

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nancy Colbert	:	
	:	
v.	:	C-2022-3036933
	:	
PECO Energy Company	:	

**INTERIM ORDER #2  
GRANTING IN PART AND DENYING IN PART  
MOTION FOR JUDGEMENT ON THE PLEADINGS AND  
DIRECTING A MORE SPECIFIC COMPLAINT**

On November 21, 2022, Nancy Colbert (Complainant or Ms. Colbert) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Respondent or Company), indicating that the reason for the Complaint is “Subversion of the Rule of Law.” As to the requested relief, she cited a number of state and federal laws, including “Pennsylvania Code Title 52 Public Utilities Chapter 57 Subchapter O Advanced Meter Deployment § 57.251. Purpose; § 57.255. EDC responsibilities regarding advanced metering.”

On December 13, 2022, PECO Energy Company (Respondent or PECO) filed an Answer with the Commission. On December 16, 2022, PECO filed an Amended Answer with New Matter (Answer) with the Commission. In the Answer, PECO states “it is believed that the Complainant objects to the installation of PECO’s Advanced Metering Infrastructure (“AMI”) meter, also known as a ‘smart meter.’” Furthermore, in the Answer, PECO presents multiple arguments in response to what it perceives to be the Complainant’s objection to the installation of a smart meter.

On December 20, 2022, Ms. Colbert filed a reply to the Answer (Reply) with the Commission. The Reply articulates numerous counterarguments to those presented by PECO in

the Answer. Relevant here is a reference to a December 12, 2022 “attempt at forced installation.” Exhibit A to the Reply clarifies that the reference relates to an effort by PECO to install a smart meter at her home.<sup>1</sup>

This matter was assigned to me on January 6, 2023. In light of the Commission’s November 4, 2020 general stay of all pending smart meter proceedings, on January 10, 2023, I issued an Order staying the proceedings in this matter until further direction by the Commission.

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 and directed the Office of Administrative Law Judge to proceed with pending formal complaint proceedings as directed by the presiding administrative law judge.<sup>2</sup>

The *November 2023 Order* was issued consistent with the ruling and guidance provided by the Pennsylvania Supreme Court in *Povacz v. Pa. Public Utility Commission (Povacz II)*,<sup>3</sup> a case that resolved many of the outstanding legal issues in many smart meter cases. In *Povacz II*, the court held, among other things, that under Act 129, customers have no right to refuse smart meter installation.<sup>4</sup> The court further clarified the burden of proof required to support a claim that the installation of a smart meter violates the safe and reasonable service requirement of Section 1501 of the Public Utility Code.<sup>5</sup> Specifically, the court held that to

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<sup>1</sup> Exhibit A to the Reply is a document dated December 12, 2022, indicating that it is from Nancy and James Colbert addressed to PECO, with a copy to the Chairman of the Commission (Memo). The Memo forbids the installation of any “monitoring, eavesdropping, and surveillance devices on our . . . property” and states that the refusal “applies to and includes to ‘Smart Meters’ any activity-monitoring, trespassing devices of any and all kinds.” See Reply at 23.

<sup>2</sup> The *November 2023 Order* is available on the Commission’s website [www.puc.pa.gov](http://www.puc.pa.gov) using the document search feature and searching Docket Number M-2009-2092655.

<sup>3</sup> *Povacz v. Pa. Public Utility Commission*, 280 A.3d 975 (Pa. 2022).

<sup>4</sup> *Id.* at 997.

<sup>5</sup> 66 Pa. C.S. § 1501.

prove that a smart meter is unsafe service under Section 1501, a complainant must support that allegation with medical or expert testimony.<sup>6</sup>

On January 12, 2024, I issued an Interim Order Establishing Initial Litigation Schedule (Interim Order #1). Interim Order #1 directed the parties as follows:

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 #1.

On January 19, 2024, the Complainant sent an email to OALJ and PECO counsel indicating that she had attached a “Motion for Special Appearance” in connection with this matter. On January 21, 2024, the Complaint sent an email to OALJ and PECO counsel indicating that she had attached a “Motion for Demand of Oaths” in connection with this matter.<sup>7</sup>

On February 6, 2024, the Complaint sent an email to OALJ and PECO counsel attaching without further explanation a document titled “Judicial Notice.” The document entitled Judicial Notice appears to be the Complainant’s response to the directive in Interim Order #1 to identify any expert who would be presented to support of the party’s position at an evidentiary hearing, including a summary of expected testimony (Notice of No Expert).<sup>8</sup>

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<sup>6</sup> A copy of the Supreme Court’s decision can be downloaded at: <https://www.pacourts.us/assets/opinions/SUPREME/out/J-77-A-L-2021mo.pdf>

<sup>7</sup> Subsequently, on February 27, 2024, the Complainant sent a similar email message to OALJ and PECO counsel in which she indicated that she was re-sending the January 21, 2024, email with a corrected certificate of service attached.

<sup>8</sup> The Complainant did not file a notice of service with the Commission regarding the Motion for Special Appearance, the Motion for Demand of Oaths and the Notice of No Expert with the Commission. To facilitate any review of this Order, the Motion for Special Appearance, the Motion for Demand of Oaths and the Notice of No Expert were added to the docket at my request.

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

On March 26, 2024 PECO filed a Motion to Dismiss (Motion to Dismiss). In the Motion to Dismiss, PECO contends that the Complainant's Complaint should be dismissed on three alternative grounds: (1) the Complainant's claims are outside the Commission's jurisdiction; (2) under the doctrine of res judicata; and (3) the Complaint is barred by Pennsylvania law.

The Motion to Dismiss was accompanied by a Notice to Plead notifying the Complainant that if she did not file a response to the Motion to Dismiss file a written response denying or correcting the Motion within 20 days from service of the Notice i.e., April 15, 2024, a decision might be rendered against her. The Complainant did file a response to the Motion.

### **History of Prior Proceedings Involving the Parties**

Insofar as PECO's Motion to Dismiss is based, in part, on the outcome of a complaint filed by Ms. Colbert on August 8, 2016 docketed at Docket No. C-2016-2561933 (2016 Complaint),<sup>9</sup> it is appropriate to provide a brief summary of that proceeding. In that case,

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<sup>9</sup> The 2016 Complaint also referenced a Formal Complaint filed by Ms. Colbert and her husband in 2015 docketed at C-2015-2515607 (2015 Complaint). As ALJ Cheskis indicated in the Order Denying Motion for Judgment on the Pleadings and Transferring Case to Office of Special Assistants issued February 8, 2017, Order at Docket No. C-2016-2561933 (February 8, 2017, Order), Ms. Colbert sought to have the decision regarding the 2015 Complaint reconsidered. The February 8, 2017 Order included the following summary of the Commission's June 30, 2016 Opinion and Order finding the 2015 Complaint legally insufficient and dismissing it in its entirety.

We agree with the ALJ's determination to dismiss the Complaint on legal insufficiency grounds. . . . In this particular case, the Complainants' factual averments fail to implicate a potential violation of the Code, a Commission Order or Regulation, or the Company's tariff. The Complainants 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 affects they experienced within their home.

February 8, 2017 Order at 7, citing

Ms. Colbert stated that the reason for filing the 2016 Complaint was “corruption” and that “all parties have all documentation.”<sup>10</sup> Regarding requested relief, Ms. Colbert indicated “July 4, 2016 Letter - Attached and 6<sup>th</sup> Notice.”<sup>11</sup>

PECO filed an 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 27, 2016, PECO filed a Motion to Dismiss the Complaint as a collateral attack on a final order and an untimely request for reconsideration.

The matter was assigned to ALJ Joel Cheskis, who construed the 2016 Complaint as a Petition for Rescission or Amendment of a final order issued by the Commission in *Nancy and Jim Colbert v. PECO Energy Company*, Docket Number C-2015-2515607 (Opinion and Order entered, June 30, 2016) (*Colbert I*).<sup>12</sup> In its Opinion and Order in that matter dated October 4, 2018 (*Colbert II*), the Commission (1) affirmed the ALJ’s treatment of the 2016 Complaint as a Petition for Rescission or Amendment of the Order issued in *Colbert I*; (2) granted the special relief requested by Ms. Colbert; (3) rescinded the Order issued in *Colbert I*; and (4) reopened the proceeding and remanded the matter to the Office of Administrative Law Judge for further proceedings as deemed necessary.<sup>13</sup>

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<sup>10</sup> 2016 Complaint ¶ 4.

<sup>11</sup> 2016 Complaint ¶ 5. Attached to the 2016 Complaint was a copy of a letter dated July 7, 2016, sent to Ms. Colbert by the Commission’s Secretary’s Bureau, concerning a letter Ms. Colbert sent to the Commission dated July 4, 2016, which the Secretary’s Bureau rejected due to Ms. Colbert’s failure to comply with the Commission’s regulations for filing. The July 7, 2016 Secretarial Letter included instructions for filing a petition for reconsideration and for filing a petition for recession or amendment.

<sup>12</sup> See, *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, 2017 Order*). 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.

<sup>13</sup> In *Colbert I*, the Commission dismissed with prejudice the Formal Complaint filed by Ms. Colbert and her husband in which they alleged that PECO’s effort to install a smart meter at their residence was unlawful and that PECO is obligated to inform its customers of the risk of damages from smart meters, including the loss of privacy, radiation poisoning, identity theft, and fire. In that case, Ms. Colbert and her husband asserted that smart meters are not cost effective, are an invasion of privacy, and cause adverse health effects. *Colbert I* at 2, 12.

The matter was assigned to ALJ Darlene D. Heep. On February 5, 2019, she issued an Initial Decision which effectively dismissed the 2016 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.

The Complainants filed Exceptions<sup>14</sup> and PECO filed Reply Exceptions.<sup>15</sup> By Opinion and Order dated September 19, 2019 (*Colbert III*), the Commission granted PECO's Reply Exceptions and dismissed the 2016 Complaint with prejudice.<sup>16</sup>

## Legal Standards

PECO's motion was filed pursuant to 52 Pa. Code §5.102 which permits the filing of motions for judgment on the pleadings and summary judgment. When ruling on a motion for judgment on the pleadings in our original jurisdiction, I must view all of the opposing party's allegations as true, and only those facts that the opposing party has specifically admitted may be considered against that party.

In a motion for judgement on the pleadings, I may only consider the pleadings themselves and any documents properly attached thereto.<sup>17</sup> I can only grant a motion for

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<sup>14</sup> 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, they stated that "All are to be cancelled with prejudice."

<sup>15</sup> In its Reply Exceptions PECO 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."

<sup>16</sup> See *Nancy and James Colvert v PECO Energy Company*, Docket No. C-2016-2561933 (Opinion and Order issued September 19, 2019).

<sup>17</sup> *Johnson v. Wetzel*, 271 A.3d 547 (Pa. Commw. Ct. 2021).

judgment on the pleadings if it is clear that there is no genuine issue of fact in dispute and the moving party is entitled to judgment as a matter of law.<sup>18</sup>

## **Disposition**

A review of the complaint form filed by the Complainant indicates that she failed to conform to the Commission’s requirements because the Complainant did not provide any detail regarding the reason for the filing of the Complaint other than “Subversion of the Rule of Law.”<sup>19</sup> Further, rather than providing a statement of requested remedies, she merely enumerated a number of federal and state statutes without further explanation.<sup>20</sup>

I am mindful that the Complainant is self-represented. In *Carlock v. The United Telephone Company of Pennsylvania*,<sup>21</sup> the Commission held that, in the normal course, the Commission would not dismiss a complaint of a self-represented person without first providing a hearing during which the self-represented complainant could further explain their position and the factual basis for their complaint. The Commission expressed the concern that, in general, complainants may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe their basic issue and supporting facts. However, PECO must also be afforded an opportunity to respond in a meaningful way to the Complaint, including the assertion of arguments that the Complaint should be dismissed without a hearing. The arguments presented by PECO in the Motion to Dismiss are discussed below.

## Jurisdiction

In the Motion to Dismiss, PECO describes the Complainant’s requested remedies as “claims”.<sup>22</sup> PECO argues that any claims arising under the US Constitution, the Pennsylvania

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<sup>18</sup> Id.

<sup>19</sup> Complaint ¶4.

<sup>20</sup> Complaint ¶5.

<sup>21</sup> Docket No. F 00163617 (Order entered July 14, 1993).

<sup>22</sup> See Motion to Dismiss at Section III D., Complaint ¶ 5.

Constitution, and various federal and state laws constitute should be dismissed because: (a) the Commission lacks jurisdiction to adjudicate such claims; and (b) the Complainant “failed to state a claim with specificity as required by 52 Pa. Code §5.22(5).”

The Complainant’s response to the complaint form inquiry regarding requested relief consists entirely of a list of citations to provisions of the US Constitution, the Pennsylvania Constitution, and various federal and state laws. The only reference to the Code is the last citation which reads as follows “Pennsylvania Code Title 52 Public Utilities Chapter 57 Subchapter O Advanced Meter Deployment § 57.251. Purpose; 57.255. EDC responsibilities regarding advanced metering.”<sup>23</sup> No additional language or explanation is provided.

In ruling on a jurisdictional issue, it is clear that the Commission is bound by the express provisions of the Pennsylvania Public Utility Code (Code) and "possesses only the authority the state legislature has specifically granted to it in the Code['s] . . . express language or necessary implication therefrom." *Sowers v. PPL Gas Utilities Corp.*, Docket No. C-20066530, (entered January 26, 2007) (citing 66 Pa C.S. §§ 1011, et seq.); See *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Allegheny County Port Auth. v. Pa. Public Util. Comm'n.*, 237 A.2d 602 (Pa. 1967); *Behrend v. Bell of Pa.*, 390 A.2d 233 (Pa.Super. 1978); *Pa. Dep't of Highways v. Pa. Public Util. Comm'n.*, 182 A.2d 267 (Pa.Super. 1962); *City of Erie v. Pa. Electric Co.*, 383 A.2d 575 (Pa.Cmwlth. 1978).

Here, the Complainant did not include these claims under the reason for filing the Complaint. Further, she provided no facts, explanation or argument relating to any of the statutes listed as “requested remedies” that would permit an evaluation of any claim she may wish to assert in this proceeding.

Moreover, I agree with PECO that, as to any assertion or claim by the Complainant under any of the statutes or laws other than the Code listed by Complainant on the

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<sup>23</sup> Id.

Complaint form,<sup>24</sup> she failed to include a “clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation.”<sup>25</sup>

In light of the above, I find that even when construed as claims, the Commission lacks the jurisdiction to provide relief to the Complainant under the statutes labeled as paragraphs a – g under requested remedies in the Complaint. Therefore, any such claims will be stricken from the Complaint.

#### Pennsylvania Law Bars the Complainant’s Claim

Relying on the Pennsylvania Supreme Court’s decision in *Povacz II*, PECO also argues that the Complaint should be dismissed because her claim is barred by Pennsylvania law. PECO correctly observes that in its opinion in that case, the Court ruled

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.<sup>26</sup>

I also agree with PECO that a customer does not have the ability to opt out of the installation of a smart meter.<sup>27</sup> Nevertheless, I am mindful that since the filing of the Motion to Dismiss, the Commission has provided guidance with respect to recent caselaw applicable to complaints involving objection to smart meter installation.

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<sup>24</sup> The Complainant’s claims under the Code are discussed elsewhere in this Order.

<sup>25</sup> 52 Pa. Code §5.22(5)

<sup>26</sup> Motion to Dismiss *Section III. C.*, citing *Povacz II* at 7. (*emphasis added in Motion to Dismiss*).

<sup>27</sup> See, *Povacz II*. See also, *Mary Paul v. Pennsylvania Public Utility Commission*, 460 C.D. 2019 (2023) (*Mary Paul*).

At the public meeting held on April 4, 2024, the Chairman of the Commission made the following statement in a case brought by a complainant who objected to the installation of a smart meter. While acknowledging that the statements in the complaint regarding health issues were general in nature,<sup>28</sup> the Chairman’s Motion included the following guidance regarding such allegations and claims: “these statements must be accepted as true [and] warrant giving [the complainant] an opportunity to proceed with his complaint” and “[t]his is particularly true given that [the complainant] is appearing *pro se*.”<sup>29</sup> The Chairman also rejected the notion that the Commission does not have authority to grant the relief requested by the complainant, stating “It may turn out, following further proceedings, that there is some other relief that the Commission can order that is in the public interest. . . . We will not know this however, if the complaint is dismissed at this stage.”<sup>30</sup>

In light of the above, I conclude that PECO’s Motion to Dismiss on the grounds that the Complainant’s claim is barred by Pennsylvania law must be denied.

### Res Judicata

PECO correctly observes that res judicata or 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 [and] operates to prevent re-litigation of claims already litigated on the merits.”<sup>31</sup> It is well established that four elements that must be met for the doctrine of res judicata to apply: (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.<sup>32</sup> *Day v. Volkswagenwerk Aktiengesellschaft*, 474 A.2d 1313 (Pa.Super. 1983).

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<sup>28</sup> Chairman’s Motion at 2.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Motion to Dismiss, Section III. B, citing *Hopewell Estates, Inc. v. Kent*, 646 A.2d 1192 (Pa.Super. 1994).

<sup>32</sup> *Id.*, citing *Day v. Volkswagenwerk Aktiengesellschaft*, 474 A.2d 1313 (Pa.Super. 1983).

PECO contends that a comparison of the 2016 Complaint and the Complaint filed in this matter demonstrate that in both instances, the Complainant objected to the installation of a smart meter, therefore, the issues and causes of action identical, the parties are identical, and the forum for resolution of the dispute i.e., the Commission is identical. PECO argues that in Colbet III, the Commission dismissed the 2016 Complaint with prejudice, barring the Complainant from raising the same issue in a subsequent PUC proceeding.

While it is true that the 2016 Complaint was dismissed with prejudice, it does not necessarily follow that the Complainant is barred from filing a further complaint against PECO.

The issue presented here is whether the dismissal of the 2016 Complaint with prejudice actually “closed the door” to the Complainant and barred her from filing a subsequent complaint against PECO relating to the installation of a smart meter.

The Commission’s Opinion and Order which dismissed the 2016 Complaint with prejudice, clearly stated that its decision to dismiss the 2016 Complaint was based on a demonstrated intent to cease all present and future actions, as reflected in and evidenced by the Petition to Withdraw and Replies to Exceptions filed by the Complainants.<sup>33</sup> Indeed, in its Opinion and Order, the Commission observed “[a]fter considering the filings, it is clear that Ms. Colbert no longer wants to pursue this complaint.”<sup>34</sup>

The Commission has previously considered the impact of res judicata in the context of cases involving a failure to appear at a hearing to prosecute a complaint. As discussed below, these provide a useful analogy to the facts presented in this case.

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<sup>33</sup> Colbert II at 6-7.

<sup>34</sup> Colbert II at 7.

The Commission has ruled that when a complainant fails to appear and prosecute their complaint, there is no determination on the merits, thereby holding that the doctrine of *res judicata* does not apply. *Flaherty*.<sup>35</sup>

A review of the Findings of Fact included in the Initial Decision and adopted by the Commission in *Colbert III* reveals that the Findings of Fact relate solely to the procedural history of the case; no Findings of Fact were by the ALJ or the Commission relating to the underlying substance of the 2016 Complaint.

Applying the principles articulated in *Flaherty* to this case, which also involves a *pro se* complainant and the dismissal of a prior complaint not prosecuted by the Complainant, I find that any claim asserted in the Complaint and not otherwise dismissed in this Order is not barred by the doctrine of *res judicata*.<sup>36</sup>

#### Complainant's Claims are Barred by Pennsylvania Law

In the Motion to Dismiss, PECO asserts three arguments in support of its position that the Complainant's claims are barred by Pennsylvania law.<sup>37</sup> First, PECO argues that the Pennsylvania Courts have definitively held that customer does not have the ability to opt out of the installation of an AMI meter, citing *Povacz II* and *Mary Paul*. Second, PECO argues that the Complainant failed to make a *prima facie* case for an accommodation. Third, PECO contends

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<sup>35</sup> *Flaherty v. Duquesne Light Co.*, Docket No. C-2023-3039314 (Opinion and Order entered Nov. 13, 2023) (citing *Scharf v. DeCou Co.*, 183 A. 41 (Pa. 1936); *Farabiugh Chevrolet v. Covenant Mgmt, Inc.*, 522 A.2d 100, 101 (Pa. Super. 1987); *Gutman v. Giordano*, 55 A.2d 782, 783 (Pa. Super. 1989); *Acobacey v. Acobacey*, 22 Phila. 333 (1991); *Monroeville v. Liberatore*, 736 A.2d 31, 34 (Pa. Cmwlth. 1999) (emphasis added)) (*Flaherty*). The Commission also found that Section 316 of the Code governing the effect of commission action does not apply to failure to appear cases. 66 Pa.C.S. § 316. See, *Flaherty* at 7 (citing *Mclaughlin v. DQE*, Docket No. C-2008-2032251 (Opinion and Order entered Feb. 27, 2009); *Duquesne Light Co. v. Pa. Pub. Util. Comm'n*, 715 A.2d 540 (Pa. Cmwlth. 1998); *Popowsky v. Pa. Pub. Util. Comm'n*, 669 A.2d 1029, 1037 n. 14 (Pa. Cmwlth. 1995), *rev'd in part on other grounds*, 706 A.2d 1197 (Pa. 1997); *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377, 1380 (Pa. 1979); *Schellhammer v. Pa. Pub. Util. Comm'n*, 629 A.2d 189, 193 (Pa. Cmwlth. 1993)).

<sup>36</sup> In very limited circumstances, Commission supports barring a complainant from filing further complaints against a utility in certain circumstances, such as when the complainant has abused the Commissions processes. *Flaherty* at 8.

<sup>37</sup> See Motion to Dismiss at Section III. C.

that it is unclear what claim the Complainant is raising in regard PECO's smart meter because the Complaint does not include any specific allegation and merely references, without further explanation, Pennsylvania Code Title 52 Public Utilities Chapter 57 Subchapter O Advanced Meter Deployment § 57.251. Purpose; § 57.255. EDC responsibilities regarding advanced metering.<sup>38</sup> The last of these arguments is dispositive and will be the only one addressed here.

I agree with PECO, that the precise nature of the Complainant's claims are unclear; however, dismissal of the Complaint, as requested by PECO is not the only available alternative. The Commission's rules of procedure permit the Commission to direct a more specific pleading.<sup>39</sup> Directing the Complainant to amend the Complaint to provide a more specific and detailed statement of the rationale for the filing of the Complaint will enable the Complainant to articulate and demonstrate whether she intends to meet the burden of proof standards established in *Povacz II*. In turn, PECO will be permitted to respond to any amendment to the Complaint.

Therefore, the Complainant will be directed to take the following actions on or before 14 days after the date of this Order:

- (1) file an amendment to the Complaint clearly articulating in detail and with specificity:
  - a. her concerns regarding her own health relating to the installation of a smart meter by PECO, if any; and
  - b. what accommodation relating to the installation by PECO of a smart meter would be acceptable to her, if any.
- (2) provide to PECO and the presiding officer the name and business address of the expert who will provide expert testimony in support of the claims made in the

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<sup>38</sup> *Id.* PECO correctly observes that 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.

<sup>39</sup> 52 Pa.Code § 5.93.

Complaint, as amended **and** a written summary of the expected testimony of that expert.

In light of the above, PECO's remaining arguments on this issue will not be considered.

The Complainant is reminded that a presiding officer's orders must be complied with, and a lack of compliance presents a sufficient basis to dismiss a complaint.<sup>40</sup>

In the event that the Complainant fails to respond to and comply with this Order, PECO may file an appropriate motion to seek dismissal of the Complaint.

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss filed by PECO Energy Company is granted in part and denied, in part.
2. That any assertions or claims arising under the statutes listed and labeled as by the Complainant as paragraphs a – g under paragraph 5 of the Complaint are stricken from the Complaint.
3. That **on or before May 31, 2024**, Nancy Colbert shall file and serve an amendment to the Complaint clearly articulating in detail and with specificity:
  - a. her concerns regarding the impact on her own health relating to the installation of a smart meter by PECO; and

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<sup>40</sup> *Treffinger v. PPL Electric Utilities Corp.*, Docket No. C-20027978 (Order entered March 3, 2003); *Snyderville Community Development Corp. v. PGW*, Docket No. C-20055032 (Order entered July 31, 2006); *Application of Black Diamond Cab Co.*, Docket No. A-00122566 (Order entered December 1, 1966).

- b. what accommodation relating to the installation by PECO of a smart meter would be acceptable to her, if any.

4. That **on or before May 31, 2024**, Nancy Colbert shall provide to PECO and the presiding officer provide to PECO and the presiding officer the name and business address of the expert who will provide expert testimony in support of the claims made in the Complaint, as amended **and** a written summary of the expected testimony of that expert. My legal assistant, Pamela McNeal, may be emailed at [pmcneal@pa.gov](mailto:pmcneal@pa.gov). If Ms. Colbert do not have access to email, she must serve me by mail, addressed to:

Arlene Ashton  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
801 Market Street, Suite 4063 4<sup>th</sup> Floor  
Philadelphia, PA 19107  
Fax: 717-231-4764

5. A copy of any amendment to the Complaint filed by the Complainant shall be served on counsel for PECO Energy Company as well as the undersigned administrative law judge.

6. That upon timely filing and service of an amendment to the Complaint filed by the Complainant, PECO Energy Company shall timely file and serve a responsive pleading.

Date: May 7, 2024

\_\_\_\_\_/s/  
Arlene Ashton  
Administrative Law Judge

**C-2022-3036933 - NANCY COLBERT v. PECO ENERGY COMPANY**

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