

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**COMPLAINANT DERE J NORMAN’S RESPONSE TO RESPONDENT, PECO ENERGY COMPANY’S PRELIMINARY OBJECTION**

Complainant Deree J. Norman (“Complainant”) respectfully files these responses to the preliminary objections of Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code §5.101(f) respectfully and petitions this Honorable Commission to issue an Order prohibiting 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.

1. On May 1, 2024, PECO was served with a formal complaint filed by Deree Norman (hereafter “Complainant”). *See*, Complainant’s Complaint.

**Agreed.**

2. In the Complaint, the Complainant alleges PECO is threatening to terminate his service, although he does not have an outstanding balance.

**Agreed in Part, Denied in Part.** The best evidence in any legal matter is a document issued by either party. Therefore, a document confirming an averment made by either party in a legal matter must be seen as a fact not an allegation. (**Exhibit 1 and Exhibit 2**) The documents in question conceal and or disregard the law that prevents PECO for changing properly functioning equipment for more advanced equipment by misrepresenting the law that allows PECO access to equipment.

3. PECO simultaneously filed an Answer and the instant Preliminary Objections.

**Agreed.**

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).

**Agreed in Part, Denied in Part.** Merely selecting one of the seven categories when filing preliminary objections are not grounds for dismissal. Preliminary objections must state specifically the legal and factual grounds relied upon within the category selected pursuant to Pursuant to 52 Pa. Code §5.101(a). Furthermore, if there is evidence to refute the specific legal and factual grounds relied upon, the preliminary objection must be overruled.

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).

**Agreed in Part, Denied in Part.** (*See: Complainant's response to paragraph 4 above*)

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).

**Agreed in Part, Denied in Part.** (*See: Complainant's response to paragraph 4 above*)

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”).

**Agreed in Part, Denied in Part.** (*See: Complainant's response to paragraph 4 above*)

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).

**Agreed in Part, Denied in Part.** (*See: Complainant's response to paragraph 4 above*)

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. PI LEXIS 167, \*3.

**Agreed in Part, Denied in Part.** (See: Complainant’s response to paragraph 4 above)

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.

**Agreed in Part, Denied in Part.** In a system of fair and equal justice, the Commissions has the inherent responsibility to public interest to comply with the Public Utility Code especially when the Code prevents a utility provider from engaging in activity that is an abuse of the utility providers authority, which if not halted would be a clear violation of the law and would lead to a utility customer being subjected to unwarranted threats and harassment.

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).

**Agreed in Part, Denied in Part.** The matter cited by PECO has no relevance to the matter before the Commission because there is no dispute. The legal and factual grounds of Complainant’s Complaint are unwavering. The mere fact that PECO has chosen to engage in subterfuge when referring to an Advanced Smart Meter as a Smart Meter is wantonly malicious and knowingly deceptive. There is an indisputable distinction between the two types of smart meters.

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

**Denied.** In the current matter before the Commission, Complainant refuses to allow PECO to exchange his current Smart Meter with an Advanced Smart Meter which is prohibited pursuant to the Pennsylvania Utility Code Title 52 §57.255(a) (**Exhibit 3**) and (**Exhibit 4**)

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

**Denied.** The matter before the Commission makes no such assertion to any algorithms. (*See, Complainant's Complaint*) Moreover, any reference by PECO to an algorithm that allows PECO to manipulate data was from a previous complaint in which the Commission ignored, never acknowledged, never addressed, and never analyzed the best evidence, which would be the algorithms used by PECO. However, in a previous matters the Commission accepted as true, by a ruling, PECO's unsubstantiated heresy testimony regarding PECO's algorithms.

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.

**Denied.** The current matter before the Commission, regarding the installation of an Advanced Smart Meter was never addressed during the hearing before Administrative Law Judge Long at C-2015-2472605. Thus, 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 engage in judicial legislation and rewrite the law. The law as established by Pennsylvania Utility Code at Title 52 § 57.255(a) and Act 129 of 2008 must be honored.

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.

**Denied.** When the cause of action is different between the same parties of a previously litigated matter on relatively the same or similar subject matter, the doctrine of res judicata does not apply. Moreover, PECO's deliberate misuse and or misrepresentation of the distinction between a Smart Meter and an AMI (Advance Metering Infrastructure) Smart Meter clearly establishes PECO's intent to defraud utility customers despite whether the Commission knows or should know the difference between the two Smart Meters.

16. The doctrine of res judicata reflects the refusal of the law to tolerate the relitigation 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).

**Agreed in Part, Denied in Part.** Without debate, if all four conditions are not met the doctrine fails as a matter of law.

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.

**Denied.** In the matter before the Commission, the requisite conditions have not been met because the cause of action in the current matter is different than in any previous matter between the two parties, for this reason the doctrine of res judicata is barred in this matter.

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.

**Denied.** In the matter before the Commission, the requisite conditions have not been met because the cause of action in the current matter is different than in any previous matter between the two parties, for this reason the doctrine of res judicata is barred in this matter.

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.

**Denied.** In the matter before the Commission, the requisite conditions have not been met because the cause of action in the current matter is different than in any previous matter between the two parties, for this reason the doctrine of res judicata is barred in this matter.

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.

**Agreed in Part, Denied in Part.** 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 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) Moreover, when a breach occurs, whether to a previous agreement, to an order of the presiding authority or of the law as written, evidence submitted in one matter can be submitted in a subsequent matter where the same parties are involved and the evidence from the previously completed litigation is relevant to the current claim. (*See: Heart Care Consultants v. Albatineh*, 239 A.3d 126, 131-32 (Pa. Super. 2020).

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.

**Agreed in Part, Denied in Part.** In a system of fair and equal justice, the Commissions has the inherent responsibility to public interest to comply with the Public Utility Code especially when the Code prevents a utility provider from engaging in activity that is an abuse of the utility providers authority, which if not halted would be a clear violation of the law and would lead to a utility customer being subjected to unwarranted threats and harassment.

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.

**Denied.** The issue in the current matter before the Commission between Complainant and PECO has never been litigated or dismissed by any authority in any jurisdiction. Thus, PECO's suggestion that the Commission previously ignored the law found at Title 52 §57.255(a) of the Pennsylvania Utility Code and subsequently ignored by the Commonwealth Court would undoubtedly call into question the competency of the Commission as well as the Commonwealth Court.

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

**Denied.** Title 52 §57.255(a) of the Pennsylvania Utility Code is clear and unambiguous.

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).

**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 the Commission, Complainant makes no assertions of possible harm from radio waves emitted by any type of smart meter. Complainant has clearly cited the relevant law that prevents PECO from installing an Advance Smart Meter without the customers written consent. (*See: Pennsylvania Utility Code at Title 52 § 57.255(a)*) PECO has effectively ignored the law, misrepresented the requirement for an Advanced Smart Meter, and has manipulated its customers into allowing the installation of Advanced Smart Meters. PECO's continued flouting of the law has subjected Complainant to repeated threats to terminate electric service unless Complainant concedes to the installation of a Advanced Smart Meter. 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. In the matter before the 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 which 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*".

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.

**Agreed in Part, Denied in Part.** In the matter before the Commission, the basis upon which Complainant refuses the installation of an Advanced Smart Meter is pursuant to Pennsylvania Utility Code at Title 52 § 57.255(a) as well as the Order issued by ALJ Guhl. PECO has never been denied access to read, test, and or inspect, Complainant's current Smart Meter and any assertion regarding any kind of algorithm is irrelevant to this matter.

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)

**Agreed in Part, Denied in Part.** PECO's reliance on a portion of the law that advances PECO's projected earnings goals without the acknowledgement or implementation of the law in its totality in conjunction with the mischaracterization of a Smart Meter vs an Advanced Smart Meter is tantamount to a criminal act. Title 52 §57.255(a) of the Pennsylvania Utility Code is

clear and unambiguous. Moreover, the Public Utility Commission's ruling does not imply, suggest, or state that PECO has the right to circumvent the law to install an Advanced Smart Meter.

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.

**Agreed in Part, Denied in Part.** PECO's tariff does not give PECO the unfettered right to misrepresent the need to access a customer's meter, ignore the law regarding the type of meter required to be installed at a customer's residence or to conceal the intentions of PECO to violate said law to achieve PECO goals.

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

**Denied.** The merits of the Complaint are unwavering, the law is clear and unambiguous, and a dismissal of the Complaint would be violation of the Law. Therefore, the Commission must overrule PECO's preliminary objections with prejudice.

### REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth above, Deree J. Norman respectfully requests that your Honorable Commission issue an order prohibiting 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.

June 10, 2024,

Respectfully submitted



By: Deree J. Norman

5367 Thomas Ave  
Philadelphia, PA 19143  
(267) 304-2162  
[dereenorman@yahoo.com](mailto:dereenorman@yahoo.com)

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**CERTIFICATE OF SERVICE**

I, Deree J. Norman, do hereby certify that on this 10<sup>th</sup> day of June 2024 a true and correct copy of the foregoing Response to Preliminary Objections and accompanying papers, was served on the individuals listed below by electronic delivery.

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

  
By: Deree J. Norman

5367 Thomas Ave  
Philadelphia, PA 19143  
(267) 304-2162  
[dereenorman@yahoo.com](mailto:dereenorman@yahoo.com)

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**VERIFICATION**

I, Deree J. Norman, hereby declare that the facts set forth in the foregoing Response to Preliminary Objections 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.

June 10, 2024,

  
Deree J. Norman

# Exhibit 1



# Exhibit 2

# NOTICE

## YOUR SERVICE WILL BE SHUT OFF IN 72 HOURS

(AVISO DE SUSPENSION DE SERVICIO EN 72 HORAS)

ACCOUNT NUMBER: 4776531222  
FOR SERVICE TO: 5367 Thomas Ave  
DATE PREPARED: 5-15-24

Your electric/natural gas service will be shut off on or after 5-20-24 because:

- You did not provide access to our meter, your equipment and/or to relight your pilot(s)
- You are not authorized for service at this location and/or a hazardous condition was found
- Defective customer equipment was identified and has not been corrected
- You did not meet the requirements and/or apply for utility service

This notice is effective for 60 days

We will NOT shut off your electric/natural gas service if you:

- Provide access to our meter, your equipment and/or to relight your pilot(s)
- Make the necessary repairs to your customer equipment and notify us with proper documentation.
- Apply for service and submit identification

### Call 800-494-4000

You may be eligible for a payment agreement or financial assistance programs. To provide us with household income and occupant information, and to apply for assistance, or to dispute your bill, please call us at 888-480-1533.

#### WE MUST RECEIVE ACCESS OR INFORMATION BEFORE THE SHUT OFF DATE

If your service is shut off, you may have to make substantial payments to have your service restored. In addition to any balance owed, you may have to pay a reconnection charge of between \$20 and \$4,550. This fee is set by PECO's tariff and based on how much work is needed to restore your service. You may also be required to pay a deposit equal to two times your average monthly usage.

#### MEDICAL EMERGENCY NOTICE

Let us know if you or anyone presently and normally living in your home is seriously ill. WE WILL NOT SHUT OFF YOUR SERVICE during such an illness, provided you: 1. Have your license physician, nurse practitioner, or physician assistant certify by phone and in writing that such an illness exists and that it may be aggravated if your service is shut off, phone certification must be followed by written certification within 7 days. AND 2. Make some equitable arrangement to pay the company your current bills for service.

#### IMPORTANT TO KNOW

Before we shut off your utility service, please read the back of this notice. You may be eligible for certain protections from shut off.

Atencion | Este es un mensaje muy importante. Si usted no lo entiende, favor de llamar a 1-800-494-4000.

Past Due Amount \$ \_\_\_\_\_ New Billing \$ \_\_\_\_\_ Total Amount Due \$ \_\_\_\_\_

See other side for more information.

# Exhibit 3

Advanced Meter Infrastructure (“AMI”) Smart Meter  
PECO is attempting to install at Complainant’s Property  
FlexNet AMI Smart Meter  
240 v 3W 60Hz FM 2S



# Exhibit 4

Complainant's Actual Smart Meter

Centron Smart Meter

240 v 3W 60Hz FM 2S

Meter No. 107 316 622 (This number corresponds with Meter No. on all monthly statements)

