

PA Code 66 Section 501 regarding the Public Utility Commission Powers and Duties states:

§ 501. General powers.

(a) Enforcement of provisions of part.--In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.

(b) Administrative authority and regulations.--The commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.

(c) Compliance.--Every public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof.

Paragraph 501 (b) is clear that the powers of the PUC, although generally broad, are and must remain limited to being **consistent with the law**. **We hold that this must mean the PUC directives must comply with ALL LAW, and not merely the internal PUC interpretation of one particular act of legislation.**

In October 2008, the Pennsylvania Senate passed and then Governor Ed Rendell signed PA Act 129, an Omnibus Amendment to the PA Public Utility Code 66. Portions of the Act deal with the regulation of “Smart Meter Technology and time of use rates.” In Act 129 of 2008 (the Act), PA C.S. § 2807(f)(2) states:

(f)(2) Electric distribution companies shall furnish smart meter technology as follows:

- (i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of request.
- (ii) In new building construction.
- (iii) In accordance with a depreciation schedule not to exceed 15 years.

Controversy has arisen over the Pennsylvania Public Utility Commission’s (PUC’s) implementation of this section of the Act. As can be demonstrated by the PUC’s own Implementation Order of June 2009,¹ Met-Ed’s Smart Meter Deployment Plan,² Pennsylvania’s legislative history and various accounting and tax authorities and definitions, the PUC does not interpret the plain language of this law correctly.

Given that:

- 1) PA Act 129 does not specifically prohibit the use of Electromechanical Meters as legal devices for measuring the consumption of Electricity by Customers within Pennsylvania and these meters remain in use by many consumers who are under the regulation of the PUC. **To deny any electricity customer the option**

¹ Docket No. M-2009-2092655

² Docket No. M-2013-2341990; Met-Ed’s Smart Meter Deployment Plan is a joint deployment plan with Pennsylvania Electric Company (Docket No. M-2013-2341994), Pennsylvania Power Company (Docket No. 2013-2341993) and West Penn Power Company (Docket No. 2013-2341991). For purposes of this document, it will be referred to as Met-Ed’s Deployment Plan.

to retain an Electromechanical meter is to create an unlawful unequal application of the law.

2) PA Code 52 is referred to several times in PA ACT 129 and includes the following language in Ch. 57 ELECTRIC SERVICE 52 § 57.251

Subchapter O. ADVANCED METER DEPLOYMENT

Sec.

57.251. Purpose.

57.252. Definitions.

57.253. Approval of advanced meters.

57.254. Advanced meter standards.

57.255. EDC responsibilities regarding advanced metering.

57.256. EDC responsibilities regarding network deployment.

57.257. Disputes concerning advanced metering.

57.258. Record retention and reporting requirements.

57.259. Customer education on advanced metering.

Authority

The provisions of this Subchapter O issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 2807(a) and (d), unless otherwise noted.

Source

The provisions of this Subchapter O adopted December 24, 1998, effective December 26, 1998, 28 Pa.B. 6302, unless otherwise noted.

§ 57.251. Purpose.

(a) The purpose of this subchapter is to facilitate the deployment of advanced metering equipment and the associated development of generation services based on these technologies. This subchapter establishes a procedure for identifying and providing for customer selection of qualified advanced meters, meter-related devices or deployment of automatic meter reading network equipment from the EDC while maintaining the safety and reliability of the electric system in this Commonwealth. **This subchapter does not require the public to participate in an advanced metering program.**

- 3) The life expectancy of an electromechanical meter well exceeds the 15 year depreciation time frame in PA Act 129.
- 4) The term depreciation is an accounting term used for businesses to reduce the value of an asset on their taxes.
- 5) **Therefore, the most reasonable plain language understanding of Paragraph (f)(2) Electric distribution companies shall furnish smart meter technology as follows:**
 - (i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of request.
 - (ii) In new building construction.
 - (iii) **When smart meter technology is furnished, those new meters shall be subject to a depreciation schedule not to exceed 15 years.**

This preserves and protects public choice as each consumer may choose whether or not to purchase a new construction home and each consumer would retain the option or whether or not to select smart meter technology at their existing home. This is the stated intent of the legislature in the Senate Journal.

However, The PA PUC Implementation order of June 2009 on page 14 states,

“The Commission believes that it was the intent of the General Assembly to require all covered EDCs to deploy smart meters systemwide when it included a requirement for smart meter deployment “in accordance with a depreciation schedule not to exceed 15 years.”

Thus the PUC forces the plain language of § 2807(f)(2)(iii) into a mandatory smart-meter narrative which has thereby aided and abetted most electric distribution companies (EDCs) to force smart meters on all customers, even over their objections

for various reasons. The PUC arrives at the incorrect conclusion that Act 129 creates a state-wide mandate of smart meters by covered EDCs by misinterpreting unambiguous legislative intent and misinterpreting plain legislative language that leaves no room for misinterpretation.

The following discussion focuses on subparagraph (f)(2)(iii) of the Act:

The ongoing issue at hand is this – the PA PUC has been acting based on what they “believe” in direct contradiction to what the Senators who negotiated the legislation said about the legislative intent of Act 129. **This creates the unacceptable condition in which the PUC moves from protecting the people from the actions of the Electricity Distribution Companies to a condition in which the PUC Demands that the people serve the wishes of the Electric Distribution Companies.**

If we apply the concept of Occam’s Razor to this situation and look for the simplest and most reasonable understanding of the situation, we can see a much simpler and clearly stated, verifiable interpretation of Act 129.

That is: the 4 EDCs with the largest customer bases must be able to provide Smart Meter technology to their customers, when and if the customers ask for those meters, and the PUC was tasked with verifying that the EDCs had a plan to do so (which would also be in keeping with protecting the rights of the people).

In the **COMMONWEALTH OF PENNSYLVANIA Legislative Journal**

WEDNESDAY, OCTOBER 8, 2008

SESSION OF 2008 192ND OF THE GENERAL ASSEMBLY No. 64 Page 2627 where

Senator Boscola is on record stating **“We also made sure that smart meters would not be mandated for every single ratepayer. Not only is that a smarter approach to smart meter deployment, but it will also save electric customers hundreds of millions of dollars paying for something that will not provide a real benefit in their own households.”**

Continuing on page 2628 Senator Boscola added, **“Together, we have put a tremendous amount of time into making this bill good for ratepayers and good for Pennsylvania. I want to thank Senator Pileggi and Kathy Eakin and Dave Woods**

on his staff, Senator Tomlinson for going above and beyond the call of duty on this very, very complicated issue, and of course, my shopping partner, Fran Cleaver on his staff. I want to also thank Senator Mellow and Senator Fumo for their faith in me during these times when the obstacles seemed almost insurmountable, and both Gladys Brown and Christopher "Wing Man" Craig, who distinguished themselves in the heat of so many battles here and so many late, late nights and early mornings of hard, hard work."

PUC Chairwoman Gladys Brown is mentioned by name as a party to the negotiations which produced this final bill. The PA PUC cannot reasonably claim not to know the intent of the Senators as presented in the Senate Journal at the time Act 129 was passed.

The History of draft versions of HB 2200 shows the changes which removed any public mandate as part of the legislative process prior to passing of Act 129.

It is therefore wholly disingenuous and unlawful for the PA PUC to administer the Act into being enforced as exactly opposite of what was negotiated in legislation.

Just because a politician wants something or deems it to be of "critical importance", does not mean that the rights of the people or the necessary processes can be superseded.

We are aware that both the US Constitution and the PA Constitution prevent unreasonable searches and seizures without a warrant. Given that:

- 1) The PUC mandates which Electricity Distribution Company Serves Which Location by establishing service territories.**
- 2) The PUC has been Mandating Installation of smart meters which must collect usage data at intervals even against the wishes of the consumer.**
- 3) The PUC Regulated Electricity Distribution Company must comply with the PUC direction in order to continue to do business.**

- 4) The PUC and EDC inform consumers that they must choose between accepting the new smart meter or being disconnected from the public electricity service grid.

It is our conclusion that the PA Government in the form of the PUC is mandating the collection of data from the people against the wishes of the people and without a warrant. It is wholly disingenuous to claim that the data is collected by a private company and not the government while perpetuating conditions in which the government is mandating that the data collection must occur. A Mandate to utilize smart meters is unlawful.

Throughout this process we as home owners have been told frequently that the existing utility easements, our service agreements with the EDC and the PUC Regulations of the EDC empower the Electricity Company to enter onto our land and to maintain their service equipment in a manner consistent with the PUC regulations. We wish to point out that unlike many other services such as internet, television, cell phone, etc. which provide us service, the Public Electricity Grid is effectively a monopoly regulated by the government. **We as consumers cannot select a different Electricity Distribution Company, even though other companies in PA are still offering the safe and legal use of Electromechanical meters.**

We are aware that our natural rights are present and to be protected by the government. PA Code 66 paragraph 1501 includes the following statement:

§ 1501. Character of service and facilities.

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and **shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.** Such service also shall be reasonably continuous and without unreasonable interruptions or delay.

Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.

Notably missing throughout the course of our complaint, and indeed throughout the many years history of complaints filed by others, are the elements of changes for the accommodation or convenience of the Public. This is a clear case of the PUC demanding compliance with their desired directive to the exclusion of cooperating with the public on desired changes.

It is clear that the method by which electricity service is measured will not by itself generate any change in electricity consumption by the public.

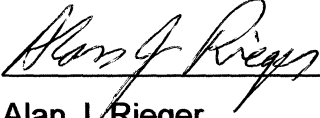
It is clear that the PUC is preventing the public from receiving accommodations which could empower the people to feel protected and self directed in decisions regarding their own homes,

We do not live in a cookie cutter world in which all households are in need of the same services in the same quantities at the same times. Ultimately, the choice of how to utilize energy falls upon us as the home owners and the consumers of the services.

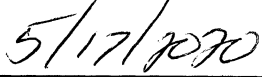
We are seeking a State Government and PUC which:

- 1) acts in a manner consistent with the law
- 2) is supportive and defensive of our Natural and Constitutional rights
- 3) is truthful with the public, not using political spin to twist the meaning of words
- 4) will accept, admit and honor the public right to choose whether or not smart meter technology is wanted or needed for our homes.

Had this been the case throughout the past few years, we would not have needed to file our complaint. Until this is the case, we will not feel satisfied with the outcome.



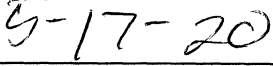
Alan J. Rieger



Date



Lydia Rieger



Date