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May 20, 2024

**VIA E-FILING**

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

**RE: Deree Norman v. PECO Energy Company  
Docket No. C-2024-3048777**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Preliminary Objections of Respondent, PECO Energy Company*.

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, appearing to read "Khadijah Scott".

Khadijah Scott, Esquire  
Assistant General Counsel, PECO Energy Company

Encl.



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>DEREE NORMAN</b>	:	
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	<b>DOCKET NO. C-2024-3048777</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**PRELIMINARY OBJECTION OF RESPONDENT,  
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code §5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On May 1, 2024, PECO was served with a formal complaint filed by Deree Norman (hereafter “Complainant”). *See*, Complainant’s Complaint.
2. In the Complaint, the Complainant alleges PECO is threatening to terminate his service, although he does not have an outstanding balance.
3. PECO simultaneously filed an Answer and the instant Preliminary Objections.
4. Pursuant to 52 Pa. Code §5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code §5.101(a)(4).
5. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure. Equitable Small Transportation Intervenors. v. Equitable Gas Co., 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

6. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible. Roc v. Flaherty, 527 A.2d 211 (Pa. Cmwlth 1985).

7. A complaint must be able to recover under the law to survive a preliminary objection. Milliner v. Enck, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) (“preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover”).

8. All of the non-moving party’s averments must be taken as true for the sake of deciding the preliminary objection. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (Pa. 1985).

9. The court does not, however, need to accept, “unwarranted inferences from facts, argumentative allegations, or expressions of opinions.” Feingold v. McNulty, 2009 Phila. Ct. Com. Pl LEXIS 167, \*3.

10. 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 if, in its opinion, a hearing is not necessary to the public interest.

11. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm’n, 817 A.2<sup>nd</sup> 593 (Pa. Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

12. In this matter, the Complainant disputes the installation of a smart meter at his property.

13. The Complainant asserts that smart meter algorithms allow PECO to create fictitious and/or inaccurate charges.

14. The Complainant has previously litigated this issue. *See*, Initial Decision of Administrative Law Judge Long at C-2015-2472605; Commonwealth Court Appeal affirming the Commission's decision at 1053 CD 2017; Initial Decision of Administrative Law Judge Guhl at F-2018-2640713; Commonwealth Court Appeal affirming the Commission's decision at 690 CD 2020.

15. 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.

16. 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).

17. In the present case, all four elements of res judicata are met. Clearly, the parties are identical in all of the Complaints. The thing sued upon is identical in all Complaints. The current formal Complaint and the 2015 Complaint; 2018 Commonwealth Court appeal; 2018

Complaint and 2020 Commonwealth Court appeal relate to the same issue: installation of an AMI smart meter and the court jurisdiction is identical.

18. The cause of action is identical. Finally, the quality and capacity of the parties is identical in all Complaints. The Complainant is the electric customer in all Complaints, and PECO is the public utility providing service to the Complainant.

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

20. 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 previous Complaints and appeals, which were denied.

21. 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.

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

23. Moreover, the Complaint is without merit and legally insufficient.

24. The Pennsylvania Supreme Court ruled that Act 129 does not provide an opt out for customers of utility smart meters. *See, Povacz v. Pa. Pub. Util. Comm'n*, Nos. 34-45, 280 A.3d 975 (Pa. 2022).

25. The dispute of a smart meter's algorithm is not a basis upon which to deny access to PECO to replace its legacy meter nor a basis upon which to receive an accommodation.

26. The Public Utility Commission ruled that “electric distribution companies **may commence termination proceedings** due to the customer's refusal to allow the utility access to their meter for purposes of replacement, consistent with the Pennsylvania Public Utility Code, Commission Regulations, Commission Orders and Commission-approved Tariff.” *See*, Pennsylvania Public Utility Commission Order, Smart Meter Procurement and Installation, issued November 14, 2023, M-2009-2092655. (*emphasis added*)

27. Pursuant to PECO's tariff, its “employees shall have access to the premises of the customer at all reasonable times for the purpose of reading meters, and for installing, testing, inspecting, repairing, removing or changing any or all equipment belonging to the Company.” *See*, PECO Energy Company Electric Tariff, 10.5 Right of Access.

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

**REQUEST FOR RELIEF**

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's formal Complaint.

Respectfully submitted,



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Khadijah Scott  
Counsel for PECO Energy Company  
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Philadelphia, PA 19103  
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Fax: 215.568.3389  
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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: May 20, 2024



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Khadijah Scott

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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 Preliminary Objection in the above matter upon all interested parties by *E-mailing* a copy to:

DEREE NORMAN  
5367 THOMAS AVENUE  
PHILADELPHIA, PA 19143  
*Via E-mail: dereenorman@yahoo.com*

Dated: May 20, 2024



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