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March 14, 2025

VIA E-FILING

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

RE: Sidhartha Banerjee v. PECO Energy Company
Docket No. F-2022-3032337

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Reply Exceptions of PECO Energy Company*.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Khadijah Scott".

Khadijah Scott, Esquire
Assistant General Counsel
PECO Energy Company

KS/alb
Enclosure



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SIDHARTHA BANERJEE	:	
Complainant	:	
	:	
v.	:	DOCKET NO. F-2022-3032337
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by SIDHARTHA BANERJEE (“Complainant”) on March 5, 2025. On May 5, 2022, PECO Energy was served with a formal complaint filed by the Complainant against PECO Energy. In the formal Complaint, the Complainant averred that he would not consent to installation of PECO’s Advanced Metering Infrastructure (“AMI”) meter without written assurances that the AMI meter would not cause health problems, interfere with his privacy or damage his appliances. On May 25, 2022, PECO Energy filed an Answer with New Matter to the Complaint denying all conclusions of law and material allegations of the Complaint and averred that Act 129 mandated installation of smart meters. On May 25, 2022, PECO filed to a Motion to Stay pursuant to the Public Utility Commission’s (Commission) Stay Order issued on November 4, 2020, of all Commission formal complaint proceedings regarding AMI health claims. On June 29, 2022, the Commission issued a Stay in this matter. On November 14, 2023, the Commission lifted its Stay Order.

On October 1, 2024, a hearing was held before the Honorable Administrative Law Judge Gail Chiodo (ALJ Chiodo). On February 12, 2025, ALJ Chiodo issued a well-reasoned Initial Decision dismissing the Complainant’s Complaint.

The Complainant filed Exceptions to the Initial Decision. In his writing, the Complainant seems to attempt to relitigate the facts of his Complaint before the Commission. He challenges the removal of his broken smart meter, the level of evidence required to refute harm from smart meters, a request to relocate his smart meter at PECO's expense, as well as, being provided written assurances that smart meters are safe.

PECO Energy files the instant Reply Exceptions and hereby respectfully requests that the Commission deny the Complainant's Exceptions and issue an Order adopting the Initial Decision of ALJ Chiodo.

I. Scope of Review

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility, PECO Energy, is responsible or accountable for the problem described in the Complaint through a violation of the Code or a regulation or order of the Commission. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. denied, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record, which is defined as evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact

sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the complainant, shifts to the respondent. If the evidence presented by the respondent is of co-equal value or “weight,” the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUC*, 443 A.2d 1371 (Pa. Cmwlth. 1982), *aff’d*, 433 A.2d 1234 (Pa. 1983). While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

It should be noted that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *See also*, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

II. Legal Argument

a. The Complainant’s claim is barred by Pennsylvania law.

On June 27, 2019, PECO’s Advanced Metering Infrastructure (“AMI”) meter was installed at the Complainant’s property. On August 21, 2021, it was determined that the AMI meter was malfunctioning and not sending reads. The Complainant refused access to replace the meter without receiving written assurances from PECO that the AMI meter would not cause him to have health issues, interfere with his privacy or appliances. It is well settled, that PECO is required to install AMI meters for the company’s electric distribution customers subject to the

requirements of Act 129. PECO is not obligated to provide the Complainant with written assurances regarding its AMI meters.

On August 16, 2022, the Pennsylvania Supreme Court issued its Opinion asserting that Section 2807(f) of the Public Utility Code mandates that EDCs furnish smart meters to **all** electric customers in their service areas and **does not** provide the ability for customers to “opt-out”. *Povacz v. Pa. Pub. Util. Comm’n*, Nos. 34-45, 280 A.3d 975 (Pa. 2022) (*Povacz* Opinion). (*emphasis added*) The court specifically stated:

Act 129 does mandate that EDCs furnish smart meters to **all** electric customers within an electric distribution service area and **does not provide electric customers the ability to opt out of having a smart meter installed**. An electric customer with concerns about smart meters may seek an accommodation from the PUC or EDC, but to obtain one the customer must establish by a preponderance of the evidence that installation of a smart meter violates Section 1501.

See, Povacz Opinion at 7. (*emphasis added*)

The Court further held that the authority to select and install a certain type of electric meter rests solely with EDCs, in this case PECO, not the customer, “regardless of a customer’s preference.” *Id.* at 22, 26-27. The Complainant was advised that PECO Energy’s system no longer supports a non-AMI meter and that a new smart meter must be installed.

On March 6, 2024, the Complainant’s meter was replaced with a functioning smart meter. The Complainant’s contention that PECO forcefully removed its meter as an unlawful taking is without merit. PECO is not required to notify its customers if meter maintenance will take place on their property, if the meter is accessible. Pursuant to PECO’s Tariff, 105. Right of Access:

10.5 RIGHT OF ACCESS. The Company's identified 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. In the event of an emergency, the Company shall have the right to access customer owned facilities and equipment for the purpose of restoring electric service, for the purpose of rendering the electric facilities safe and reliable, or for the purpose of reducing the likelihood of damage to the Company's facilities and equipment.

In this matter, the AMI meter that was replaced was PECO equipment. This issue is without merit.

Moreover, the Complainant's contention that PECO must relocate the meter at its cost is without merit. Pennsylvania law is clear. A customer does not have the ability to opt out of the installation of an AMI meter. *See, Povacz. See also, Mary Paul v. Pennsylvania Public Utility Commission*, 460 C.D. 2019 (2023)(holding there is not an opt-out provision. Finding all other arguments, including those regarding burden of proof, were without merit); *Janice Denito Branagh, v. Pennsylvania Public Utility Commission* 1857 C.D. 2019 (2023))(holding there is not an opt-out provision).

The Complainant has failed to make a prima facie case for an accommodation. In order to meet a burden of proof, "specific to smart meters and RF emissions, the burden is two-fold." *Povacz* at 49. The Pennsylvania Supreme Court has held that "first, a customer must present **expert opinion rendered to a reasonable degree of scientific certainty** that smart meters emit RFs and that RF emissions cause adverse health effects and, second, expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm." *Id. (emphasis added)*

In this case, the Complainant has not proffered any expert evidence in support of his claim. Instead, he avers that he is entitled to relocation of a smart meter because his broken meter was replaced without his consent. It is also important to note that despite the Complainant's failure to meet his burden of proof regarding an accommodation, PECO attempted to contact the Complainant on multiple occasions to schedule an inspection of the property regarding a meter relocation. The Complainant did not comply with suggested scheduled appointments. PECO is not required to relocate the Complainant's meter at its expense, even assuming *arguendo*,

the Complainant did meet his burden of proof regarding an accommodation. This issue is without merit.

Accordingly, ALJ Chiodo's Initial Decision is well-reasoned with ample support from the law. As detailed in the Initial Decision, the Complainant has failed to prove that PECO has violated any statute, regulation or law. Accordingly, the Complainant's Exceptions should be dismissed.

III. Conclusion

ALJ Chiodo correctly determined that the Complainant had not met his burden of proof in this matter. Accordingly, ALJ Chiodo's decision to dismiss the Complainant's case against PECO Energy should be upheld.

For the reasons set forth above, PECO respectfully requests that the Commission deny the Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,



Khadijah Scott
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Philadelphia, PA 19103
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Fax: 215.568.3389
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	:	
PECO ENERGY COMPANY	:	
Respondent	:	

VERIFICATION

I, Khadijah Scott, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.



Date: March 14, 2025

Khadijah Scott

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**SIDDHARTHA BANERJEE,
COMPLAINANT**

v.

**PECO ENERGY COMPANY,
RESPONDENT**

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Docket No. F-2022-3032337

CERTIFICATE OF SERVICE

I, Khadijah Scott, hereby certify that I have this day served a copy of PECO Energy Company's Reply Exceptions in the above matter upon all interested parties by E-mailing a copy to:

SIDDHARTHA BANERJEE
121 ROCKY GLEN RD
OXFORD PA 19363
Via email: siddharthaban@gmail.com

Dated: March 14, 2025



Khadijah Scott
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