

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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|---------------------|---|---------------------------|
| DEREE J. NORMAN | : | |
| Complainant | : | DOCKET NO. C-2024-3048777 |
| v. | : | |
| | : | |
| PECO ENERGY COMPANY | : | |
| Respondent | : | |

**COMPLAINANT DERE J NORMAN’S RESPONSE IN OPPOSITION
TO RESPONDENT, PECO ENERGY COMPANY’S NEW MATTERS**

Pursuant to 52 Pa. Code § 5.63(a) Deree J. Norman, (“Complainant”) replies in opposition to New Matters filed by Respondent, PECO Energy Company (“PECO”) and states:

1. PECO incorporates by reference responses contained in Paragraphs 1 through 11 above as though fully set forth at length.

This is a paragraph of incorporation to which no response is required. However, Complainant objects to the characterizations depicted in the incorporated paragraphs as false, incomplete, inconsistent and or misleading.

2. The Complainant disputes the installation of a smart meter at his property.

Denied. Plaintiff contests the installation of an **Advanced Metering Infrastructure (AMI)** Smart Meter at his property pursuant to the Pennsylvania Utility Code at Title 52 § 57.255(a) which clearly states that the installation of an Advance Smart Meter shall be made only at customer’s written request. Considering no such request has be proffered by Plaintiff in conjunction with the fact that Plaintiff currently has a digital wireless Smart Meter installed at his property, Plaintiff is not in violation of the current code. Moreover, as per the PUC’s adoption of the Initial Decision issued by ALJ Guhl, ¶ 5 of the Order states: *“That as long as Deree J. Norman keeps the payment schedule stated in this Order, PECO Energy Company shall not suspend or terminate his utility service except for valid safety or emergency reasons or assess late payments or finance charges against his account”*. (See: ¶ 4 of PECO’s Answer)



AMI Meter PECO wants to install,
FlexNet AMI Smart Meter
240 v 3W 60Hz FM 2S



Complainant's Actual Meter
Centron Smart Meter
240 v 3W 60Hz FM 2S
Meter No. 107316622

Attached is the most recent monthly statement which confirms Complainant's balance and Complainant's actual Smart Meter by Meter No. (**Exhibit 1**) Therefore, PECO's threats of terminating Complainant's electric service are in direct conflict with the both the Pennsylvania Utility Code as well as the Order issued by ALJ Guhl which was adopted by this Commission.

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

Denied. Complainant has not made a claim of any kind regarding an algorithm in the Formal Complaint currently before this Commission and the assertion by PECO is unequivocally false and disingenuous. Legislators had the foresight to allow customers to opt out of having an Advanced Smart Meter installed because an Advance Smart Meter was above and beyond the scope of Act 129 of 2008. Consequently, PECO's installation of an Advanced Smart Meter affords PECO the ability to send and receive data to and from the Advanced Smart Meter over one minute intervals every hour of every day in a billing cycle. These facts are ascertained from the manufacture's specifications of the Advanced Smart Meter. Unfortunately, legislators failed to understand that PECO would deviate from the process and manipulate customers into allowing the installation of an Advanced Smart Meter without their written consent and use the unfettered access to control and manipulate data in accordance with PECO's projected earnings goals.

4. 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.

Denied. The issue current before this Commission was never raised or addressed during either hearing. The issue was never addressed by the Commonwealth Court which instinctively sides with the PUC. Moreover, neither the PUC nor the Commonwealth Court has the authority to judicial legislation. The law as established by Pennsylvania Utility Code at Title 52 § 57.255(a) and Act 129 of 2008 is sacrosanct and must be honored.

5. 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.

Denied. PECO's New Matters in paragraph 2 and 3 the meter in question is merely referred to as a "smart meter". This distinction must be seen by this Commission as false misrepresentation considering the designation of the meter referenced in paragraph 5 of PECO's New Matters is an AMI smart meter. An AMI (Advance Metering Infrastructure) Smart Meter is considerably different in functionality from a Smart Meter but PECO uses the terms interchangeably to distract from the actual distinctions between the two meters. The distinction between the two meters has never been addressed in a Complaint filed by Complainant before the PUC or the Commonwealth Court and therefore the doctrine of res judicata does not apply in this matter. Moreover, the doctrine of res judicata is an issue of law subject to this Commission's plenary, de novo review. (*See: Wilmington Trust, N. A., 219 A.3d at 1179.*) Therefore, Complainant's refusal to allow the installation of an Advanced Smart Meter referred to as an AMI meter pursuant to the Pennsylvania Utility Code at Title 52 § 57.255(a) and Act 129 of 2008 may not be dismissed on the grounds of res judicata.

6. 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).

Denied. In the matter before this Commission the four conditions have not been met and res judicata is barred because the subject matter of the Complaint has not been litigated.

7. In the present case, all four elements of res judicata are met. Clearly, the parties are identical in all prior 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.

Denied. In the matter before this Commission the four conditions have not been met and res judicata is barred because the subject matter of the Complaint has not been litigated.

8. 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.

Denied. In the matter before this Commission the cause of action is different and res judicata is barred because the subject matter of the Complaint has not been litigated.

9. 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.

Denied. For the doctrine of collateral estoppel to apply, the issues presented in both cases must be identical. In this matter, it is clear this requirement is not met because this matter involves a blatant violation of the PA Utility Code as well as a breach of the PUC Order which were not present in any previous matter.

10. 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 already denied.

Denied. Although res judicata requires the parties to the instant action be the same or stand in privity, the mere presence of the same parties to an instant action or stand in privity to the parties of the original action does not satisfy the requirements of res judicata especially where the relief sought in an additional action is different from relief sought in the original action. (*See: McGill v. Southwark Realty Co.*, 828 A.2d 430)

11. 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.

Denied. In the matter before this Commission, it would be unlawful for the Commission to ignore the law as established by Pennsylvania Utility Code at Title 52 § 57.255(a) as well as the Order issued by ALJ Guhl. The public has a grave interest in knowing that the law is properly adhered to by PECO as well as this Commission.

12. 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.

Denied. The matter before the Commission has never been address and should not be dismissed as a matter of law. The matter before this Commission pertains to the type of meter at Complainant's home. Plaintiff's Formal Complaint at C-2015-2472605, which was dismissed, pertained to electric usage charges, while Plaintiff's Formal Complaint at F-2018-2640713 pertained to the ALJ and Commissions failure to order a payment agreement pursuant to Public Utility Code, 66 Pa. C.S.A. §1405(b)(1) at the conclusion of the Formal Complaint at C-2015-2472605. Furthermore, the Order issued by ALJ Guhl, where established a payment arrangement pursuant to Public Utility Code, 66 Pa. C.S.A. §1405(b)(1), clearly states in

paragraph 5, “That as long as Deree J. Norman keeps the payment schedule stated in this Order, PECO Energy Company shall not suspend or terminate his utility service except for valid safety or emergency reasons or assess late payments or finance charges against his account”. Therefore, considering Complainant has **a)** never missed a payment since the order and **b)** has an outstanding balance of ZERO (0), PECO is in breach of the Order by attempting to terminate Complainant electric service and may not take action against Plaintiff unless or until the law is changed.

13. Moreover, this Complaint is without merit.

Denied. Complainant has established the merits of his Formal Complaint by a preponderance of the evidence.

14. 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).

Agreed in Part, Denied in Part. Although Act 129 of 2008 does not provide an opt out for customers of utility smart meters, it also does not require the installation of an Advanced Smart Meter. Moreover, *Povacz v. Pa. Pub. Util. Comm’n*, Nos. 34-45, 280 A.3d 975 (Pa. 2022) does not apply to this case because in *Povacz* the Defendant refuted the installation of a smart meter because of suspected dangers related to radio waves. In *Povacz* there was no distinction made between a Smart Meter and an Advanced Smart Meter. In the matter before this Commission, Complainant makes no assertions of possible harm from radio waves emitted by any type of meter. Complainant has clearly cited the relevant law that prevents PECO from its repeated threats to terminate electric service unless Complainant concedes to the installation of a Advanced Smart Meter.

15. 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.

Agreed in Part, Denied in Part. The PUC does not have the requisite authority to judicially legislate current law. PECO’s actions of misrepresenting an Advanced Smart Meter under the guise of it simply being a smart seter is tantamount to fraud by a reckless misrepresentation.

16. 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.

Agreed in Part, Denied in Part. Plaintiff has never denied PECO access to read the meter, inspect the meter, or test the meter. PECO has given access to Mary McQuilken (“McQuilkin”), and Thomas Lerro (“Lerro”), representatives for PECO, for readings, testing and or inspecting on more than one occasion. As a result of each visit, it was determined that there were no foreign wires and the meter was operating correctly.

WHEREFORE, Deree J. Norman respectfully demands that this Honorable Commission prohibit PECO from any further attempts to a) terminate Complainant’s electric service or b) force the installation of an Advanced Smart Meter at Complainant’s property.

May 31 2024,

Respectfully submitted



By: Deree J. Norman

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PECO ENERGY COMPANY :
Respondent :

CERTIFICATE OF SERVICE

I, Deree J. Norman, do hereby certify that on this 31st day of May 2024 a true and correct copy of the foregoing Response to New Matters and accompanying papers, was served on the individuals listed below by electronic delivery.

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VERIFICATION

I, Deree J. Norman, hereby declare that the facts set forth in the foregoing Response to New Matters are true to the best of my knowledge, information, and belief. I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

May 31, 2024,


Deree J. Norman