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March 26, 2024

**VIA E-FILING**

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

**RE: Nancy Colbert v. PECO Energy Company  
Docket No. C-2022-3036933**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Respondent, PECO Energy Company's Motion to Dismiss*.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Khadijah Scott".

Khadijah Scott, Esquire  
Assistant General Counsel, PECO Energy Company

Encl.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>NANCY COLBERT</b>	:	
<b>Complainant</b>	:	
v.	:	<b>DOCKET NO. C-2022-3036933</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion for Judgment on the Pleadings of PECO Energy Company within 20 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to Motion for Judgment on the Pleadings, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Khadijah Scott, and where applicable, the Administrative Law Judge presiding over the issue.

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

With a copy to:  
Khadijah Scott, Esq.  
PECO Energy Company  
2301 Market Street, S-23  
Philadelphia, PA 19103

Dated: March 26, 2024



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Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street S-23  
Philadelphia, PA 19103  
(267) 533-1830  
Khadijah.scott@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>NANCY COLBERT</b>	:	
<b>Complainant</b>	:	
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	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**RESPONDENT, PECO ENERGY COMPANY’S  
MOTION TO DISMISS**

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code §5.102(a) respectfully petitions this Honorable Commission to dismiss the instant Complaint for the following reasons:

**I. PROCEDURAL HISTORY:**

1. On December 3, 2020, PECO was served with a Formal Complaint filed by Nancy Colbert (hereafter “Complainant”). *See*, Complainant’s Complaint attached hereto as Exhibit “1.”
2. On December 13, 2022, PECO filed its Answer to the Complaint.
3. On December 16, 2022, PECO filed an Amended Answer with New Matter to the Complainant’s Complaint. *See*, PECO’s Amended Answer attached hereto as Exhibit “2.”
4. On December 23, 2022, the Complainant filed a Reply to PECO’s Amended Answer with New Matter.
5. On January 10, 2023, this matter was Stayed pursuant to Smart Meter Procurement and Installation, Docket No. M-2009-2092655 (Order entered November 4, 2020).
6. By Order entered November 14, 2023, at Smart Meter Procurement and Installation Docket No. M-2009-2092655 (November 2023 Order), the Commission lifted the November 4, 2020 general stay of smart meter proceedings.

7. On January 12, 2024, the Honorable Administrative Law Judge, Arlene Ashton, issued an Interim Order Establishing Initial Litigation Schedule, specifically ordering:

That on or before March 1, 2024, any Party wishing to present expert testimony (including but not limited to medical, technical, etc.) must provide to the other Party in writing, the name and business address of that expert and a written summary of the expected testimony of that expert. Each Party shall provide notice to me, via email to my legal assistant, that they have identified an expert and provided the other Party the expert information and summary of expected testimony.

*See*, Interim Order.

8. On March 1, 2024, PECO filed its letter identifying its expert witness with the Public Utility Commission. On March 1, 2024, the letter was served on the Complainant.

9. The Complainant did not file or submit a letter of intent to present expert testimony.

10. On March 11, 2024, the Complainant filed a Motion for Special Appearance, a Motion for Demand of Oaths and a document titled “Judicial Notice.” To the extent a response is required, PECO denies all material allegations of fact and conclusions of law, to which no response is required. However, to the extent that the Motion for Special Appearance and Motion for Demand of Oaths requires an answer, they are denied.

## **II. RELEVANT FACTS:**

11. In 2015, the Complainant filed a Formal Complaint regarding the refusal of an AMI meter. *See*, Formal Complaint Docket Nos. C-2015-2515607<sup>1</sup> and C-2016-2561993. In that Complaint, the Complainant disputed the installation of an AMI smart meter. *See*, Final Order and Opinion granting Petition for Rescission or Amendment of the Pennsylvania Public

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<sup>1</sup> The docket number was subsequently changed to C-2016-2561993.

Utility Commission's Final Order entered in *Nancy and Jim Colbert v. PECO Energy Company*, Docket No. 2015-2515607.

12. On February 15, 2019, the Initial Decision granted the request of the Complainant to withdraw the Formal Complaint. *See*, Complainant's Request for Withdrawal.

13. On February 15, 2019, PECO Energy filed Exceptions, specifically seeking dismissal with prejudice to establish that the 2016 Formal Complaint proceeding, and all the matters raised herein, could not be raised in any future action to prohibit PECO's installation of a smart meter at the Complainant's service address.

14. On September 19, 2019, the Public Utility Commission ("PUC") granted PECO's Exceptions and dismissed the Complainant's Complaint with prejudice. *See*, PUC Opinion and Order dated September 19, 2019.

15. PECO Energy avers that the Complainant's Complaint is barred by the doctrine of res judicata and Pennsylvania law.

### **III. LEGAL ARGUMENT**

#### **A. Standard of Review**

16. The Commission's regulations at 52 Pa. Code §5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing.

17. Under 52 Pa. Code §5.102(d)(1), the presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.

18. The “filing of a formal complaint entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.” 52 Pa. Code. §5.21 (d).

19. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983).

20. The provisions at 52 Pa. Code §5.102(c) and 52 Pa. Code. §5.21 (d) serve judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of the case exists, a hearing is unnecessary. *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d. 557 (Pa. Cmwlth. 1989).

**B. The Complainant’s Complaint should be dismissed because it is barred by the doctrine of res judicata.**

In this matter, the doctrine of res judicata clearly applies to the Complainant’s Complaint. Res judicata, also known as claim preclusion, is the concept that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the same parties. *Hopewell Estates, Inc. v. Kent*, 646 A.2d 1192 (Pa. Super. 1994). The doctrine of res judicata operates to prevent re-litigation of claims already litigated on the merits. As stated by the Commission in *Frank Tomazin v. Pennsylvania-American Water Company*, 1997 Pa. PUC Lexis 52 (1997), “the policies underlying the doctrine of res judicata are minimizing judicial energy devoted to individual cases, establishing certainty and respect for

court judgments, and protecting the party relying on the prior adjudication from vexatious litigation.” Res judicata includes any issue, claim or defense that was raised or could have been raised in the prior proceedings. *Glynn v. Glynn*, 2001 PA Super 359, ¶ 27, 789 A.2d 242, 250. The doctrine of res judicata reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine of res judicata to apply, four conditions must be met: (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality and capacity of the parties suing or sued. *Day v. Volkswagenwerk Aktiengesellschaft*, 474 A.2d 1313 (Pa.Super. 1983).

In the Formal Complaint at Docket No. C-2016-2561993, the Complainant objected to the installation of an AMI meter. The Complainant filed the present Complaint in objection to the installation of an AMI meter. Hence, the issues are identical. The Complainant is identical. The Respondent is identical. Hence, the parties are identical. The forum in which the present Complaint is filed, *i.e.*, the PUC, is identical. The PUC has already ruled that the matter of the Complainant’s refusal to have an AMI meter installed is dismissed ***with prejudice***, which bars the Complainant from raising this identical issue in the present action to prohibit PECO’s installation of a smart meter at the Complainant’s service address. *See*, Exhibit “2.” Thus, the Complainant is barred from relitigating this claim under the doctrine of res judicata.

Accordingly, this Complaint is without merit and should be dismissed.

### **C. The Complainant’s claim is barred by Pennsylvania law.**

In this matter, PECO Energy avers that the company is required to install AMI meters for the company’s electric distribution customers subject to the requirements of Act 129. On August 16, 2022, the Pennsylvania Supreme Court issued its Opinion asserting that Section 2807(f) of the Public Utility Code mandates that EDCs furnish smart meters to **all** electric customers in

their service areas and **does not** provide the ability for customers to “opt-out”. *Povacz v. Pa. Pub. Util. Comm’n*, Nos. 34-45, 280 A.3d 975 (Pa. 2022) (*Povacz* Opinion). (*emphasis added*)

The court specifically stated:

Act 129 does mandate that EDCs furnish smart meters to **all** electric customers within an electric distribution service area and **does not provide electric customers the ability to opt out of having a smart meter installed**. An electric customer with concerns about smart meters may seek an accommodation from the PUC or EDC, but to obtain one the customer must establish by a preponderance of the evidence that installation of a smart meter violates Section 1501.

*See, Povacz* Opinion at 7. (*emphasis added*)

The Court further held that the authority to select and install a certain type of electric meter rests solely with EDCs, in this case PECO, not the customer, “regardless of a customer’s preference.” *Id.* at 22, 26-27. The Complainant was advised that PECO Energy’s system no longer supports a non-AMI meter and that a new smart meter must be installed. In addition, the PUC’s regulations provide that [a] public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91- 56.100 (relating to notice procedures prior to termination) for any of the following actions by the customer ... failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading. Pennsylvania law is clear. A customer does not have the ability to opt out of the installation of an AMI meter. *See, Povacz. See also, Mary Paul v. Pennsylvania Public Utility Commission*, 460 C.D. 2019 (2023)(holding there is not an opt-out provision. Finding all other arguments, including those regarding burden of proof, were without merit); *Janice Denito Branagh, v. Pennsylvania Public Utility Commission* 1857 C.D. 2019 (2023) )(holding there is not an opt-out provision).

Moreover, the Complainant has failed to make a prima facie case for an accommodation. The Complainant has failed to set forth any evidence to support a claim that that installation of a smart meter violates Section 1501. The Pennsylvania Supreme Court has held that:

A customer seeking affirmative relief from the PUC must prove by a preponderance of the evidence that the named utility was responsible or accountable for the problem described in the complaint and that the offense was a violation of the Code, a PUC regulation or Order, or a violation of a PUC-approved tariff. 66 Pa.C.S. §§ 332(a), 701; *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Commw. 1990), alloc. denied, 602 A.2d 863 (Pa. 1992). Although Act 129 **does not provide an electric customer with the right to opt-out** of the installation of a smart meter at their residence, they may file a complaint raising a claim that installation of a smart meter violates Section 1501 of the Code.

Relevant to this matter, Section 1501 provides as follows: Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, To establish a claim by a preponderance of the evidence means to offer evidence that outweighs or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the opposing party. *Stacey Weaver v. PPL Electric Utilities Corp.*, No. C-2018-3005382, 2020 WL 5876967 (Pa. P.U.C. Sept. 17, 2020); see also *Popowsky v. Pa. Util. Comm'n*, 937 A.2d 1040, 1057 (Pa. 2007) (acknowledging that “the PUC properly applies a preponderance of the evidence standard to make factually-based determinations”). 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. 66 Pa.C.S. § 1501. Pursuant to this section, an EDC (as a public utility) must provide service that is, *inter alia*, both safe and reasonable.

To carry their burden of proof on a Section 1501 claim, a smart meter challenger may be required to present **medical documentation and/or expert testimony** demonstrating that the furnishing of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 under the circumstances presented. *Susan Kreider v. PECO Energy Co.*, P-2015-2495064, 2016 WL 406549, at \*14 (Pa. P.U.C. Jan. 28, 2016).

*Povacz* at 36-37. (*emphasis added*)

It is important to note that it is unclear what claim the Complainant is raising in regard PECO’s smart meter. Pursuant to 52 Pa. Code §5.22(5), a “clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal

investigation” is required to be included in a formal complaint. The Complainant’s Complaint does not set forth any specific allegation, but simply states:

Pennsylvania Code Title 52 Public Utilities Chapter 57 Subchapter O Advanced Meter Deployment § 57.251. Purpose; § 57.255. EDC responsibilities regarding advanced metering.

*See*, Exhibit “1.”

Notwithstanding the Complainant’s failure to state a claim upon which relief can be granted with specificity, the Complainant cannot meet her burden of proof. In order to meet a burden of proof, “specific to smart meters and RF emissions, the burden is two-fold.” *Povacz* at 49. The Pennsylvania Supreme Court has held that “first, a customer must present **expert opinion rendered to a reasonable degree of scientific certainty** that smart meters emit RFs and that RF emissions cause adverse health effects and, second, expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm.” *Id.* (*emphasis added*)

In this case, the Complainant has not proffered any expert evidence in support of her claim. She has not only failed to comply with the January 12, 2024, Interim Order of this Court by providing proposed expert testimony on her behalf, but has also failed to meet the minimum criteria as required by Pennsylvania law for the first required prong of an accommodation claim. Pennsylvania law is clear, “evidence that does not support a conclusion (or is inconclusive) cannot meet that minimal burden.” *Povacz* at 50. “The generic versus specific nature of a claim does not diminish the need to prove, by a preponderance of the evidence — **with expert opinion** within a reasonable degree of certainty — that the service or facility is unsafe and that a causal connection exists between the allegedly unsafe service or facility and harm, either to the public at large or to specific individuals.” *Id.* at 50. (*emphasis added*)

Notwithstanding the Complainant's failure to meet her burden of proof for an accommodation, even assuming *arguendo* that she could meet her burden, an accommodation does not include an opt-opt option. "Reasonable service does not require an exception to the mandatory installation of smart meters." *Povacz* at 55. The court has further held that "by operation of the statute, an EDC cannot be required to provide accommodation without the finding of a Section 1501 violation." *Id.* Inasmuch as a finding of a Section 1501 violation cannot be found without expert testimony, the Complainant is barred from seeking an accommodation. *See, Povacz. See also, Alexia and Lawrence McKnight v. Pennsylvania Public Utility Commission*, 1253 C.D. 2019 (2024) (affirming PUC decision holding as in *Povacz*, the PUC properly found the scientific evidence of potential harm inconclusive and determined that the McKnights' failed to sustain their burden of proof). The Complainant has failed to put forth evidence that PECO is in violation of Title 66 Section 1501. Therefore, this issue is without merit and should be dismissed.

**D. The Complainant's Claims are Outside the Jurisdiction of the Public Utility Commission.**

Within the Complaint, the Complainant lists a myriad of unintelligible claims that she is seeking the Public Utility Commission to address. She lists her remaining claims as:

- a. United States Constitution Fourth, Fifth, and Fourteenth Amendments and upheld by USC Title 18 § 242 and §241, as well as by case law;
- b. Pennsylvania Constitution: Article 1 §1, §8, §26, and Article 10 §2
- c. Federal Trades Commission law on monopolies.
- d. 18 U.S. Code § 1038 - False information and hoaxes;
- e. 18 Pa.C.S.A. Crimes and Offenses § 4107. Deceptive or fraudulent business practices;
- f. 18 Pa. C.S.A. § 5703 Interception, disclosure or use of wire, electronic or oral communications
- g. Pennsylvania Title 18 Chapter 35 - Burglary and Other Criminal Intrusion §3503 Criminal trespass.

Notwithstanding the fact that the Complainant has failed to state a claim with specificity as required by 52 Pa. Code §5.22(5), it is well settled that the Public Utility Commission may only

address matters that are within its jurisdiction. The “Commission, as a creation of the General Assembly, has only the powers and authority granted to it via the Public Utility Code, and that subject matter jurisdiction is a prerequisite to the Commission utilizing its power to decide a controversy.” *See, Jonathan Dibello v. PECO Energy Company*, Opinion and Order, C-2023-3041825 at 7 (December 2023), *citing Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992). “As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Public Utility Code (Code).” *Id.* at 10. 66 Pa. C.S.A. §§ 101, et seq. “Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom.” *Id.*; *citing Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977); *Allegheny County Port Authority v. Pa. PUC*, 427 Pa. 562, 237 A.2d 602 (1967); *Behrend v. Bell of Pa.*, 390 A.2d 233 (Pa. Super. 1978); *Pa. Department of Highways v. Pa. PUC.*, 182 A.2d 267 (Pa. Super. 1962); and *City of Erie v. Pa. Electric Co.*, 383 A.2d 575 (Pa. Cmwlth. 1978). “The Commission must act within, and cannot exceed, its jurisdiction.” *Id. City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945). Accordingly, alleged violations of the United States Constitution, Pennsylvania Constitution, Federal Trades Commission and Pennsylvania Criminal Statutes are outside of the Public Utility Commission’s jurisdiction and must be dismissed as a matter of law.

#### **IV. Conclusion**

In the matter sub *judice*, the Complainant has failed to state a specified claim upon which relief may be granted. The Complainant has failed to proffer evidence in support of a smart meter claim. The Complainant’s Complaint is barred by the doctrine of *res judicata* and

Pennsylvania law and is outside the jurisdiction of the Public Utility Commission. Accordingly, this Complaint is without merit and should be dismissed.

**WHEREFORE**, PECO Energy Company respectfully requests that your Honorable Commission dismiss the Complainant's Complaint.

Respectfully Submitted,



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Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(267) 533-1830  
Fax: 215.568.3389  
Khadijah.scott@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**


<b>NANCY COLBERT</b>	:	
<b>Complainant</b>	:	
v.	:	<b>DOCKET NO. C-2022-3036933</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**VERIFICATION**

I, Khadijah Scott, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

Date: March 26, 2024

  
\_\_\_\_\_  
Khadijah Scott

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>NANCY COLBERT</b>	:	
<b>Complainant</b>	:	
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	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**CERTIFICATE OF SERVICE**

I, Khadijah Scott, hereby certify that I have this day served a copy of PECO Energy Company's Motion to Dismiss the Complainant's Complaint in the above matter upon all interested parties by E-mailing a copy to:

NANCY COLBERT  
142 PENNSYLVANIA AVE  
PHOENIXVILLE PA 19460  
*Via email: nrcc1@protonmail.com*

March 26, 2024



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Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(267) 533-1830  
Fax: 215.568.3389  
Khadijah.scott@exeloncorp.com

# **EXHIBIT 1**

## Botak, Amy:(PECO)

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**From:** RA-PCESERVE@pa.gov  
**Sent:** Monday, November 28, 2022 9:21 AM  
**To:** Scott, Khadijah:(PECO)  
**Cc:** Botak, Amy:(PECO)  
**Subject:** [EXTERNAL]PA PUC eServe Notice

**Importance:** High

**EXTERNAL MAIL. Do not click links or open attachments from unknown senders or unexpected Email.**

Dear Khadijah Scott,

A(n) **Formal Complaint** has been served in this proceeding. This document is docketed as **C-2022-3036933**. You may view this document at

[Colbert Formal Complaint](#)

You are receiving this email because you are a(n) **Respondent** for this case and have agreed to be served electronically. By selecting electronic service (eService), you have agreed that this notification constitutes valid service. Electronic service of any and all documents will be in place of paper service.

Thank You,  
Public Utility Commission  
Commonwealth of Pennsylvania

*\* Please do not respond to this automatically generated email.*

*PUC has recently updated E-Service delivery E-Mail address to RA-PCESERVE@pa.gov. Please update your Address book and/or E-Mail rules accordingly.*

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Formal Complaint**

*Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an informal complaint.*

**To complete this form, please type or print legibly in ink.**

**1. Customer (Complainant) Information**

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name Nancy Colbert \_\_\_\_\_

Street/P.O. Box 142 Pennsylvania Avenue \_\_\_\_\_ Apt # \_\_\_\_\_

City Phoenixville \_\_\_\_\_ State PA Zip 19460 \_\_\_\_\_

County Chester \_\_\_\_\_

Telephone Number(s) Where We Can Contact You During the Day (required):

610 917 1116

( ) \_\_\_\_\_ (home) ( ) \_\_\_\_\_ (mobile)

nrcc1@protonmail.com

E-mail Address (required): \_\_\_\_\_

Utility Account Number (from your bill) 35558-00208 \_\_\_\_\_

**If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.**

Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**2. Name of Utility or Company (Respondent)**

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

peco

**3. Type of Utility Service**

Check the box listing the type of utility service that is the subject of your complaint (check only one):

ELECTRIC

STORM WATER

GAS

WASTEWATER/SEWER

DATE OF DEPOSIT

NOV 21 2022

PA Public Utility Commission  
Secretary's Bureau

- WATER                       TELEPHONE/TELECOMMUNICATIONS (local, long distance)
- STEAM HEAT                       MOTOR CARRIER (e.g. taxi, moving company, limousine)

**4. Reason for Complaint**

**What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.**

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.

Other (explain). **Subversion of the Rule of Law**

**Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.**

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

**5. Requested Relief**

**How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.**

- a. **United States Constitution Fourth, Fifth, and Fourteenth Amendments and upheld by USC Title 18 § 242 and §241, as well as by case law;**
- b. **Pennsylvania Constitution: Article 1 §1, §8, §26, and Article 10 §2**
- c. **Federal Trades Commission law on monopolies.**
- d. **18 U.S. Code § 1038 - False information and hoaxes;**
- e. **18 Pa.C.S.A. Crimes and Offenses § 4107. Deceptive or fraudulent business practices;**
- f. **18 Pa. C.S.A. § 5703 Interception, disclosure or use of wire, electronic or oral communications**
- g. **Pennsylvania Title 18 Chapter 35 - Burglary and Other Criminal Intrusion §3503 Criminal trespass**
- h. **Pennsylvania Code Title 52 Public Utilities Chapter 57 Subchapter O Advanced Meter Deployment § 57.251. Purpose; § 57.255. EDC responsibilities regarding advanced metering;**

**Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.**

**6. Protection From Abuse (PFA)/ Domestic Violence**

Has a court granted you a "Protection From Abuse" order or any other order which provides clear evidence of domestic violence against you that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order or any other order for your personal safety or welfare?

YES  ~~NO~~  N/A

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES  ~~NO~~

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES  ~~NO~~

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

**Subversion of the Rule of Law**

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, (all required contact information). Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address \_\_\_\_\_

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

**9. Verification and Signature**

**You must sign your complaint.** Individuals filing a Formal Complaint must print or type their name on the line provided in the verification paragraph below and must sign and date this form in ink. **If you do not sign the Formal Complaint, the PUC will not accept it.**

**Verification:**

I Nancy Colbert  
Nancy Colbert, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Nancy Colbert  
(Signature of Complainant)

November 21, 2022  
(Date)

\_\_\_\_\_  
Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

**Note:** If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification must be signed by an authorized officer or authorized employee. If the Formal Complaint is not signed by one of these individuals, the PUC will not accept it.

**10. How to File Your Formal Complaint**

**Electronically.** You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

**Mail.** Mail the completed form with your original signature and any attachments, by certified mail, priority mail, or overnight delivery to this address and retain the tracking information as proof of submission:

Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, Pennsylvania 17120

**If you are appealing a BCS decision:** follow the directions in the cover letter you received from the Secretary's Bureau with the formal complaint form. ONLY Formal complaints appealing a BCS decision can be filed by fax, email or overnight delivery to meet filing deadlines. All other formal complaints MUST be eFiled or mailed.

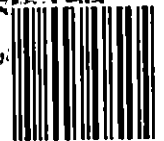
If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777. Keep a copy of your Formal Complaint for your records.

Please know that your complaint form and the utility's answer will not be published to the PUC's website. Once your complaint case moves to the Office of Administrative Law Judge, any filings you make should be marked confidential if you do not want them published to the website.

9142 Pennsylvania Avenue  
Phoenixville, Pennsylvania  
[19460]

RECEIVED PHILADELPHIA PA 190

NOV 23 2022 21 N



U.S. POSTAGE PAID  
FCM LETTER  
PHOENIXVILLE, PA  
19460  
NOV 21, 22  
AMOUNT

**\$4.60**

R2305E123302-12

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

RDC 99

17120

7021 1970 0001 2581 6042



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE  
**CERTIFIED MAIL**

Secretary  
PA PUBLIC UTILITY COMMISSION  
400 North Street  
Harrisburg, PA 17120

17120-007999



## **EXHIBIT 2**



Commonwealth of Pennsylvania  
**Pennsylvania Public Utility Commission**  
Harrisburg, PA 17105-3265  
**EFILING - FILING DETAIL**

Date Created	Filing Number
12/16/2022	2448299

Your filing has been electronically received. Upon review of the filing for conformity with the Commission's filing requirements, a notice will be issued acknowledging acceptance or rejection (with reason) of the filing. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

The date filed on will be the current day if the filing occurs on a business day before or at 4:30 p.m. (EST). It will be the next business day if the filing occurs after 4:30 p.m. (EST) or on weekends or holidays.

**Docket Number:** C-2022-3036933

**Case Description:** Answer with New Matter

**Transmission Date:** 12/16/2022 3:14 PM

**Filed On:** 12/16/2022 3:14 PM

**eFiling Confirmation Number:** 2448299

File Name	Document Type	Upload Date
Amended Answer with New Matter to Formal Complaint - Nancy Colbert.pdf	Answer to Formal Complaint	12/16/2022 3:14:13 PM

For filings exceeding 250 pages, the PUC is requiring that filers submit one paper copy to the Secretary's Bureau within three business days of submitting the electronic filing online. Please mail the paper copy along with copy of this confirmation page to Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg PA 17120 a copy of the filing confirmation page or reference the filing confirmation number on the first page of the paper copy.

**No paper submission is necessary for filings under 250 pages.**

You can view a record of this filing and previous filings you have submitted to the PUC by using the links in the Filings menu at the top of the page. Filings that have been submitted within the last 30 days can be viewed by using the Recent Filings link. Older filings can be viewed by using the search options available in the Filing History link.



Direct Dial: 215.841.6841  
khadijah.scott@exeloncorp.com

December 16, 2022

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

**RE: Nancy Colbert vs. PECO Energy Company  
PUC Docket No. C-2022-3036933**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Amended Answer with New Matter of PECO Energy Company to Formal Complaint*.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Khadijah Scott". The signature is written in a cursive style.

Khadijah Scott, Esquire  
Assistant General Counsel, Exelon BSC  
Encl.

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**NANCY COLBERT** :  
    **Complainant** :  
    **v.** :           **DOCKET NO. C-2022-3036933**  
          :           :  
**PECO ENERGY COMPANY** :  
    **Respondent** :  
          :           :  
          :           :

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**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed NEW MATTER of PECO Energy Company within 20 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to NEW MATTER, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Khadijah Scott, and where applicable, the Administrative Law Judge presiding over the issue.

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

With a copy to:  
Khadijah Scott, Esq.  
PECO Energy Company  
2301 Market Street, S-23  
Philadelphia, PA 19103

Dated: December 16, 2022



---

Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street S-23  
Philadelphia, PA 19103  
215-841-6841  
Khadijah.scott@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>NANCY COLBERT</b>	:	
<b>Complainant</b>	:	
v.	:	<b>DOCKET NO. C-2022-3036933</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

**AMENDED ANSWER OF RESPONDENT,**  
**PECO ENERGY COMPANY**

---

On December 3, 2020, PECO Energy Company (“PECO”) was served with a Formal Complaint filed by Nancy Colbert (hereafter “Complainant”). On December 13, 2022, PECO filed its Answer to the Complaint. Pursuant to 52 Pa. Code §5.61, PECO responds via an Amended Answer to the Complaint and states:

1. Admitted
2. Admitted.
3. Admitted.
4. Denied. Unless specifically admitted herein, PECO denies all material allegations of fact and conclusions of law in the Complaint.

In her formal complaint, the Complainant states that PECO is in violation of the Subversion of the Rule of Law. It is unintelligible as to what the Complainant’s Complaint avers, however, it is believed that the Complainant objects to the installation of PECO’s Advanced Metering Infrastructure (“AMI”) meter, also known as a “smart meter.”

Notwithstanding the fact that the Complainant has failed to state any health assertions as to why she does not wish to have a smart meter installed, PECO denies any underlying claim by

the Complainant that her health is being affected by PECO's AMI smart meter, and proof thereof is demanded at any evidentiary hearing in this matter.

By way of further answer, PECO Energy's records reveal that the Complaint has received electric service at 142 Pennsylvania Ave., Phoenixville, PA 19460 under account number 35558-00208 since April 2003. *See*, Account Activity Statement attached hereto as Exhibit "1". In 2002, an AMR meter was installed at the Complainant's property. In 2015, the Complainant filed a Formal Complaint regarding the refusal of an AMI meter. *See*, Formal Complaint Docket Nos. C-2015-2515607<sup>1</sup> and C-2016-2561993. In that Complaint, the Complainant disputed the installation of an AMI smart meter. *See*, Final Order and Opinion granting Petition for Rescission or Amendment of the Pennsylvania Public Utility Commission's Final Order entered in *Nancy and Jim Colbert v. PECO Energy Company*, Docket No. 2015-2515607, attached hereto as Exhibit "2".

On February 15, 2019, the Initial Decision granted the request of the Complainant to withdraw the Formal Complaint. *See*, Complainant's Request for Withdrawal attached hereto as Exhibit "3". On February 15, 2019, PECO Energy filed Exceptions, specifically seeking dismissal with prejudice to establish that the 2016 Formal Complaint proceeding, and all the matters raised herein, could not be raised in any future action to prohibit PECO's installation of a smart meter at the Complainant's service address. On September 19, 2019, the Public Utility Commission ("PUC") granted PECO's Exceptions and dismissed the Complainant's Complaint with prejudice. *See*, PUC Opinion and Order dated September 19, 2019, attached hereto as Exhibit "4".

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<sup>1</sup> The docket number was subsequently changed to C-2016-2561993.

In this matter, the doctrine of res judicata clearly applies to the Complainant's Complaint. Res judicata, which is also known as claim preclusion is the concept that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the same parties. *Hopewell Estates, Inc. v. Kent*, 646 A.2d 1192 (Pa.Super. 1994). The doctrine of res judicata operates to prevent re-litigation of claims already litigated on the merits. As stated by the Commission in *Frank Tomazin v. Pennsylvania-American Water Company*, 1997 Pa. PUC Lexis 52 (1997), "the policies underlying the doctrine of res judicata are minimizing judicial energy devoted to individual cases, establishing certainty and respect for court judgments, and protecting the party relying on the prior adjudication from vexatious litigation." Res judicata includes any issue, claim or defense that was raised or could have been raised in the prior proceedings. *Glynn v. Glynn*, 2001 PA Super 359, ¶ 27, 789 A.2d 242, 250. The doctrine of res judicata reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine of res judicata to apply, four conditions must be met: (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality and capacity of the parties suing or sued. *Day v. Volkswagenwerk Aktiengesellschaft*, 474 A.2d 1313 (Pa.Super. 1983).

In the Formal Complaint at Docket No. C-2016-2561993, the Complainant objected to the installation of an AMI meter. The Complainant filed the present Complaint in objection to the installation of an AMI meter. The Complainant is identical. The Respondent is identical. The issue is identical. The forum in which the present Complaint is filed, *i.e.*, the PUC, is identical. The PUC has already ruled that the matter of the Complainant's refusal to have an AMI meter installed is dismissed with prejudice, which bars the Complainant from raising this identical issue in the present action to prohibit PECO's installation of a smart meter at the

Complainant's service address. *See*, Exhibit "4." Thus, the Complainant is barred from relitigating this claim under the doctrine of res judicata.

Notwithstanding the withdrawal of the Complainant's Formal Complaint at Docket No. C-2016-2561993, the Complainant has continued to refuse an AMI meter. As a customer courtesy, the Complainant was allowed to call in her monthly meter readings to PECO Energy. On November 14, 2022, a Ten Day Shut Off Notice was left at the Complainant's property for failure to provide access to the meter for a meter exchange of the AMR meter to an AMI meter. Thereafter, the Complainant contacted PECO and advised that she did not want an AMI meter for personal reasons. She further advised that she would not give permission for PECO to install an AMI meter. The Complainant was advised that PECO Energy's system no longer supports a non-AMI meter and that a new meter must be installed. The Complainant is currently receiving estimated readings.

On November 21, 2022, the Complainant filed an Informal Complaint with the Bureau of Consumer Services ("BCS") under case number 003878735. On December 5, 2022, the Complaint was dismissed because a Formal Complaint was pending. *See*, BCS Decision attached hereto as Exhibit "5". In this matter, PECO Energy avers that the company is required to install AMI meters for the company's electric distribution customers subject to the requirements of Act 129. On August 16, 2022, the Pennsylvania Supreme Court issued its Opinion asserting that Section 2807(f) of the Public Utility Code mandates that EDCs furnish smart meters to all electric customers in their service areas and does not provide the ability for customers to "opt-out". *Povacz v. Pa. Pub. Util. Comm'n*, Nos. 34-45, 280 A.3d 975 (Pa. 2022) (*Povacz* Opinion). The court specifically stated:

Act 129 does mandate that EDCs furnish smart meters to all electric customers within an electric distribution service area and does not provide electric customers the ability to opt out of having a smart meter installed. An electric customer with concerns about smart meters may seek an accommodation from the PUC or EDC, but to obtain one the customer must establish by a preponderance of the evidence that installation of a smart meter violates Section 1501.

*See, Povacz* Opinion at 7. (*emphasis added*)

The Complainant has failed to seek an accommodation or put forth evidence that PECO is in violation of Title 66 Section 1501. The Court further held that the authority to select and install a certain type of electric meter rests solely with EDCs, in this case PECO, not the customer. *Id.* at 26-27. In addition, the PUC's regulations provide that [a] public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91- 56.100 (relating to notice procedures prior to termination) for any of the following actions by the customer ... failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading. PECO Energy followed all required noticing practices. The law is clear. A customer does not have the ability to opt out of the installation of an AMI meter. The Complainant's Complaint is also barred by *res judicata*. Accordingly, this Complaint is without merit and should be dismissed.

5. This paragraph is a request for relief to which no answer is required. To the extent this paragraph contains factual allegations, they are denied for the reasons set forth above. See, Response to Paragraph 4.

6. Admitted.

7. Admitted.

8. PECO Energy neither admits nor denies the allegations in paragraph 8. PECO Energy is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, such allegation is deemed denied.

9. Paragraph 9 is a Verification and Signature to which no response is required.

10. Paragraph 10 contains information regarding Filing, to which no response is required.

### **NEW MATTER OF RESPONDENT, PECO ENERGY COMPANY**

PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.62(b), further responds to the Complaint and states:

1. PECO incorporates by reference responses contained in Paragraphs 1 through 10 above as though fully set forth at length.

2. This is the Complainant's second formal complaint against PECO Energy in which the Complainant disputes the installation of an AMI smart meter.

3. The Complainant filed formal complaint docketed at Docket No. C-2015-2515607. In that Complaint, the Complainant disputed the installation of an AMI smart meter. *See*, Exhibits "2" and "4".

4. On February 15, 2019, Administrative Law Judge, Darlene Heep, granted the Complainant's request to withdraw her Formal Complaint. *See*, Exhibit "4".

5. On February 15, 2019, PECO Energy filed Exceptions to the Initial Decision of Administrative Law Judge Darlene Heep, specifically seeking dismissal with prejudice to establish that the 2016 Formal Complaint proceeding, and all the matters raised herein, could not

be raised in any future action to prohibit PECO's installation of a smart meter at the Complainant's service address. *Id.*

6. On September 19, 2019, the Commission issued a Final Order, granting PECO Energy's Exceptions. *Id.*

7. The Commission held that the Formal Complaint of Nancy and James Colbert, filed on August 8, 2016, at Docket No. C-2016-2561993, is dismissed with prejudice. *Id.*

8. The Complainant's dispute of the installation of an AMI smart meter in the current formal complaint should be dismissed on the grounds of res judicata.

9. The doctrine of res judicata reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:

- (1) Identity of issues;
- (2) Identity of causes of action;
- (3) Identity of persons and parties to the action; and
- (4) Identity of the quality and capacity of the parties suing or sued.

Day v. Volkswagenwerk Aktiengesellschaft, 318 Pa. Superior Ct. 255, 474 A.2d 1313, 1316, 1317 (1983).

10. In the present case all four elements of res judicata are met. Clearly, the parties are identical in both Complaints. The thing sued upon is identical in both Complaints. Both the current formal complaint and the 2016 Complaint relate to the same issues: installation of an AMI smart meter and the court jurisdiction is identical.

11. The cause of action is identical. Finally, the quality and capacity of the parties is

identical in both Complaints. The Complainant is the electric customer in both Complaints, and PECO is the public utility providing service to the Complainant.

12. Because the present complaint asserts the same factual and legal basis for relief as the dismissed 2016 Complaint, the Complainant is estopped from attempting to re-assert her dispute of the installation of an AMI smart meter.

13. Res judicata also requires the parties to the instant action be the same or stand in privity to the parties of the original action. Hopewell Estates, Inc. v. Kent, 435 Pa. Superior Ct. 471. 476,646 A.2d 1192 (1994). The parties in the most recent action are the same as the 2016 complaint which was already withdrawn. This matter is again initiated by Nancy Colbert against PECO Energy.

14. Section 703 of the Public Utility Code, 66 Pa. C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing of, in its opinion, a hearing is not necessary to the public interest.

15. Here, the issues presented have all been litigated previously and dismissed with prejudice. Therefore, PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

16. The Commission has already ruled that the matter of the Complainant's refusal to have an AMI meter installed is dismissed with prejudice, which bars the Complainant from raising this identical issue in the present action to prohibit PECO's installation of a smart meter at the Complainant's service address. Thus, the Complainant is barred from relitigating this claim under the doctrine of res judicata.

17. Because the present Complaint asserts the same factual and legal basis for relief as the

dismissed 2016 Complaint, the Complainant is estopped from attempting to re-assert her claims here.

18. On August 16, 2022, the Pennsylvania Supreme Court issued its Opinion asserting that Section 2807(f) of the Public Utility Code mandates that EDCs furnish smart meters to all electric customers in their service areas and does not provide the ability for customers to “opt-out”.

*Povacz v. Pa. Pub. Util. Comm’n*, Nos. 34-45, 280 A.3d 975 (Pa. 2022)

19. Accordingly, the Complainant’s allegations regarding the dispute of the installation of an AMI smart meter should be dismissed pursuant to the doctrine of res judicata.

**WHEREFORE**, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant Complaint.

Respectfully Submitted,



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Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-6841  
Fax: 215.568.3389  
Khadijah.scott@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>NANCY COLBERT</b>	:	
<b>Complainant</b>	:	
v.	:	<b>DOCKET NO. C-2022-3036933</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

---

**VERIFICATION**

I, Khadijah Scott, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

Date: December 16, 2022



\_\_\_\_\_  
Khadijah Scott

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>NANCY COLBERT</b>	:	
<b>Complainant</b>	:	
v.	:	<b>DOCKET NO. C-2022-3036933</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

---

**CERTIFICATE OF SERVICE**

I, Khadijah Scott, hereby certify that I have this day served a copy of PECO Energy Company's Answer with New Matter to Complainant's Complaint in the above matter upon all interested parties by E-mailing a copy to:

NANCY COLBERT  
142 PENNSYLVANIA AVE  
PHOENIXVILLE PA 19460  
*Via email: nrcc1@protonmail.com*

December 16, 2022



---

Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-6841  
Fax: 215.568.3389  
Khadijah.scott@exeloncorp.com

# **EXHIBIT 1**

\*\*\* Account Information \*\*\*

Account Number: 35558-00208  
 Account Status: Active  
 Requested By: NANCY COLBERT  
 (610)917-1116 Extension:  
 Mail To: NANCY COLBERT  
 142 PENNSYLVANIA AVE  
 PHOENIXVILLE PA 19460

\*\*\* Current Account Status \*\*\*

Current Bill: \$0.00  
 Billed Prior: \$0.00  
 Balance Due: \$0.00  
 Service Address: 142 PENNSYLVANIA AV  
 PHOENIXVILLE PA 19460  
 Credit Amount: \$1.22  
 Deposit Requested: \$0.00  
 Deposit On-Hand: \$0.00  
 Meter Bill Grp: 16  
 Rate: Electric Residential Service

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	KWH
12/22/20	ELECTRIC SERVICE	10/20/20 11/19/20	3148	107303501	\$80.41					
12/22/20	ELECTRIC SERVICE	11/19/20 12/22/20	3771	107303501	\$90.91					
12/22/20	Regular Bill						\$90.92		01/13	1167
12/31/20	Payment					\$90.92				
01/26/21	CANCELED ELECTRIC SERVICE	12/22/20 01/25/21	4483	107303501	\$102.83					
01/26/21	Regular Bill						\$102.83		02/17	712
01/27/21	Estimated Bill					\$102.83				
01/27/21	ELECTRIC SERVICE	12/22/20 01/25/21	4324	107303501	\$82.11					
01/27/21	Regular Bill						\$82.11		02/18	553
02/09/21	Payment					\$82.11				
02/24/21	CANCELED ELECTRIC SERVICE	01/25/21 02/23/21	4796	107303501	\$71.63					
02/24/21	Regular Bill						\$71.63		03/18	472
02/26/21	Estimated Bill					\$71.63				
02/26/21	ELECTRIC SERVICE	01/25/21 02/23/21	4736	107303501	\$63.80					
02/26/21	Regular Bill						\$63.80		03/22	412
03/11/21	Payment					\$63.80				
03/25/21	ELECTRIC SERVICE	02/23/21 03/22/21	5151	107303501	\$63.54					
03/25/21	Regular Bill						\$63.54		04/16	415
04/02/21	Payment					\$63.54				
04/23/21	CANCELED ELECTRIC SERVICE	03/22/21 04/22/21	5627	107303501	\$71.58					
04/23/21	Regular Bill						\$71.58		05/17	476
04/27/21	Estimated Bill					\$71.58				
04/27/21	ELECTRIC SERVICE	03/22/21 04/22/21	5582	107303501	\$65.76					
04/27/21	Regular Bill						\$65.76		05/19	431
05/05/21	Payment					\$65.76				
05/24/21	CANCELED ELECTRIC SERVICE	04/22/21 05/21/21	5969	107303501	\$60.10					
05/24/21	Regular Bill						\$60.10		06/15	387
05/26/21	Estimated Bill					\$60.10				
05/26/21	ELECTRIC SERVICE	04/22/21 05/21/21	5894	107303501	\$50.40					
05/26/21	Regular Bill						\$50.40		06/17	312
06/09/21	Payment					\$50.40				
06/23/21	CANCELED ELECTRIC SERVICE	05/21/21 06/22/21	6400	107303501	\$75.50					
06/23/21	Regular Bill						\$75.50		07/15	506
06/29/21	Estimated Bill					\$75.50				
06/29/21	ELECTRIC SERVICE	05/21/21 06/22/21	6298	107303501	\$62.32					
06/29/21	Regular Bill						\$62.32		07/21	404
07/07/21	Payment					\$62.32				

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	KWH
07/23/21	CANCELED ELECTRIC SERVICE	06/22/21 07/22/21	6794	107303501	\$74.13					
07/23/21	Regular Bill						\$74.13		08/16	496
07/29/21	Estimated Bill					\$74.13				
07/29/21	ELECTRIC SERVICE	06/22/21 07/23/21	6848	107303501	\$81.11					
07/29/21	Regular Bill						\$81.11		08/20	550
08/10/21	Payment					\$81.11				
08/23/21	CANCELED ELECTRIC SERVICE	07/23/21 08/20/21	7345	107303501	\$74.26					
08/23/21	Regular Bill						\$74.26		09/14	497
08/26/21	Estimated Bill					\$74.26				
08/26/21	ELECTRIC SERVICE	07/23/21 08/20/21	7430	107303501	\$85.22					
08/26/21	Regular Bill						\$85.22		09/17	582
09/07/21	Payment					\$85.22				
09/22/21	CANCELED ELECTRIC SERVICE	08/20/21 09/21/21	8095	107303501	\$97.25					
09/22/21	Regular Bill						\$97.25		10/14	665
10/04/21	Estimated Bill					\$97.25				
10/04/21	ELECTRIC SERVICE	08/20/21 09/21/21	8243	107303501	\$116.65					
10/04/21	Regular Bill						\$116.65		10/26	813
10/08/21	Payment					\$116.59				
10/21/21	CANCELED ELECTRIC SERVICE	09/21/21 10/20/21	8744	107303501	\$75.93					
10/21/21	Regular Bill						\$75.99		11/12	501
10/28/21	Estimated Bill					\$75.93				
10/28/21	ELECTRIC SERVICE	09/21/21 10/20/21	8658	107303501	\$64.64					
10/28/21	Regular Bill						\$64.70	\$0.06	11/19	415
10/29/21	Payment					\$64.77				
11/19/21	CANCELED ELECTRIC SERVICE	10/20/21 11/18/21	9019	107303501	\$57.54					
11/19/21	Regular Bill						\$57.47		12/13	361
12/08/21	Payment					\$60.61				
12/10/21	Estimated Bill					\$57.54				
12/10/21	CANCELED ELECTRIC SERVICE	10/20/21 11/18/21	9043	107303501	\$60.70					
12/10/21	Regular Bill						\$0.02		01/03	385
12/13/21	Adjustment					\$60.70				
12/13/21	CANCELED ELECTRIC SERVICE	10/20/21 11/18/21	9043	107303501	\$60.70					
12/13/21	Regular Bill						\$0.02		01/04	385
12/14/21	Adjustment					\$60.70				
12/14/21	ELECTRIC SERVICE	10/20/21 11/18/21	9043	107303501	\$60.70					
12/14/21	Regular Bill						\$0.02		01/05	385
12/22/21	CANCELED ELECTRIC SERVICE	11/18/21 12/21/21	9564	107303501	\$80.67					
12/22/21	Regular Bill						\$80.69		01/18	521
01/04/22	Payment					\$84.06				
01/07/22	Estimated Bill					\$80.67				
01/07/22	ELECTRIC SERVICE	11/18/21 12/21/21	9589	107303501	\$84.06					
01/07/22	Regular Bill						\$0.02		01/31	546
01/26/22	CANCELED ELECTRIC SERVICE	12/21/21 01/25/22	10232	107303501	\$100.97					
01/26/22	Regular Bill						\$100.99		02/17	643
02/07/22	Payment					\$81.66				
02/14/22	Estimated Bill					\$100.97				
02/14/22	ELECTRIC SERVICE	12/21/21 01/25/22	10095	107303501	\$81.65					
02/14/22	Regular Bill						\$0.01		03/08	506
02/24/22	CANCELED ELECTRIC SERVICE	01/25/22 02/23/22	10523	107303501	\$72.21					
02/24/22	Regular Bill						\$72.22		03/18	428

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	KWH
03/07/22	Payment					\$64.13				
03/10/22	Estimated Bill					\$72.21				
03/10/22	ELECTRIC SERVICE	01/25/22 02/23/22	10467	107303501	\$64.13					
03/10/22	Regular Bill						\$0.01		04/01	372
03/25/22	CANCELED ELECTRIC SERVICE	02/23/22 03/24/22	10772	107303501	\$54.61					
03/25/22	Regular Bill						\$54.62		04/18	305
04/08/22	Payment					\$68.64				
04/25/22	Estimated Bill					\$54.61				
04/25/22	ELECTRIC SERVICE	02/23/22 03/24/22	10869	107303501	\$68.63					
04/25/22	ELECTRIC SERVICE	03/24/22 04/22/22	11363	107303501	\$81.85					
04/25/22	Regular Bill						\$81.85		05/17	896
05/05/22	Payment					\$81.85				
05/24/22	CANCELED ELECTRIC SERVICE	04/22/22 05/23/22	11854	107303501	\$81.42					
05/24/22	Regular Bill						\$81.42		06/15	491
06/02/22	Payment					\$77.94				
06/21/22	Estimated Bill					\$81.42				
06/21/22	ELECTRIC SERVICE	04/22/22 05/23/22	11830	107303501	\$77.94					
06/21/22	Regular Bill								07/13	467
07/13/22	ELECTRIC SERVICE	05/23/22 06/22/22	12225	107303501	\$70.11					
07/13/22	Regular Bill						\$70.11		08/04	395
07/25/22	Regular Bill						\$70.11		08/16	
08/08/22	Payment					\$70.11				
08/22/22	ELECTRIC SERVICE	06/22/22 07/22/22	12693	107303501	\$81.49					
08/22/22	Regular Bill						\$81.49		09/13	468
08/23/22	ELECTRIC SERVICE	07/22/22 08/22/22	13421	107303501	\$120.92					
08/23/22	Regular Bill						\$202.41		09/14	728
09/01/22	Payment					\$120.92				
09/20/22	Late Payment Charge				\$1.22					
09/21/22	Late Payment Charge					\$1.22				
09/22/22	CANCELED ELECTRIC SERVICE	08/22/22 09/21/22	13985	107303501	\$100.96					
09/22/22	Late Payment Charge				\$1.22					
09/22/22	Regular Bill						\$183.67	\$82.71	10/14	564
10/11/22	Payment					\$176.68				
10/18/22	Adjustment					\$100.96				
10/18/22	ELECTRIC SERVICE	08/22/22 09/21/22	13949	107303501	\$95.18					
10/18/22	Regular Bill						\$1.21		11/09	528
10/20/22	Late Payment Charge					\$1.22				
10/24/22	ELECTRIC SERVICE	09/21/22 10/20/22	14287	107303501	\$64.72					
10/24/22	Regular Bill						\$64.71		11/15	338
11/18/22	Credit					\$1.22				
11/21/22	ELECTRIC SERVICE	10/20/22 11/18/22	14664	107303501	\$70.97					
11/21/22	Regular Bill						\$134.46	\$63.49	12/13	377
11/23/22	Payment					\$64.71				
11/28/22	Payment					\$64.71				
12/05/22	Payment					\$6.26				

## **EXHIBIT 2**

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held October 4, 2018

Commissioners Present:

Gladys M. Brown, Chairman  
Andrew G. Place, Vice Chairman  
Norman J. Kennard  
David W. Sweet  
John F. Coleman, Jr.

Nancy Colbert

C-2016-2561993

v.

PECO Energy Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Formal Complaint (Complaint) of Nancy Colbert (Complainant or Ms. Colbert) on August 8, 2016, seeking reconsideration of the Commission's prior decision granting PECO Energy Company (PECO or Respondent) authority to install a smart meter at Petitioner's residence. See, *Nancy and Jim Colbert v. PECO Energy Company*, Docket No. 2015-2515607 (Order entered June 30, 2016) (*June 2016 Order*). Our *June 2016 Order* denied and dismissed the Complaint on grounds of legal insufficiency, with prejudice, and denied the Complainant's request for a hearing on allegations that installation of smart meters cause adverse effects to residents' health,

safety and privacy rights. PECO filed an Answer to the Complaint (Answer) denying the averments on September 6, 2016.

As a procedural matter, Administrative Law Judge (ALJ) Joel Cheskis construed the Complaint as a Petition for Rescission or Amendment of a final order of the Commission pursuant 52 Pa. Code § 5.572(d) (allowing relief at any time from a final order by petition for rescission or amendment).<sup>1</sup> Pursuant to Commission internal operating procedures regarding requests for special relief under 52 Pa. Code § 5.572, the Complaint was transferred to the Commission’s Office of Special Assistants (OSA) for disposition.

For the reasons set forth herein, we will (1) treat the Complaint (hereinafter “Petition”) as a Petition for Rescission or Amendment of the *June 2016 Final Order*; (2) grant the special relief requested by the Complainant (hereinafter “Petitioner”); (3) rescind our *2016 Final Order* dismissing the complaint with prejudice; and (4) reopen the proceeding at that docket and remand the matter to the Office of Administrative Law Judge for further proceedings as deemed necessary, consistent with this Opinion and Order.

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<sup>1</sup> Due to a series of filing errors, the Commission’s Secretary’s Bureau rejected the Complainant’s attempts to file a timely request for reconsideration of our *June 2016 Order*. The Secretary’s Bureau docketed the present Complaint more than fifteen days after entry of the *June 2016 Order*. As discussed, *infra*, on September 27, 2016, PECO filed a Motion to Dismiss the Complaint as a collateral attack on a final order and an untimely request for reconsideration. In the interest of justice for the *pro se* Complainant, the ALJ exercised discretion to construe the Complaint as a petition for rescission or amendment of a final order, allowable at any time under 52 Pa. Code § 5.572. See, Order of ALJ Joel Cheskis, issued February 8, 2017, *Nancy Colbert v. PECO Energy Company: Order Denying Motion for Judgement on the Pleadings and Transferring Petition to Office of Special Assistants*, Docket No. C-2016-2561993. (*ALJ’s February 8 Order*).

## History of Proceeding

On August 8, 2016, the Petitioner, acting *pro se*, filed the present Petition seeking reconsideration of the Commission's *June 2016 Final Order* at Docket No. C-2015-2515607. *ALJ's February 8 Order* at 1-2.

On September 6, 2016, PECO filed an Answer and New Matter accompanied by a Notice to Plead, in which it denied the allegations in the Petition and asserted, by way of new matter, that the Petition is barred by the doctrine of *res judicata* since the same facts and allegations were raised and addressed by the Commission's prior *June 2016 Final Order* at Docket No. C-2015-2515607 (Opinion and Order entered on June 30, 2016). The Commission's *June 2016 Final Order* upheld the ALJ's denial of a hearing and dismissal of Ms. Colbert's complaint on grounds of legal insufficiency. We concluded that, where a smart meter was not yet installed in a customer's residence, the customer could not, as a matter of law, assert a violation of any provision of the Public Utility Code, Commission Regulation or utility tariff based on adverse effects to their own health and safety alleged to be caused by a smart meter, because the customer could not personally testify to any such adverse effects. No appeal was taken from the final order, and no petition for reconsideration was timely filed. *Id.* at 2 and 7.

On September 27, 2016, PECO filed a Motion for Judgement on the Pleadings (PECO Motion), that reiterated the allegations raised in the new matter, asked that the ALJ find that the Complaint is barred by *res judicata* from relitigating the identical claims under the same set of facts previously decided by the Commission's *June 2016 Final Order* at Docket No. C-2015-2515607, and requested that the Complaint be dismissed with prejudice. *Id.* at 2-3.

On October 11, 2016, Ms. Colbert filed a response to PECO's Motion, in which she alleged, *inter alia*, that she was denied due process in the prior proceeding because she was not afforded a hearing regarding the issues decided by the Commission's *June 2016 Final Order*. Ms. Colbert further asserted that PECO misrepresented the content of Ms. Colbert's response to the new matter. In conclusion, Ms. Colbert reiterated her request for a hearing in the present proceeding to present evidence regarding her allegations that smart meters cause adverse effects to health, safety and privacy rights. *ALJ's February 8 Order* at 3.

On January 18, 2017, the parties were notified of the assignment of a motions judge and hearing on PECO's Motion scheduled for February 8, 2017. Following hearing on PECO's Motion to dismiss, ALJ Cheskis denied the Motion. *ALJ's February 8 Order* at 6.

Noting the circumstances under which the Petitioner had failed to timely file a petition for reconsideration of the *June 2016 Final Order*, and viewing the facts in a light most favorable to Petitioner, the ALJ construed the matter as a Petition for Rescission or Amendment of the *June 2016 Final Order*, pursuant to Section 5.572(d) of the Public Utility Code, 52 Pa. Code § 5.572(d) (allowing relief from a final order at any time by petition for rescission or amendment), and transferred the matter to OSA for disposition. *ALJ's February 8 Order* at 7-9.

## **Discussion**

### **A. Nature of Filing**

We begin by considering the nature of the filing before us, to determine the applicable legal standard of review. As previously noted, no appeal or petition for

reconsideration was timely filed in response to the Commission's *June 2016 Final Order*. Therefore, the Opinion and Order of the Commission became final and effective on the date it was entered. *See*, Section 1.14(b) of Commission Regulations, 52 Pa. Code §1.14(b). Although the Petition was filed outside the fifteen-day period for seeking reconsideration, the ALJ exercised discretion in the interest of justice for the *pro se* Petitioner under 52 Pa. Code § 1.2(a) to liberally apply our Regulations and construe the Petition as a request for relief pursuant to Section 5.572(d) of Commission Regulations, 52 Pa. Code § 5.572(d), thereby allowing the Complainant to seek relief at any time by petition for rescission or amendment of a final Commission order. *Id.* We concur.

Therefore, we will review the matter as a Petition for Rescission or Amendment of the Commission's *June 2016 Final Order* seeking special relief in the form of a remand to the Office of Administrative Law Judge for hearing. Consequently, the legal standard of review is discretionary. *West Penn Power v. Pennsylvania Public Utility Comm'n*, 659 A.2d 1055 (Cmwlth. 1995).

## **B. Legal Standards**

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa Cmwlth. 1993); also see, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Public Utility Code establishes a party's right to seek relief following the issuance of a final decision pursuant to Subsection 703(f) and (g), 66 Pa. C.S. §§ 703

(f) and (g), relating to rehearings as well as rescission and amendment of final orders. Requests for such relief must be consistent with Section 5.572(d) of our Regulations, 52 Pa. Code § 5.572 (d), relating to petitions for relief following the issuance of a final decision.

Under Section 5.572 (d), a party may seek relief from a final Commission order at any time by petition for rescission or amendment. In such cases, the petition must allege circumstances which warrant disturbing the finality of orders to grant special relief. *Feleccia v. PPL Electric Utilities Corp., et al*, Docket No. C-20016210 (Order entered March 7, 2003) at 2.

Commonwealth Court has addressed the question of legal sufficiency of a complaint in cases where an electric utility customer challenges the installation of a smart meter at their residence. In *Romeo v. Pa. Pub. Util. Comm'n*, 154 A.3d 422, 2017 (Pa. Cmwlth. 2017), the court held that an electric utility customer must be afforded the opportunity to present witnesses and evidence of the alleged adverse effects to health and safety caused by smart meters. *Id.*

As previously noted, rescission or amendment of a prior final order of the Commission is matter of Commission discretion. *See, West Penn Power v. Pennsylvania Public Utility Comm'n*, 659 A.2d 1055 (Cmwlth. 1995) (PUC has discretion whether to act on petition for rescission or amendment of prior order). Therefore, under the discretionary standard of review, we will exercise our discretion to disturb a final order only under circumstances deemed appropriate. *City of Pittsburgh v Pennsylvania Department of Transportation*, 416 A.2d 461 (Pa. 1980).

While a §5.572(d) petition may raise any matter to persuade us to exercise our discretion to amend or rescind a prior Commission order, it is not appropriate to allow

parties to relitigate matters already decided. “Parties . . ., cannot be permitted [a second opportunity] . . ., to raise the same questions which were specifically considered and decided against them.” *Duick v Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)). Exercise of Commission discretion to disrupt the finality of prior Commission orders is appropriate only where a §5.572(d) petition raises “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

Additionally, as a public utility, PECO’s duty regarding the installation of smart meters is governed by Section 1501 of the Code, 66 Pa. C.S. § 1501, which requires utilities to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and to make all repairs, changes, improvements, etc., to its service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees, and the public. 66 Pa. C.S. § 1501.

### **C. Position of the parties**

#### **1. Ms. Colbert’s Petition for Rescission or Amendment**

As reflected in her Petition and subsequent responses to PECO, Ms. Colbert disputed the installation of a smart meter at her residence based on facts and issues presented in the prior Commission proceeding in *Nancy and Jim Colbert v. PECO Energy Company*, Docket No. 2015-2515607 (Order entered June 30, 2016). On that basis, the Petitioner asserted that she has a right to a hearing to raise her objections to PECO’s authority to install a smart meter at her residence. *ALJ’s February 8 Order* at 1, 3 and 7.

## **2. PECO's Answer and New Matter and Motion for Judgement on the Pleadings**

As reflected in the pleadings, PECO averred that Complainant/Petitioner's assertions are an attempt to re-litigate the prior complaint decided by the Commission's *June 2016 Final Order*, which approved PECO's authority to install a smart meter at Ms. Colbert's residence, and therefore should be dismissed, with prejudice, as set forth in PECO's New Matter. The New Matter set forth the history of the proceeding underlying the Commission's *June 2016 Final Order* that addressed the same facts and asserted *res judicata* as a bar to the present Complaint. *ALJ's February 8 Order* at 1-3.

### **D. ALJ's Order Denying PECO's Motion**

Based on the Petitioner's own assertions, ALJ Cheskis concluded that Ms. Colbert did not raise new facts or arguments in opposition to PECO's authority to install a smart meter at her residence, but rather sought reconsideration of the Commission's *July 2016 Final Order* at Docket No. C-2015-2515607. *ALJ's February 8 Order* at 8. Although the Complaint was filed beyond the fifteen-day period in which to request reconsideration under 52 Pa. Code § 5.572(c), which would have barred the request as untimely, in consideration of the fact that the Complainant was acting *pro se*, the ALJ exercised discretion under 52 Pa. Code § 1.2(a) to apply Commission Regulations liberally, and construed the Complaint as a petition under § 5.572(d) which allows a request for relief from a final order at any time by petition for rescission or amendment. *Id.* at 8-9.

### **E. Disposition**

Based upon our review of the record and the applicable law, as discussed above, we find that the Complaint is appropriately treated as a Petition for Rescission or

Amendment of the Commission's *June 2016 Final Order*. Further, consistent with the Commonwealth Court's decision in *Romeo v. Pa. Pub. Util. Comm'n*, 154 A.3d 422, 2017 (Pa. Cmwlth. 2017), we find that it is warranted to grant the Petitioner's request for special relief and remand this matter to the Office of Administrative Law Judge for any hearings deemed necessary at which the Petitioner may offer evidence in support of her allegations that the installation of a smart meter will cause adverse effects to her health, safety and privacy rights. Therefore, we believe there is sufficient basis to warrant exercising our discretion to rescind and amend our *June 2016 Final Order*, reopen that docket and direct a remand for a hearing in that proceeding.

In our *June 2016 Final Order* at Docket No. C-2015-2515607, we dismissed, with prejudice, the Complainants' objections to PECO's installation of a smart meter at their residence. In that proceeding, the Complainants objected to PECO's attempts to install a smart meter at the Complainants' residence and refused PECO access to the property to do so. PECO notified the Complainants that their electric service would be terminated due to denial of access for PECO to install a smart meter. *Id.* at 2.

The Complainants averred in that proceeding that PECO's attempts to install a smart meter at their residence were unlawful, and that PECO was obligated to inform its customers of the risk of damages from smart meters, including the loss of privacy, radiation poisoning, identity theft, and fire. *Id.* The Complainants alleged, *inter alia*, smart meters are not cost effective, are an invasion of privacy, and cause adverse health effects, citing websites and publications in support of their assertions. *Id.*

Our finding in the *June 2016 Final Order* upheld the ALJ's conclusion that the Complainant failed to allege facts which support a finding that PECO's action was unlawful, and therefore, dismissed the Complaint on the grounds of legal insufficiency. We held:

We agree with the ALJ's determination *to dismiss the Complaint on legal insufficiency grounds*. We have held that the express language of Act 129 does not prohibit us from holding a hearing on issues related to the safety of smart meters, consistent with our statutory authority in Section 1502 of the Code, when a legally sufficient claim is present. *Kreider, Supra*, at 17. In cases involving smart meter installation, we evaluate specific allegations made by the complainant under the circumstances in each case and reach a conclusion based on those particular circumstances. *See, Susan Kreider v. PECO Energy Company*, Docket No. P-2015-2495064 (Order on Reconsideration entered January 28, 2016), at 21. In this particular case, the Complainant's factual averments fail to implicate a potential violation of the Code, a Commission Order or Regulation, or Company's Tariff. The Complainant's have not presented a claim to which they could personally testify that would support a finding that the installation of a smart meter was responsible for any specific safety or health effects they experienced in their home.

*Nancy and Jim Colbert v. PECO Energy Company*, Docket No. C-2015-2515607 (Opinion and Order entered, June 30, 2016) (emphasis added).

However, our rationale in our *June 2016 Final Order* for dismissing the Complaint for legal insufficiency was subsequently rejected by the Commonwealth Court in *Romeo v. Pa. Pub. Util. Comm'n*, 154 A.3d 422, 2017 (Pa. Cmwlth. 2017). In *Romeo*, the Court found, where an electric utility's customer objected to the installation of a smart meter based on allegations of adverse effects to health, safety and privacy rights, the complainant was not required to allege facts to which the complainant "would personally testify." Therefore, the factual allegations of the complaint were legally sufficient. The court reversed our finding of legal insufficiency and remanded the matter to the agency for a hearing to allow the customer an opportunity to present evidence in support of the allegations.

*Romeo*, therefore, effectively overrules prior Commission precedent which held that, where a smart meter was not yet installed in a customer's residence, the customer could not, as a matter of law, assert a violation of any provision the Public Utility Code, Commission Regulation or utility tariff based on adverse effects to their own health and safety alleged to be caused by a smart meter, because the customer could not personally testify to such adverse effects. See, *Corbett v. Pennsylvania Power Company*, Docket No. C-2011-2219898 (Final Order entered May 27, 2011); *Jones v. Metropolitan Edison Company*, Docket No. C-2011-2224380 (Final Order entered June 28, 2011); *Griffin v. Metropolitan Edison Company*, Docket No. C-2012-2300172 (Final Order entered July 31, 2012); *Brake v. West Penn Power Company*, Docket No. C-2013-2367308 (Opinion and Order entered November 14, 2013); *Drake v. Pennsylvania Electric Company*, Docket No. C-2014-2413771 (Final Order entered June 12, 2014); *Efaw v West Penn Power Company*, Docket No. C-2014-2413744 (Final Order entered June 12, 2014), *Siemion v PECO Energy Company*, Docket No. C-2015-2493952 (Final Order entered October 21, 2015), *Schoefer v PECO Energy Company*, Docket No. C-2015-2497438 (Final Order entered November 6, 2015).

We note that *Romeo* was decided in 2017, after our *June 2016 Final Order* was issued. Therefore, while directly on point, *Romeo* does not operate as controlling legal precedent where, as here, the Commission had entered a final order, the *June 2016 Final Order* dismissing the complaint with prejudice, prior to the issuance of *Romeo*.

Typically, where a final agency order has been entered, *res judicata* would bar any subsequent challenge, even one based on a change in the law. Generally, new developments in the case law will not alter the finality of the prior agency order. *Jones v. Costlow*, 47 A 2d. 259 (Pa. 1946). However, because this case arises as a Petition for Rescission or Amendment of a prior final order of the Commission, we have discretion to determine whether to apply the holding in *Romeo* to grant special relief and require remand and hearing is discretionary. *West Penn Power v. Pennsylvania Public Utility*

*Comm'n*, 659 A.2d 1055 (Pa. Cmwlth. 1995) (PUC has discretion whether to act on petition for rescission or amendment of prior order).

In the present case, the *pro se* Petitioner has maintained her request for a hearing at every stage of the proceeding. We also note the unique circumstances under which the *pro se* Petitioner made attempts to timely file for reconsideration of the *June 2016 Final Order*, which were rejected by the Secretary's Bureau for ministerial reasons. *See, infra.* at. Fn. 1.

Under the unique circumstances of this case, involving the rights of a *pro se* Petitioner and under facts which warrant exercise of our discretion to treat the Complaint as a Petition for Rescission or Amendment, our concern to afford a *pro se* complainant due process consistent with *Romeo* outweighs the technical insufficiency of the filings. In these circumstances, the rationale applied in *Romeo* is a “new or novel” argument not considered by our *June 2016 Final Order*, which is sufficient basis for exercising our discretion. *Duick v Pennsylvania Gas and Water Company* at 559.

Therefore, we find there is sufficient basis for exercising our discretion to grant the special relief requested. Thus, we will rescind our *June 2016 Final Order* that dismissed the complaint and direct that the matter at that docket be reopened and remanded to the Office of Administrative Law Judge for further proceedings as deemed necessary and the issuance of an initial decision on remand, consistent with this Opinion and Order.

## Conclusion

Based upon our review of the record, applicable law and the forgoing discussion, we shall grant the Petition filed by Nancy Colbert on August 8, 2016, consistent with the discussion herein. The prior proceeding at Docket No. C-2015-2515607 is to be reopened and the matter remanded to the Office of Administrative Law Judge for such hearings as may be necessary to permit the Complainants to present evidence in support of their allegations that the installation of a smart meter at their residence will cause adverse effects to their health, safety and privacy rights; **THEREFORE,**

### IT IS ORDERED:

1. That the Formal Complaint filed by Nancy Colbert at this docket shall be construed as a Petition for Rescission or Amendment of the Pennsylvania Public Utility Commission's prior order in *Nancy and Jim Colbert v. PECO Energy Company*, Docket No. 2015-2515607 (Order entered June 30, 2016), pursuant to 52 Pa. Code 5.572(d).
2. That the Petition for Rescission or Amendment of the Pennsylvania Public Utility Commission's Final Order entered in *Nancy and Jim Colbert v. PECO Energy Company*, Docket No. 2015-2515607 (Order entered June 30, 2016), filed by Nancy Colbert on August 8, 2016, at this docket, is granted.
3. That the Pennsylvania Public Utility Commission's Final Order entered in *Nancy and Jim Colbert v. PECO Energy Company*, Docket No. 2015-2515607 (Order entered June 30, 2016) is rescinded and the proceeding at that docket shall be reopened and remanded to the Office of Administrative Law Judge for such further

proceedings as may be necessary and for the issuance of an Initial Decision on Remand for the purposes of permitting the Complainants to present evidence in support of their allegations that the installation of a smart meter at their residence will cause adverse effects to their health, safety and privacy rights, consistent with this Opinion and Order.

4. That the proceeding at Docket No. C-2016-2561993 be marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: October 4, 2018

ORDER ENTERED: October 4, 2018

## **EXHIBIT 3**

C-2016-2561993  
**RECEIVED**

FEB 04 2019

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

January 31, 2019

PA puc  
Commonwealth of Pennsylvania, KEYSTONE BUILDING  
2<sup>nd</sup> floor  
400 North Street  
Harrisburg, PA 17120

DEAR Madam Secretary of the puc:

**WHEREAS NOTICE WAS SENT TO GLADYS BROWN ON OCTOBER 19, 2018**

**WHEREAS NOTICE WHICH INCLUDED THE OCTOBER 19, 2018 LETTER WAS SENT TO ALL AT THE PUC ON NOVEMBER 5, 2018 CERTIFIED MAIL, WITH PROOF OF DELIVERY ON NOVEMBER 30, 2018 AT 8:07 AM**

**WHEREAS THE PECO WARD SMITH QUOTED EXTENSIVELY FROM SAID DOCUMENTATION IN HIS DECEMBER 27, 2018 PAPERWORK**

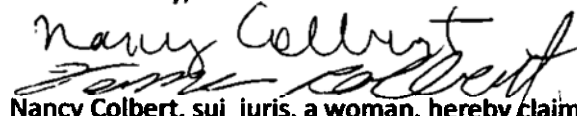
**THIS IS A RESTATEMENT OF THE SAME MESSAGE ALREADY RECEIVED. THE COLBERTS ENDED ANY FURTHER PUBLIC HEARING FOR THEIR FORMAL COMPLAINT BEGUN NOVEMBER 2015 WHICH PUC GAVE THE DOCKET NUMBER 2015-2515607. SINCE PUC ASSIGNED ANOTHER NUMBER, 2016-2561993, THAT ONE AS WELL IS TO BE CANCELLED. THE COLBERTS, NEITHER NANCY NOR JAMES, EVER FILED A SECOND FORMAL COMPLAINT BUT PUC ASSIGNED ONE FOR THEIR OWN INTERESTS AND PURPOSES PERHAPS TO ATTEMPT TO CREATE AN EX PARTE HEARING THAT VIOLATES THE FORMAL COMPLAINT PROCESS.**

AGAIN AND AGAIN,

**ALL FORMAL COMPLAINT PROCESS HAS BEEN WITHDRAWN, ABORTED, CANCELLED BY THE COLBERTS. IN OTHER WORDS, WE DROP THIS CASE under any and all docket numbers assigned, THERE IS NO FURTHER ACTION.**

**Thank you for your immediate attention, Rosemary Chiavetta.**

Most seriously,



Nancy Colbert, sui juris, a woman, hereby claiming all rights nunc pro tunc

James Colbert, sui juris, a man, hereby claiming all rights nunc pro tunc

COPY MAINTAINED IN FILE

**CERTIFIED MAIL**

c/o Colbert  
142 Pennsylvania Avenue  
Phoenixville, Pennsylvania



7018 1130 0002 0586 4792



1000



17120

U.S. POSTAGE PAID  
FCM LETTER  
PHOENIXVILLE, PA  
19380  
FEB 04, 19  
AMOUNT  
**\$4.05**  
R2305K131555-04

PA Puc  
COMMONWEALTH OF PENNSYLVANIA  
KEYSTONE BUILDING  
SECOND FLOOR ROOM-N201-SECRETARY  
400 NORTH STREET  
HARRISBURG, PA



# **EXHIBIT 4**

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held September 19, 2019

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
David W. Sweet, Vice Chairman  
Norman J. Kennard  
Andrew G. Place  
John F. Coleman, Jr.

Nancy and James Colbert

C-2016-2561993

v.

PECO Energy Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed on February 15, 2019, by PECO Energy Company (PECO) to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Darlene D. Heep issued on February 15, 2019. The Initial Decision granted the request of Nancy and James Colbert (Complainants) to withdraw the Formal Complaint (Complaint). PECO's Exceptions, filed on February 15, 2019, and subsequent Reply Exceptions, filed on February 22, 2019, request that the Commission amend the Initial Decision to clarify that upon permission granted for the Complainants to withdraw the Complaint, the case is dismissed with prejudice. For the reasons set forth below, we shall

grant PECO's Exceptions. The ALJ's Initial Decision shall be amended to reflect that the matter is dismissed with prejudice and the case marked closed.

### **I. History of the Proceeding**

On August 8, 2016, Nancy Colbert (Complainant or Ms. Colbert) filed a formal Complaint which referenced a prior Formal Complaint at Docket No. C-2015-2515607,<sup>1</sup> and noted that there was corruption and that all parties have all documentation – Docket No. C-2015-2515607. The Complainant's requested relief was "July 4, 2016 Letter<sup>2</sup> - Attached and 6<sup>th</sup> Notice."

On September 6, 2016, PECO filed its Answer and New Matter in which it generally denied the allegations and contended that the Complaint should be dismissed pursuant to *res judicata*.

On September 19, 2016, the Complainant filed a response to the answer and to New Matter. The Complainant generally stated that the Answer and New Matter contained untruths and that her rightful request for a hearing remained at Docket

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<sup>1</sup> Nancy and Jim Colbert had filed the formal Complaint on November 23, 2015. On December 14, 2015, PECO filed its Answer with New Matter and Preliminary Objections. The Initial Decision Sustaining Preliminary Objections and Dismissing the Complaint (I.D.) of Administrative Law Judge David A. Salapa was served on January 14, 2016. The parties filed Exceptions and Reply Exceptions. On June 30, 2016, the Commission entered its Opinion and Order in which it modified the I.D. by correcting Finding of Fact No. 4 and the related language on page four to indicate that the Complainants' timely filed an Answer to the Preliminary Objections, et al.

<sup>2</sup> Attached to the filing was a Secretarial Letter dated July 7, 2016, which stated that the Secretary's Bureau received the Complaint on July 5, 2016 challenging the Commission's June 30, 2016 Opinion and Order. However, the Commission returned it unfiled because it did not comply with Commission regulations, and noted that the Complainant could refile following instructions that were set forth in the letter pertaining to filing a Petition for Reconsideration or a Petition for Rescission or Amendment, depending on the date the Complainant took any action.

C-2015-2515607. The Complainant further noted that the Commission should provide her with the Petition for Reconsideration so she could complete and return it.

On November 20, 2018, the Commission received a letter from the Colberts<sup>3</sup> stating that they would no longer attend a hearing in this matter.<sup>4</sup>

On December 27, 2018, PECO filed a Motion to Dismiss with Prejudice (*December 2018 Motion*).

On February 4, 2019, the Complainant filed a letter in which she stated that they had ended any further public hearing of the November 2015 complaint at C-2015-2515607 and that they had not filed a second formal complaint.

On February 5, 2019, Administrative Law Judge Darlene D. Heep issued an Initial Decision in which she dismissed the complaint. The ALJ's Initial Decision effectively dismissed the Complaint by construing the Complainants' asserted refusal to participate in the proceedings as a constructive Petition to Withdraw the Complaint, reviewed the matter under the standard set forth in the Commission Regulations at 52 Pa. Code § 5.94 (pertaining to withdrawal of pleadings in a contested proceeding) and granted withdrawal. I.D. at 6-8. The I.D. did not address the arguments raised in PECO's *December 2018 Motion*.

On February 15, 2019, PECO filed Exceptions. In its Exceptions PECO supports the I.D., specifically the decision to grant the Petition to Withdraw and to mark

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<sup>3</sup> We note that the letter was filed by Nancy and James. Colbert. However, Nancy Colbert was the only named Complainant in this Complaint docket. There, we will regard only Ms. Colbert as the Complainant.

<sup>4</sup> Attempts by both Commission staff and PECO to communicate with the Complainant regarding her pursuit of the complaint and/or discovery matters were to no avail. I.D. 3-4.

the docket closed. However, PECO submits that for the reasons set forth in its *December 2018 Motion*, it requests that the Complaint be dismissed with prejudice.

On February 22, 2019, Nancy and James Colbert filed a document labelled Exceptions in which they stated that they were cancelling all iterations of one or both of their names associated with Commission dockets against PECO including, but not limited to, C-2015-2515607 and C-2016-2561993. In addition, the Colberts stated that “All are to be cancelled with prejudice.”

Also, on February 22, 2019, PECO filed Reply Exceptions in which it noted that the Colberts’ Exceptions confirmed that they were cancelling all dockets in their names, including all existing dockets and any future ones and that “all are to be cancelled with prejudice.”

## **II. Discussion**

Before us for consideration are PECO’s Exceptions and Reply Exceptions to the ALJ’s I.D. effectively dismissing the Complaint by granting the Complainant’s withdrawal of the Complaint. We consider the ALJ’s decision to grant permission for withdrawal of the *pro se* Complainant’s Complaint in our discretion to liberally construe the provisions of the Commission’s Rules of Practice and Procedure to secure a just, speedy and inexpensive determination in this proceeding. *See* 52 Pa. Code § 1.2(a).

### **A. Legal Standards**

The Commission’s Rule of Practice and Procedure at 52 Pa. Code § 5.94 permit parties to withdraw pleadings and is to be granted only by permission of the presiding officer or the Commission. The presiding officer or Commission must consider the petition, any objection thereto and the public interest in determining whether to

permit withdrawal of the pleading. *See Reading, Blue Mountain and Northern Railroad Company v. Commonwealth of PA. Dept. of Transportation*, Docket No. C-2014-2426416 (Recommended Decision issued August 28, 2014).

## **B. ALJ's Initial Decision**

ALJ Heep made fourteen Findings of Fact and reached four Conclusions of Law. I.D. at 5-6; FOF 1-14. and 7-8. The ALJ's Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted in their entirety unless expressly or by necessary implication rejected or modified by this Opinion and Order.

The ALJ determined that the Colbert November 20, 2018 letter in which they state that they "will no longer attend a hearing." And that there is "no need for another hearing" since it is "predetermined" that they will lose the case, should be treated as a Petition to Withdraw. ALJ Heep granted the request for withdrawal because it would not be in the public interest to continue the matter, because the Colberts had stated that they no longer wanted a hearing, and because PECO would not be prejudiced by a dismissal of the case.

The ALJ also stated that the case could be dismissed as an appropriate sanction for failure to comply with an order of an Administrative Law Judge under 52 Pa. Code § 5.371. Specifically, the Colberts failed to comply with deadlines set forth in Prehearing Orders for the exchange of exhibits and witness lists and to participate in a settlement conference.

## **C. PECO's Exceptions and Replies to Exceptions**

In its Exceptions and Replies to the Exceptions, PECO requests that the Commission modify the ALJ's Initial Decision to reflect that, in addition to the

withdrawal of the Complaint, the case is dismissed with prejudice for failure to prosecute. Exc. at 1. In support of the Exceptions, PECO attached a copy of the Motion to Dismiss with Prejudice for Failure to Prosecute, which the ALJ did not rule upon. Exc. at 2, attached (PECO Motion). Specifically, PECO seeks dismissal with prejudice to establish that this proceeding, and all the matters raised herein, cannot be raised in any future action to prohibit PECO's installation of a smart meter at the Complainants' service address. PECO Motion at 1.

As further support, PECO filed Replies to the Exceptions, providing a copy of the letter submitted by the Complainants to the Commission on February 22, 2019. The Complainants' letter purports to cancel any current and future proceeding in the Complainants' names. Based on the Complainants' demonstrated intent to cease all present and future actions, PECO submits that the present proceeding should be dismissed with prejudice.

### **III. Disposition**

On consideration of the positions of the Parties, we shall grant the Exceptions and Reply Exceptions of PECO and adopt the Initial Decision of ALJ Heep as modified consistent with this Opinion and Order.

We agree with the ALJ's decision to treat the November 18, 2018 letter as a Petition to Withdraw. The Colbert subsequent filings, including their Exceptions, support this determination. As noted above, the Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.94 permit parties to withdraw pleadings and is to be granted only by permission of the presiding officer or the Commission. The presiding officer or Commission must consider the petition, any objection thereto and the public interest in determining whether to permit withdrawal of the pleading.

After considering the filings, it is clear that Ms. Colbert no longer wants to pursue this complaint. In addition, PECO did not object to their request. Finally, we concur with the ALJ that it would be in the public interest to not continue this matter. Based on the position of the Complainant, that PECO does not object and that the public interest would not be harmed by the withdrawal, we find that the requested withdrawal should be granted.

Second, we agree with PECO that the Commission should grant the Complainants' request to dismiss the matter with prejudice.

Based on the foregoing, we shall grant the Exceptions and Reply Exception of PECO and adopt the Initial Decision, as modified, consistent with this Opinion and Order.

#### **IV. Conclusion**

Accordingly, upon review and consideration of the record of this proceeding, and based on the foregoing discussion, we shall grant PECO's Exceptions and modify the ALJ's Initial Decision to reflect that the Complaint is dismissed with prejudice, consistent with this Opinion and Order; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Exceptions of PECO Energy Company, filed on February 15, 2019, at Docket No. C-2016-2561993, are granted consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Darlene D. Heep, issued on February 15, 2019, at Docket No. C-2016-2561993, is modified to reflect

that our holding that the Complaint is dismissed with prejudice, consistent with this Opinion and Order.

3. That the Formal Complaint of Nancy and James Colbert, filed on August 8, 2016, at Docket No. C-2016-2561993, is dismissed with prejudice, consistent with this Opinion and Order.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: September 19, 2019

ORDER ENTERED: September 19, 2019

# **EXHIBIT 5**

