES COLBERT	:	
Complainant	:	
v.	:	DOCKET NO. C-2016-2561993
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

EXCEPTIONS OF PECO ENERGY COMPANY

By Secretarial Letter dated February 15, 2019, the Commission issued the Initial Decision (“I.D.”) of Administrative Law Judge Darlene Heep in this matter. Exceptions to the I.D, if any, are due within 20 days (in this case, by March 7, 2019), with Reply Exceptions due on Monday, March 18, 2019.

The I.D. granted the Colberts’ Petition to Withdraw and marked the docket closed. PECO supports those actions as the appropriate next steps to close this proceeding. With that said, on December 27, 2018, PECO filed a Motion to Dismiss *With Prejudice* (a copy of which is attached to these Exceptions). In that Motion (¶¶33-42), PECO demonstrated at length that the dismissal in this case should be *with prejudice*.

The I.D. (pp. 4-5) notes that PECO filed its Motion to Dismiss, but does not address the arguments raised by PECO. The I.D. does not state that the dismissal is with prejudice.

PECO respectfully submits that, for the reasons set forth in its Motion to Dismiss, the dismissal in this case should be with prejudice. The Colberts had every opportunity to proceed with a hearing in this matter and chose not to do so after being fully informed of the consequences of refusing to attend the hearing. PECO already prepared for hearing once, and any future complaint would be prejudicial to PECO (and the Commission) because it would

require them to prepare for hearing a second time. In such a situation, dismissal *with prejudice* is appropriate under prior Commission Orders (which are cited and discussed in detail in PECO's Motion to Dismiss).

PECO therefore respectfully requests that the Commission adopt the I.D. in its dismissal of the Complaint, but that the Commission further state the dismissal is with prejudice and that the Colberts are banned from filing any future complaints on the same subject matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Ward L Smith".

Ward Smith, Assistant General Counsel
Shawane Lee, Assistant General Counsel
2301 Market Street, S-23
Philadelphia, PA 19103
215-841-6863
ward.smith@exeloncorp.com
Counsel for PECO Energy

February 15, 2019

Legal Department
2301 Market Street / S23-1
Philadelphia, PA 19103

Direct Dial: 215.841.6863

December 27, 2018

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

Re: Nancy and James Colbert v. PECO Energy Company
Docket No. C-2016-2561993

Dear Secretary Chiavetta:

Attached for filing is PECO Energy Company's Motion to Dismiss with regard to the above referenced matter.

Very truly yours,



Ward L. Smith
Counsel for PECO Energy Company

WS/ld
Enclosures

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

NANCY AND JAMES COLBERT :
Complainant :
v. : **DOCKET NO. C-2016-2561993**
: :
PECO ENERGY COMPANY :
Respondent :

NOTICE TO PLEAD

To: Nancy and James Colbert

Pursuant to 52 Pa. §§ 1.22 and 5.61, you may file an Answer to this Motion. Said answer is due within 20 calendar days, (In this case, by Wednesday, January 16, 2019), unless the Presiding Officer sets a different reply period. If you do not file an Answer the Motion may be decided without further input from you. If you choose to file an Answer, you must serve a copy on PECO's counsel and file a copy with the Commission's Secretary. You must also provide a copy to the Administrative Law Judge.

File with:
Rosemarie Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:

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

Ward L. Smith, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, December 27, 2018.

A handwritten signature in black ink, appearing to read "Ward L. Smith", written over a horizontal line.

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY AND JAMES COLBERT	:	
Complainants	:	
v.	:	DOCKET NO. C-2016-2561993
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**MOTION OF PECO ENERGY COMPANY
STATING THAT IT DOES NOT OBJECT TO THE COLBERTS' REQUEST TO
CANCEL THE SCHEDULED FEBRUARY EVIDENTIARY HEARING
AND
REQUESTING THAT THE COMMISSION DISMISS THE COMPLAINT, WITH
PREJUDICE, FOR LACK OF PROSECUTION**

On November 5, 2018, the Colberts sent a letter to the Commission in which they stated, in material part (emphasis added):

We are in receipt of correspondence calling for a hearing in February 2019. Apparently, the puc did not receive or is ignoring our October 19, 2018 correspondence, so it is now resent under certified mailing. The puc will read or reread that **we will no longer attend any hearing** . . . To summarize, **there is no need for another hearing**

PECO would prefer to proceed with the evidentiary hearing as scheduled in February.

But it is expensive and time-consuming to prepare for and appear at the evidentiary hearing in an AMI/health case so, if the Colberts truly do not intend to appear at the evidentiary hearing, the hearing should be cancelled. And, **if the hearing is cancelled because the Colberts do not wish to have a hearing, then this complaint should be dismissed with prejudice so that PECO can proceed with installation of the AMI meter.**

If, after reading this Motion, the Colberts conclude that they would like to proceed with the evidentiary hearing as scheduled in February, they can simply let PECO and the Commission know that, and PECO will withdraw this Motion and continue to prepare for hearing.

I. BACKGROUND

1. On August 17, 2016, PECO was served with a formal complaint in this matter.

2. On September 27, 2016, PECO filed a Motion for Judgment on the Pleadings.

3. On February 8, 2017, Administrative Law Judge Joel H. Cheskis issued an Initial Decision denying PECO's Motion for Judgment and referring the docket to the Office of Special Assistants "for any further action."

4. Sometime prior to February 1, 2018, the Colberts separately sent, to the Commission and PECO, a "Notice of Fault and Opportunity to Cure; Notice of Liability Regarding Trespassing Technology."

5. On February 1, 2018, the Commission sent a letter to the Colberts in which the Commission stated that the Colberts' Notice is "a legal nullity to which no formal response is required. Your Notice is not a formal complaint and will not be treated as a formal complaint by the Commission. To the extent that you believe your Notice provides you with certain legal rights, you should seek competent legal representation before taking any further action." A copy of the Commission's letter is attached as Exhibit A.

6. On February 22, 2018, PECO sent a letter to the Colberts in which it stated that "PECO has reviewed the 'Notice' documents and concludes that these documents do not establish any legal rights." A copy of PECO's February 22, 2018 letter is attached as Exhibit B.

7. On March 28, 2018, PECO received another copy of the "Notice" documents, dated March 24, 2018, from the Colberts.

8. On April 2, 2018, PECO sent a letter to the Colberts in which it again advised that "PECO has reviewed the 'Notice' documents and concludes that these documents do not establish any legal rights." A copy of PECO's April 2, 2018 letter is attached as Exhibit C.

9. On October 4, 2018, the Commission issued an Order assigning this matter to the Office of Administrative Law Judge for evidentiary hearings.

10. On October 17, 2018, the Commission issued a Status Conference Notice stating that, on October 26, 2018, the parties were to join a telephone conference with the ALJ to discuss the status of the case. The notice was corrected and re-issued on October 18, 2018, with the same October 26 date for the status conference call.

11. On October 19, 2018, the Colberts sent a letter to the Commission¹ in which they stated (emphasis added):

257 years after the British Commander Cornwallis found his army surrounded on land and sea by American and French, realized the monarchy would no longer be able to infringe upon inalienable rights, and surrendered at Yorktown, VA. One nation under God, by Rule of LAW – not men – completed by the Bill of Rights, was born.

Dear Gladys Brown, acting as Chair of the PENNSYLVANIA PUBLIC UTILITY COMMISSION and as the woman:

*We no longer request the right to a public hearing to be denied with prejudice to our faces, now that we have filed the Notices of Liability. You do not have subject matter jurisdiction over it. MODUS ET CONVENTIO VINCUNT LEGEM.*²

12. On October 22, 2018, Administrative Law Judge Heep issued a Prehearing Order providing contact/call-in information for the October 26 status conference.

¹ PECO was not served with a copy of the October 19, 2018 letter and it does not appear on the Commission's website. PECO therefore is not able to determine when the Commission received the Colberts' October 19 letter. However, the Colberts attached a copy of the October 19 letter to their subsequent November 5, 2018 letter, which is discussed below. PECO accepts the Colberts' statement that they sent this document to the Commission on or about October 19, 2018. PECO notes that the copy of the October 19 letter provided by the Colberts does not contain any identifying information such as a caption or docket number, which may explain why it was not posted to the Commission's website for this docket.

² Broadly: "Manner and agreement overrule the law."

13. On October 23, 2018, in preparation for the scheduled conference status call, PECO filed three documents: (1) a notice of appearance for its inside lead counsel, Ward Smith; (2) a motion to admit its external counsel, Tom Watson, *pro hac vice*; and (3) its Set I Discovery, which was comprised of nine questions regarding the Colberts' health claims. (Generally, PECO's Set I Discovery asks the Colberts to identify with greater specificity the adverse health effects that they claim will occur or have occurred; inquires whether Mrs. Colbert or any member of her household has any of those health effects or if she claims that installation of a PECO AMI meter will cause her or a family member to have such adverse health effects; and further inquires whether she has any documentary proof (medical records or otherwise) in support of such claims.)

14. Instead of participating in the scheduled October 26, 2018, status conference call, on that date the Colberts sent a letter, nominally addressed to individuals at the Commission (including Your Honor) and PECO³. The October 26 letter did not explicitly request that the February hearing be cancelled, but did express displeasure with PECO's October 23 filings and the Commission's procedures:

This document notifies the above-named individuals – who once again engaged in lies, deceit, trickery and hate for humanity as evidenced in their latest round of documents sent to Nancy Colbert less than five days before a “hearing” to serve their own interests – have had their actions recorded in the Court of Universal Law where there exists no lies, deceit, trickery and hate for humanity.

The above-named individuals should be aware that what they have hidden will be revealed in the Court of Universal Law where truth, honesty, authenticity and love overrules.

³ The receipt date stamped on the face of the document by the Chairman's office shows that it was received by the Commission on October 31, 2018. The Colberts did not serve PECO with the October 26, 2018 letter. PECO first became aware of the October 26, 2018 letter on November 1, 2018, when the Commission served it on PECO and issued a Secretarial Letter to cure the Colberts' *ex parte* communication.

The above-named individuals might want to consider what is at stake by continuing their illicit actions under the Law that settles all matters with results that turn everything upside down – emptying what must be, beyond the clutch of those filling for their own gain.

15. On October 26, ALJ Heep convened the scheduled conference call. PECO participated; as noted, the Colberts did not.

16. On November 1, 2018, the Commission issued a Hearing Notice in which it scheduled the evidentiary hearing in this matter for February 12-13, 2019.

17. On November 1, 2018, PECO was served for the first time with the Colberts October 26, 2018 letter.

18. On November 2, 2018, the date for the Colberts to object to PECO's Set I Discovery passed, without objection.

19. On November 5, 2018, the Colberts sent a letter to the Commission.⁴ In that letter the Colberts stated (emphasis added):

We are in receipt of correspondence calling for a hearing in February 2019. Apparently, the puc did not receive or is ignoring our October 19, 2018 correspondence, so it is now resent under certified mailing. The puc will read or reread that **we will no longer attend any hearing** to be denied with prejudice to our faces, now that we have filed Notices of Liability which are not in puc jurisdiction. MODUS ET CONVENTIO VINCUNT LEGEM.

To summarize, **there is no need for another hearing** for yet another predetermined "lost" case in the long line of lost cases

* * *

⁴The November 5, 2018 letter was subsequently posted to the Commission's website. The receipt date stamped on the face of the document by the Secretary's Bureau shows that it was received by the Commission on November 20, 2018. The Colberts did not serve PECO with the November 5, 2018 letter. PECO utilizes the Commission's "subscription" service for the *Colbert* docket, and its records show that it first became aware of the November 5, 2018 letter on December 6, 2018, when it received a subscription notice that the November 5 letter had been posted to the Commission's website.

Please take heed: The Notice of Liability is a divinely guided document; the members of the puc and responsible peco individuals are violating The Source of Life with the harm on many levels being allowed. Members of the puc and peco will have to search their souls alone to begin to discover what this means and we pray they will do so, to realize the real individuals they were created to be instead.

20. On November 12, 2018, the date for the Colberts to provide answers to PECO's Set I Discovery passed; no answers were provided.

21. On November 20, 2018, ALJ Heep issued a Prehearing Order in which she established a procedural schedule for interim service dates prior to the scheduled February hearing. Witness reports were to be exchanged on December 17, 2018, and hearing exhibits are to be exchanged on January 19, 2019.

22. On November 26, 2018, PECO filed a Motion to Compel responses to its Set I Discovery.

23. On December 6, 2018, PECO received a Subscription Notice from the PUC informing PECO of the Colberts' November 5 letter. This was the first time that PECO was notified of the existence of either the Colberts' October 19, 2018 letter or their November 5, 2018 letter.

24. Between December 6 and December 12, 2018, counsel for PECO called the Colberts at least twice and left messages asking the Colberts to contact PECO to discuss case status and options for non-litigated resolution. On December 12, 2018, counsel for PECO sent a letter to the Colberts in which counsel requested that the Colberts contact PECO to discuss case status and options for non-litigated resolution. As of the date of this filing, PECO has not received any return communications from the Colberts.

25. December 17, 2018 was the date for the Colberts' Answer to PECO's Motion to Compel. As of the date of filing this Motion, PECO has not received a responsive pleading, and none has been posted to the Commission's website.

26. December 17, 2018 also was the date for the exchange of witness reports. On December 14, 2017, PECO served its witness reports and filed a certificate of service evidencing that service. As of the date of filing this Motion, PECO has not received any witness reports from the Colberts, nor has a certificate of service been posted to the Commission's website.

II. ARGUMENT

A. **The Colberts have clearly and unequivocally demonstrated that they no longer request an evidentiary hearing and that they will not appear at the scheduled February hearing**

27. It should be self-evident from the Background description that the Colberts have stated that they do not wish to have, and will not attend, an evidentiary hearing. But to reiterate the key sequence of events and statement by the Colberts: On October 19, 2018, the Colberts sent the Commission a letter in which they stated: "*We no longer request the right to a public hearing. . . .*" On November 1, 2018, the Commission issued a Hearing Notice in which it scheduled the evidentiary hearing in this matter for February 12-13, 2019, and on November 5, 2018, the Colberts sent a letter to the Commission in which they stated:

We are in receipt of correspondence calling for a hearing in February 2019. [We will no longer attend any hearing . . . there is no need for another hearing . . .

28. In addition, the Colberts have missed every opportunity to prepare, and to allow PECO to properly prepare, for the scheduled evidentiary hearing. Although the Colberts clearly knew about the October 26, 2018 status call, they skipped that call. They have not objected to or answered discovery and did not answer PECO's Motion to Compel. They did not exchange witness reports by the designated deadline.

B. If the Colberts are not going to attend the hearing, it would be wasteful to continue to keep the hearing on the schedule, which would require preparation by the ALJ and PECO, and the Commission thus should grant the Colberts' request to cancel that hearing

29. To be prepared for an evidentiary hearing, Your Honor must review the case file and clear your calendar for the day(s) of the scheduled evidentiary hearing. The Commission must set aside a hearing room, making it unavailable for other proceedings, and schedule a court reporter to attend.

30. To be prepared for an evidentiary hearing, PECO must finalize and provide its hearing exhibits (currently due to be exchanged on January 29, 2019), prepare for direct examination of its witnesses, and review the file of the Colberts' claims so that it can prepare cross-examination questions of them. Its witnesses must travel from New York City (Dr. Israel) and Annapolis, MD (Dr. Davis); its external counsel (Mr. Watson) must travel from Washington D.C. Travel and hotel costs would be incurred. PECO's internal team – Mr. Pritchard, Mr. Uber, Ms. Lee, and Mr. Smith – all must clear two days on their work schedules for the scheduled hearing dates.

31. If the hearing is not cancelled, all of that effort and preparation will have to occur; if the Colberts follow through on their intention to not appear, all of that effort and preparation will be wasted.

32. Unless the Colberts advise that they still want a hearing (see further discussion below), the Commission should therefore avoid that preparation and waste by granting the Colberts' pending request to cancel the hearing currently scheduled for February 12-13, 2019.

C. If the Commission grants the Colberts' request to cancel the hearing, the complaint should be dismissed for lack of prosecution

33. If the Colberts do not wish to proceed with an evidentiary hearing, then it is not possible for them to sustain their burden of proof and prevail in this proceeding. Earlier this year, the Commission had the opportunity to opine on the proper procedure when an AMI complainant withdraws their request for an evidentiary hearing. In *Zeibari v PECO Energy Company*, C-2017-2617281 (Opinion and Order entered Aug. 2, 2018) the Zeibaris stated that they would not appear at their scheduled AMI/health hearing – in their case, due to health reasons – and that they wished to withdraw their complaint. On January 2, 2018, Your Honor issued an Initial Decision Granting Request for Leave to Withdraw Complaint. Even though the Initial Decision granted the relief that the Zeibaris requested, the Zeibaries filed Exceptions, in which they requested that the Commission rule in their favor even though an evidentiary hearing had not been held, claiming that they were not able to attend their scheduled hearing due to health issues.

34. In *Zeibari*, PECO filed Reply Exceptions in which it sought to bring the case to closure. PECO argued that (1) if the Commission were to grant relief to the Zeibaris without a hearing, that would violate PECO's due process rights; and (2) since the Zeibaris had been given a clear opportunity for an evidentiary hearing, the dismissal of their complaint should be with prejudice so that the Zeibaris could not file a new complaint at some point in the future, thus potentially further delaying installation of an AMI meter at their residence.

35. In *Zeibari*, the Commission stated that it could not rule in favor of the Zeibaris without holding an evidentiary hearing because doing so would violate PECO's due process. The Commission therefore accepted the Zeibaris' request to withdraw their complaint and closed the docket, stating (pp. 8-9, emphasis added):

Turning now to the gravamen of the Complainant's Exceptions, *it appears that the Complainant is requesting the Commission to rule in her favor and direct PECO not to install a smart meter on her property absent any type of hearing process.* In cases involving *pro se* complainants, this Commission generally takes a more lenient and liberal interpretation of its procedural requirements, acknowledging that *pro se* complainants may find it difficult to navigate through the hearing process which, in some instances, may include obligations such as responding to pre-hearing motions and testifying at an administrative hearing before an ALJ. . . . Nevertheless, *the complainants must satisfy the burden of proving their cases by a preponderance of the evidence,* consistent with Section 332(a) of the Code, 66 Pa. C.S. § 332(a). *See Zied v. PECO Energy Company*, Docket No. P-2015-2520474 (Order entered April 21, 2016).

While we generally accord *pro se* litigants a certain degree of latitude in our proceedings, there are limits to that latitude, and we must protect the due process rights of all Parties involved in a proceeding. *We cannot make a ruling in favor of one Party absent a hearing in some form. Because there are material issues of fact present in the instant proceeding, we cannot waive the Parties' rights to cross-examination or prohibit the Parties from responding to arguments made by each other.* *See Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (stating that the Commission is bound by the due process provisions of constitutional law which include "notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal"). Therefore, we cannot grant the Complainant's third and fourth Exceptions because this would deprive PECO of its opportunity to respond to the Complainant's averments and violate PECO's due process rights.

36. PECO respectfully submits that *Zeibari*, as applied to the current situation, leads to the following conclusions: (1) the Colberts have the burden of proof; (2) in order to meet that burden of proof, the Colberts would have to appear at an evidentiary hearing and present their case; (3) since the Colberts have made clear that they do not intend to appear at hearing, it is not possible for them to meet their burden of proof; and (4) the complaint should therefore be dismissed for want of prosecution.

37. Once the formal complaint is dismissed, PECO will have authority to proceed with installation of an AMI meter at the Colbert residence, or alternatively to terminate service to the Colberts for failure to allow installation of an AMI meter.

D. The dismissal should be with prejudice

38. In *Zeibari*, PECO requested that the dismissal of the Zeibaris' be with prejudice so that the Zeibaris could not "pick their own time" to re-initiate a future proceeding. The Commission denied PECO's request because the Zeibaris said that the reason that they could not attend a hearing was due to illness and because, according to the Commission, there was "some ambiguity regarding the complainants' intentions" and whether they would ever seek an evidentiary hearing. The Commission concluded (p. 9) that the illness (which was outside of the Zeibaris' control) might improve in the future, and it was consistent with due process to allow the Zeibaris a future opportunity for a hearing if and when their illness resolved:

However, we find that it is appropriate under the circumstances to permit the Complainant to withdraw her Complaint, without prejudice, *which holds open the opportunity for the Complainant to re-file her Complaint in this matter should her situation and health permit*. The withdrawal of pleadings in a contested proceeding is governed by our Regulation at 52 Pa. Code § 5.94. In pertinent part, that Regulation provides that the Commission is to consider the petition to withdraw the pleading, any answer thereto, and the public interest, in determining whether the withdrawal will be granted. *In this case, there is some ambiguity regarding the complainant's intentions*. While it appears the Complainant is seeking to keep her cause of action alive, as suggested by her handwritten annotation provided in her withdrawal letter and by her subsequent Exceptions to the ALJ's Initial Decision, it is equally apparent that the Complainant does not desire to participate in any form of a hearing. We find that granting a withdrawal without prejudice is in the public interest as it effectively addresses these ambiguities and, at the same time, protects the Parties' due process rights.

39. The elements that were material to the Commission's holding in *Zeibari* do not exist with the Colberts. The Colberts do not state that they will miss the hearing due to illness; to the contrary, they state that they will not attend the scheduled evidentiary hearing because they believe that Your Honor and the Commission have already prejudged their case without hearing any evidence. Moreover, there is no "ambiguity regarding the [Colberts'] intentions." The Colberts have sent numerous letters to the Commission stating that they do not wish to have an evidentiary hearing and will not attend such a hearing.

40. Moreover, by filing this Motion, PECO is providing the Colberts with another opportunity to remove any and all ambiguity regarding their intentions. If they wish to proceed with the scheduled February 12-13 evidentiary hearing, they can simply say that in reply to this Motion and PECO will withdraw its Motion and continue to prepare for hearing.

41. On December 20, 2018, the Commission entered Orders in three customer complaint cases in which it made clear that, when a customer is notified of a hearing and chooses not to participate, the proper procedure is to dismiss the complaint *with prejudice*. *Mimmo v PECO*, C-2018-3000900, was a reliability complaint in which the complainant missed the evidentiary hearing. ALJ Pell dismissed the complaint with prejudice, and Mr. Mimmo filed exceptions, claiming that he had been confused about whether the hearing was taking place. The Commission (p. 12) adopted ALJ Pell's Initial Decision and dismissed the complaint with prejudice, "barring the Complainant from filing another formal complaint with the Public Utility Commission raising the same issues or claims. . . ." *Harvey v PECO*, C-2018-3002514, involved a request for a payment agreement. The complainant failed to appear for hearing, and Special Agent Arnold issued an Initial Decision dismissing the complaint with prejudice. Ms. Harvey filed exceptions in which she stated that she had been admitted to the hospital the day of the hearing. PECO replied that Ms. Harvey had not presented any documentation to support her statement that she had been in the hospital, and that she could have contacted the Special Agent prior to hearing or, at a minimum, after the hearing but before the Initial Decision was issued. As with *Mimmo*, the Commission (p.12) adopted the Initial Decision, dismissed the complaint with prejudice, and barred Ms. Harvey from filing future complaints on the same subject matter. Finally, *DeMarco v PECO*, C-2017-2613087, involved a foreign wiring dispute in which the complainant did not appear for hearing, but ALJ Calvetti was able to contact the

complainant at the time and date set for the hearing. Ms. DeMarco refused to participate, stating that the case should be taken up with her realtor. ALJ Calvetti dismissed the case with prejudice, the Commission affirmed, and Ms. DeMarco filed a Petition for Rescission. The Commission denied the Petition and dismissed the complaint with prejudice, stating (p. 12, footnote omitted) that:

Consistent with our prior decisions, we agree with the ALJ's Initial Decision that dismisses the Complaint, with prejudice, due to the Complainant's failure to appear for the scheduled hearing and prosecute the Complaint. We recognize that the dismissal of the Complaint, with prejudice, may appear to be a severe sanction on the Complainant. Nevertheless, our regulations permit the imposition of sanctions where a party, after being notified, fails to appear or to be represented at a scheduled conference or hearing. 52 Pa. Code § 5.245. The Hearing Notices clearly gave the parties notice of the date and time of the hearing and the possibility of sanctions if a party failed to appear. Under the facts of this specific case, we conclude that in light the Complainant's failure to abide by the rules in the Hearing Notices and refusal to listen to the ALJ on the telephone calls made by the ALJ to her during the scheduled hearing, the appropriate circumstances do not exist for us to grant the Complainant's Petition and disturb the Commission's *August 2018 Final Order*. Therefore, we deny the Petition.

42. The Colberts' case parallels these decisions. The Colberts know about the scheduled hearing; they simply do not wish to participate in it. As in *DeMarco*, this is grounds for dismissal with prejudice; as *Mimmo* and *Harvey* make clear, dismissal with prejudice acts as a bar against filing any future complaint that raises the same issues and claims as set forth in the instant complaint.

E. The Notices do not affect the relief requested in this Motion or PECO's subsequent ability to install an AMI meter after the complaint is dismissed

43. The Colberts have made clear that, in lieu of relying upon the Commission's procedures (including an evidentiary hearing), they intend to rely upon their "Notice" documents to protect their rights and positions.

44. The Commission informed the Colberts, on February 1, 2018, that their Notice is “a legal nullity.”

45. PECO informed the Colberts, on at least two occasions, that it has concluded that the Notice(s) do not establish any legal rights.

46. In their October 19, 2018 letter the Colberts themselves allege and acknowledge that the Commission does not have jurisdiction over their Notice.

47. PECO has not sought to install an AMI meter at the Colbert residence while their formal complaint was pending before the Commission *due to the presence of that formal complaint*. If and when the formal complaint is dismissed, PECO will not consider itself bound by the Colberts’ Notice(s) and will not be subject to any legal stay of its actions. Consequently, if and when the formal complaint is dismissed, PECO will proceed with installation of an AMI meter at the Colbert residence and/or termination of service for failure to allow PECO to install an AMI meter.

F. Timing/procedure for answering this Motion

48. The Commission’s regulations, 52 Pa. Code §5.61(a)(1), establish that answers to Motions must be filed within 20 days of service of the Motion (in this case, by Thursday, January 16, 2019), unless the presiding officer orders a different time for reply.

49. Hearing exhibits in this case are due to be exchanged on January 29, 2019 and the evidentiary hearing is set for February 12-13, 2019. Consequently, if the Colberts reply by the January 16, 2019 return date for answering this Motion, that should allow Your Honor to issue an order that will timely avoid extensive (wasted) hearing preparation by the parties. PECO therefore does not request that Your Honor set an accelerated reply period.

50. With that said, if the Colberts wish to proceed with the February 12-13 hearing, or if the Colberts wish to quickly re-confirm that they do not wish to have an evidentiary hearing and will not attend it, *it would be extremely helpful if the Colberts can contact counsel for PECO as soon as possible.* In that case, PECO will take responsibility to inform Your Honor of any such communications. To that end, the Colberts can contact Mr. Smith at:

Ward.smith@exeloncorp.com

215-841-6863

PECO is also enclosing a self-addressed stamped envelope that the Colberts can use to reply in writing.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, PECO respectfully requests that, if the Colberts wish to have an evidentiary hearing, they quickly advise Your Honor and PECO, in which case PECO will withdraw this Motion and continue to prepare for the scheduled February 12-13 evidentiary hearing. However, if the Colberts do not so notify Your Honor and PECO, then PECO requests that Your Honor (a) grant this Motion; and (b) dismiss the Colberts' complaint with prejudice, stating that they are barred from filing any future complaints on the same subject matter.

Respectfully submitted,



Ward Smith, Assistant General Counsel
Shawane Lee, Assistant General Counsel
2301 Market Street, S-23
Philadelphia, PA 19103
215-841-6863
ward.smith@exeloncorp.com
Counsel for PECO Energy

December 27, 2018

EXHIBIT A

Commission Letter, February 1, 2018



EX-11011-1
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE
Ch. Corrsp.
#2018.030

February 1, 2018

Mrs. Nancy Colbert
142 Pennsylvania Avenue
Phoenixville, PA 19460

Re: Notice of Fault and Opportunity to Cure
Notice of Liability Regarding Trespassing Technology

Dear Mrs. Colbert:

Your Notice is a legal nullity to which no formal response is required. Your Notice is not a formal complaint and will not be treated as a formal complaint by the Commission. To the extent that you may believe your Notice provides you with certain legal rights, you should seek competent legal representation before taking any further action.

Sincerely,

Rhonda L. Daviston
Assistant Counsel

cc: Arlene MacMillan,
Chairman Brown's Office

EXHIBIT B

PECO Letter, February 22, 2018

EXHIBIT B



An Exelon Company

Legal Department
2301 Market Street / S23-1
Philadelphia, PA 19103

Direct Dial: 215-841-6841
Fax: 215-568-3389

February 22, 2018

VIA FIRST CLASS MAIL

James Colbert
Nancy Colbert
142 Pennsylvania Avenue
Phoenixville, PA

**Re: 142 Pennsylvania Avenue
AMI Meter Installation**

Dear Mr. and Mrs. Colbert:

I am in receipt of your "Notice of Fault and Opportunity to Cure Liability Regarding Trespassing Technology", "Notice of Opportunity to Cure" and "Notice of Fault" addressed to PECO, President and Chief Executive Officer, Craig L. Adams, dated January 27, 2018. I am responding to your notice on behalf of Mr. Adams and PECO. PECO has reviewed the "Notice" documents and concludes that these documents do not establish any legal rights.

Please be advised that PECO will not recognize any of your "Notice" documents as forming a contract or other legal right and you are on notice that any additional documents sent to PECO in this form are automatically null and void. I am returning your original documents for your records. Any additional documents forwarded to PECO in this form will be returned.

I trust this responds to your request. If you have any questions or concerns, please do not hesitate to contact me directly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawane L. Lee".

Shawane L. Lee
Assistant General Counsel, PECO Energy

Enclosures

EXHIBIT C

PECO Letter, April 2, 2018



An Exelon Company

Legal Department
2301 Market Street / S23-1
Philadelphia, PA 19103

Direct Dial 215-841-6841
Fax: 215-568-3389

April 2, 2018

VIA FIRST CLASS MAIL

James Colbert
Nancy Colbert
142 Pennsylvania Avenue
Phoenixville, PA

**Re: 142 Pennsylvania Avenue
AMI Meter Installation
PUC Docket No. C-2016-2561993**

Dear Mr. and Mrs. Colbert:

I am in receipt of your "Notice of Default and Imminent Liability Concerning Trespassing Technology", "Notice of Default," "Plain Statement of Facts" and "Affidavit of Non-Response" addressed to PECO, President and Chief Executive Officer, Craig L. Adams, dated March 24, 2018. I am responding to your notice on behalf of Mr. Adams and PECO. PECO has reviewed the "Notice" and "Default" documents and concludes that these documents do not establish any legal rights.

Please be advised that PECO will not recognize any of your "Notice" and "Default" documents as forming a contract or other legal right and you are on notice that any additional documents sent to PECO in this form are automatically null and void. I am returning your original documents for your records. Any additional documents forwarded to PECO in this form will be returned.

If this matter proceeds to an evidentiary hearing, PECO reserves the right to demand that you provide evidence to support every factual allegation made in these documents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawane L. Lee".

Shawane L. Lee
Assistant General Counsel, PECO Energy

Enclosures

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Nancy and James Colbert :
 :
 v. : Docket No. C-2016-2561993
 :
 PECO Energy Company :

CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that on December 27, 2018, I served a copy of PECO Energy Company's *Motion to Dismiss*, upon all interested parties via overnight delivery to:

Nancy and James Colbert
142 Pennsylvania Avenue
Phoenixville, PA 19460

Dated: December 27, 2018



Ward L. Smith
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
Phone: (215) 841-6863
Fax: 215.568.3389
Ward.Smith@exeloncorp.com