

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMPLAINANT DERE J NORMAN’S PETITION FOR CLARIFICATION

Pursuant to 52 Pa. Code § 5.572 Deree J. Norman, (“Complainant”) respectfully moves this Honorable Commission to Clarify the Initial Decision issued by Administrative Law Judge Darlene Heep on October 4, 2020.

1. The Commission, by and through ALJ Heep, failed to acknowledge and comprehend that there are factual differences between an **Advanced Smart Meter** and a **Smart Meter**?
2. The Commission, by and through ALJ Heep, failed to acknowledge and comprehend the fact that Complainant, Deree J. Norman, has a **Smart Meter** currently installed at the service address located at 5367 Thomas Ave, Philadelphia, PA 19143.
3. The Commission, by and through ALJ Heep, failed to acknowledge and comprehend the fact that Respondent PECO wants to install a **Advanced Smart Meter** at the service address located at 5367 Thomas Ave, Philadelphia, PA 19143.
4. The Commission, by and through ALJ Heep, failed to acknowledge and comprehend the fact that Act 129 of 2008 requires all Electric Distribution Companies (EDCs) with greater than 100,000 customers to install **Smart Meters** for its customers.

5. The Commission, by and through ALJ Heep, failed to acknowledge and comprehend the fact that the legislative branch (elected officials) of this states saw fit to include specific language in 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*”, thereby prohibiting the installation of an **Advance Smart Meter** without a written request from said customer of any respective service address, which in this case is located at 5367 Thomas Ave, Philadelphia, PA 19143, to which there is no such written request.

6. The Commission, by and through ALJ Heep, failed to acknowledge and comprehend the fact that despite Complainant’s repeated identification of and or reference to Title 52 §57.255(a) of the Pennsylvania Utility Code in **1) Complainant’s Response to Preliminary Objections (Exhibit A) (eight (8) separate references)** and **2) Complainant’s Response to New Matters (Exhibit B) (four (4) separate references)**, the Honorable Darlene Heep failed to address this specific section of the Pennsylvania Utility Code anywhere in the Initial Decision (**Exhibit C**) issued on October 4, 2024.

Wherefore, Complainant respectfully requests that this Honorable Commission and or the Honorable Darlene Heep clarify why this crucial section of the Pennsylvania Utility Code has been overlooked, disregarded and or ignored.

October 7, 2024,

Respectfully submitted



By: Deree J. Norman

5367 Thomas Ave
Philadelphia, PA 19143
(267) 304-2162

dereenorman@yahoo.com


BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I, Deree J. Norman, do hereby certify that on this 7th day of October 2024 a true and correct copy of the foregoing Petition for Clarification 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

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Complainant : DOCKET NO. C-2024-3048777
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PECO ENERGY COMPANY :
Respondent :

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.

October 7, 2024,


Deree J. Norman

EXHIBIT A

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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.2nd 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


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PECO ENERGY COMPANY :
Respondent :

CERTIFICATE OF SERVICE

I, Deree J. Norman, do hereby certify that on this 10th 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

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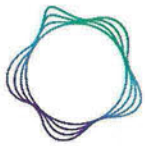
VERIFICATION

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



pecoSM

AN EXELON COMPANY

TEN DAYS SHUT OFF NOTICE
(AVISO DE SUSPENSION DE SERVICIO EN 10 DIAS)

DEREE NORMAN
5367 THOMAS AVE
PHILADELPHIA PA 19143

Account number: 4776531222
Date: April 26, 2024

Your Electric/Gas Service May Be Shut Off!

Your PECO Energy Service will be shut off on or after 8:00 a.m. on **May 6, 2024**, because:

- You have a past due amount of PECO Energy charges in the amount of \$ as of _____.
- You did not give us access to inspect our meter.**
- You did not meet the requirements and/or complete the application for utility service.

We will NOT shut of your electric service if you do ONE of the following:

- Pay \$ in full before, this includes any amount you owe on your payment plan. This notice is effective for 60 days.
- Show us a paid receipt for the past due amount.
- Call 1-808-480-1533 right away if you dispute this bill or to provide us with household income and occupant information. You may be eligible for a payment agreement or special assistance programs. To talk about your bill, please call our office at 1-888-480-1533.

X To provide access to our meter, please call our office at 1-800-494-4000 OR peco.com/schedule

WE MUST RECEIVE YOUR PAYMENT BEFORE THE SHUT-OFF DATE. WE WILL NOT ACCEPT PAYMENTS AT YOUR PROPERTY.

If your energy service is shut off, you may have to pay all of the following before service can be turned back on.

Past Due Amount of _____
 Deposit past Due Amount of _____
 Agreement Unbilled Balance _____
 Turn-on charge of up to \$1650.00

*If your service is shut off, you may be required to pay any additional bills that have become past due to restore your service.

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 licensed 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 arrangements to pay this bill. You must provide us with household income and occupant information to determine your payment terms while protected under the medical certification.

If you have questions or need more information, contact us as soon as possible at (800) 494-4000. After you talk to us, if you are not satisfied, you may file a complaint with the Public Utility Commission. The Public Utility Commission may delay the shut off if you file the complaint before the shut off date. To contact them, call 1 (800) 692-7380 or write to the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, Pennsylvania 17105-3265.

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)



EXHIBIT B

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 Commissions 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 a 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

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


BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DEREE J. NORMAN :
Complainant : DOCKET NO. C-2024-3048777
v. :
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.

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

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

EXHIBIT C

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deree J. Norman

v.

PECO Energy Company

:
:
:
:
:

C-2024-3048777

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

The Preliminary Objection of PECO Energy Company is sustained due to the legal insufficiency of the Complaint and because the Complainant cannot prevail even if the averments of the Complaint are read in the light most favorable to the Complainant.

HISTORY OF THE PROCEEDINGS

On April 29, 2024, Deree J. Norman (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Company) stating that the Company was threatening to shut off or had already shut off service, noting that his bills are timely paid and that he has no outstanding balance with PECO. As relief, the Complainant requested that PECO “[s]top threatening to terminate my service.”

On May 20, 2024, PECO filed an Answer and New Matter. In the Answer, PECO admitted that the Company issued the Complainant a 10-day Termination Notice for failure to allow PECO access to install a smart meter. In the New Matter, PECO stated that the Complainant disputes the installation of a smart meter, and that the Complainant previously litigated this issue before the Commission. PECO further argued that this matter should be dismissed due to *res judicata* and because it is without merit given that the Pennsylvania Supreme Court has held that Act 129¹ does not provide an opt out for utility smart meter installation.

Also on May 20, 2024, PECO filed Preliminary Objections. Therein, PECO asserted that the matter should be dismissed due to legal insufficiency because the same issue was previously litigated by the Complainant before the Commission. PECO further averred the matter should be dismissed because the Complainant seeks to prevent installation of a smart meter at his residence and no relief is possible for the Complainant because the Pennsylvania Supreme Court has ruled that there is no opt out for smart meter installation. PECO also asserted that its tariff and the Commission allow the company to terminate service if access to its meters is refused.

On May 31, 2024, the Complainant replied to the New Matter. In the Reply, he stated that this matter should not be dismissed because the requirements of *res judicata* are not met and that installation of smart meters is not required.

On June 3, 2024, the Complainant filed a “Complainant’s Praecipe to Supplement” response in opposition to the New Matter which consisted of a copy of a utility bill.

¹ 66 Pa.C.S. §§ 2803, 2806.1, 2807, 2811, 2813-2815 (Act 129).

On June 19, 2024, the Complainant filed a Response to PECO Energy Company's Preliminary Objection, with attachments, again contending that the matter should not be dismissed, and that PECO should not terminate his service because he does not have an outstanding balance. He further states that he refuses to allow PECO to exchange his meter, that the requirements to dismiss a matter under the doctrine of *res judicata* are not present and that installation of smart meters is not required.

This matter was assigned to me for a decision on the Preliminary Objection on June 7, 2024. After review of the record, it was determined that the Preliminary Objection would be sustained and an Initial Decision issued. This matter is ready for a decision

FINDINGS OF FACT

1. The Complainant is Deree J. Norman, a PECO electric customer at 5367 Thomas Avenue, Philadelphia, Pennsylvania 19143 (service address).
2. The Respondent is PECO Energy Company.
3. PECO issued termination notices to the Complainant on April 26, 2024, and May 20, 2024. Complainant's Answer to Preliminary Objection, Exhibits 1 and 2.
4. PECO issued termination notices to the Complainant because the Complainant refused PECO access to its meter at the service address. *Id.*
5. The Complainant is refusing PECO access to change his meter. Complainant's Answer to Preliminary Objection, Exhibit 3; *Id.* at pp. 7-8.

DISCUSSION

Section 332(a) of the Code, 66 Pa.C.S. § 332(a), provides that the party seeking relief from the Commission has the burden of proof. PECO has filed Preliminary Objections seeking dismissal of this action.²

If it is determined that a moving party is entitled to a judgment as a matter of law, and there is no genuine issue of material fact, a motion for judgment on the pleadings or summary judgment will be granted. 52 Pa. Code § 5.102(d)(1). The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.102 govern motions for judgment on the pleadings. Generally, the moving party bears a heavy burden of showing that no genuine issue of material fact exists and that it is entitled to a 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 Mortg. Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa. Cmwlth. 1978). It must accept as true all well-pleaded statements of fact of the non-moving party and consider only those facts that the non-moving party specifically admits. *Weik v. Estate of Brown*, 794 A.2d 907 (Pa. Super. 2002). All doubts as to the existence

² I note that PECO's Preliminary Objections raise three issues: 1) *res judicata*; 2) mandatory implementation of smart meter installation; and 3) termination of service permitted for a customer's failure to allow PECO access to its meter. *Res judicata* is an affirmative defense and as such is not properly raised as a preliminary objection. However, PECO also raised this defense in its new matter. As an affirmative defense asserted in new matter, PECO's claim would have been more appropriately presented as a motion for judgment on the pleadings. Nevertheless, the Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa. Code § 1.2(a). Accordingly, I will treat PECO's preliminary objections as a motion for judgment on the pleadings.

of a genuine issue of material fact must be resolved against the moving party. *Thomson Coal Co. v. Pike Coal Co.*, 412 A.2d 466 (Pa. 1979). Only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. *Williams v. Lewis*, 466 A.2d 682 (Pa. Super. 1983); *Service Emps. Int'l Union, Local 69, AFL-CIO v. The Peoples Nat. Gas Co., d/b/a Dominion Peoples*, Docket No. C-20028539 (Opinion and Order entered December 19, 2003). Judgment on the pleadings should be entered only when the case is clear and free from doubt. *Reuben v. O'Brien*, 496 A.2d 913 (Pa. Super 1985). Finally, the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703.

Commission Regulations provide that failure to file a timely reply to New Matter may be deemed in default, and relevant facts stated in the New Matter may be deemed to be admitted. 52 Pa. Code § 5.63(b); *Jones v. Phila. Gas Works*, Docket Number C-2019-3007984 (Order and Opinion entered July 16, 2020).

While the Complainant does not directly state it in the Complaint here, it is clear in the Complainant's Reply to the New Matter and Response to the Preliminary Objection that the Complainant is seeking to prevent installation of a smart meter at the service address. Complainant's Reply to New Matter at 2, 6; Complainant's Answer to Preliminary Objection at 7-8.

PECO contends that the matter should be dismissed because: 1) under the doctrine of *res judicata*, the Complainant cannot relitigate previously litigated issues; and 2) the Complainant cannot opt out of a smart meter installation and therefore cannot prevail on his claims.

Res Judicata

The doctrine of *res judicata* bars the filing and relitigating of claims previously litigated before the Commission. *See Hanley v. Penn Power Co.*, Docket No. C-2023-3041147 (Opinion and Order entered May 9, 2024). For the doctrine to prevail, four conditions must be met. They are: (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).

Here, PECO contends that the Complainant is seeking to litigate a claim challenging “algorithms” used by PECO in its metering system and that this was previously litigated by the Complainant in *Norman v PECO Energy Co.*, C-2015-2472605 (Opinion and Order entered July 13, 2017). The Complainant contends that he, in this matter, is not raising claims pertaining to “algorithms.” *See* Complainant Reply to New Matter at 2; Complainant Answer to Preliminary Objection at 8.

When considering a motion for judgment on the pleadings, the Commission must accept as true all well-pleaded statements of fact of the non-moving party and consider only those facts that the non-moving party specifically admits. *Weik v. Estate of Brown*, 794 A.2d 907 (Pa. Super. 2002). The Complainant’s framing of his claims as not including the previously litigated issue of “algorithms” is accepted. Therefore, the *res judicata* conditions of identity of issues and identity of causes of action are not met. The doctrine of *res judicata* does not apply and cannot form the basis for dismissal.

Smart Meter Opt Out

Mr. Norman is seeking to prevent installation of a Smart Meter at the service address. *See* Complainant’s Response to New Matter, Request for Relief. The Commission has concluded that there is no provision in the Code or the Commission’s Regulations or Orders that allows a customer to “opt out” of smart meter installation. *See Povacz v. PECO Energy Co.*, Docket No. C-2012-2317176 (Opinion and Order entered Jan. 24, 2013). In *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (“*Povacz II*”), the Pennsylvania Supreme Court affirmatively established that there is no "opt-out" provision for installation of a smart meter pursuant to Act 129 and that to raise a viable challenge to smart meter installation, a customer must satisfy the preponderance of evidence standard for a violation of Section 1501 of the Code. *Povacz II* at 983-984.

To prevail on a Section 1501 claim, a Complainant challenging smart meter installation must establish that PECO installing a smart meter is unsafe or unreasonable. To meet that burden, a complainant may be required to present medical documentation and/or expert testimony in support. *See Kreider v. PECO Energy Co.*, Docket. No. P-2015-2495064 (Opinion and Order entered Jan. 28, 2016). In the instant Complaint and Response to New Matter, the Complainant has presented no basis upon which he can prevail in an evidentiary hearing. In fact, he unambiguously states that he “makes no assertions of possible harm from radio waves emitted by any type of meter.” Complainant’s Response to New Matter ¶14. The Complainant cannot prevent installation of a smart meter at the service address and therefore any claims seeking that remedy are dismissed. *Povacz II* at 999.

Termination Notice for Refusal to Allow PECO to Change the Meter

PECO issued termination notices to the Complainant. Complaint ¶¶ 4-5, Response to New Matter at 2, Response to Preliminary Objections Exhibits 1 and 2. Both notices state that the Complainant did not provide access to PECO meters. Response to Preliminary Objections Exhibits 1 and 2.

While the Complainant states that he has allowed PECO to read the meter, inspect the meter, or test the meter, he acknowledges that he has refused to allow PECO to change his meter. Response to New Matter at 7. Mr. Norman makes very clear in his response to the New Matter that he has not allowed PECO to change the meter at the service address. *Id.* at 3, 6.

Termination of service for refusal to permit PECO to change a meter is allowed by the Commission. As the Commission has stated:

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.

Pennsylvania Public Utility Commission Order, Smart Meter Procurement and Installation, Docket No. M-2009-2092655 (Order entered Nov. 14, 2023). Also, PECO's tariff states:

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.

PECO Energy Company Electric Tariff, 10.5 Right of Access. A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa.Cmwlth. 1977). Additionally, the Public Utility Code and regulations provide that a utility company may notify a customer and terminate service where the customer does not permit access to the company's meters for replacement. *See* 52 Pa. Code § 56.81(3) and 66 Pa.C.S. § 1406(a)(4).

Here, the Complainant cannot prevail. PECO committed no violations when it issued notices to the Complainant advising that the service would be terminated because the required access to PECO equipment and change the meter was not allowed. This matter will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A preliminary objection will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979).

4. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa. Code § 1.2(a).

5. A motion for judgment on the pleadings will be rendered if the applicable pleadings show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law. 52 Pa. Code § 5.102

6. There is no provision in the Code or the Commission's Regulations or Orders that allows a customer to "opt out" of smart meter installation. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022)

7. PECO may commence termination proceedings due to the Complainant's refusal to allow the utility access to their meter for purposes of replacement, *Pennsylvania Public Utility Commission Order, Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered Nov. 14, 2023).

8. Based on the Complainant's averments, recovery or relief is not possible for the Complainant, and he is not entitled to judgment as a matter of law. 52 Pa. Code § 5.102; *Ridge v. State Emps.' Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

ORDER

THEREFORE

IT IS ORDERED

1. That the Preliminary Objection of PECO in the matter of Deree J. Norman v. PECO Energy Company at Docket Number C-2024-3048777 is sustained.

2. That the Formal Complaint of Deree J. Norman at Deree J. Norman v. PECO Energy Company at Docket Number C-2024-3048777 is dismissed.

