



.....
An Exelon Company

Legal Department
2301 Market Street / S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Direct Dial: 215.841.6841

July 13, 2015

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

RE: Catherine Frompovich v. PECO Energy Company
PUC Docket No.: C-2015-2474602

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Reply Exceptions* with regard to the matter referenced above.

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 black ink, appearing to read "Shawane Lee", with a stylized flourish at the end.

Shawane Lee
Counsel for PECO Energy Company

cc: Certificate of Service
Catherine Frompovich

SL/ab

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CATHERINE J. FROMPOVICH

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

:
:
:
:
:
:
:
:
:
:

Docket No. C-2015-2474602

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

**Shawane L. Lee, Esquire
2301 Market Street
Philadelphia, PA 19103
215.841.6841
Shawane.Lee@exeloncorp.com
Counsel for PECO Energy Company**

DATE: July 13, 2015

REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Catherine Frompovich (“Complainant”) in the above-referenced matter on June 26, 2015. On March 24, 2015, Complainant filed a formal complaint against PECO Energy. In her formal complaint, Complainant objects to the installation of an AMI electric “Smart Meter” at her residence and requests to “opt out” of the meter installation. Complainant alleges she does not want the smart meter installed at her property because she believes the meters have health and safety risks.

Respondent, PECO Energy filed an Answer with New Matter on April 10, 2015, denying the allegations in the Complaint. PECO Energy also filed a Preliminary Objection to Complainant’s Complaint, averring that PECO Energy is required to install the meter pursuant to Act 129 and there are no consumer “opt out” provisions in the current statute. Complainant filed a response to PECO Energy’s Preliminary Objections on May 11, 2015.

On May 27, 2015, Administrative Law Elizabeth H. Barnes issued an Initial Decision, dismissing Complainant’s Complaint, holding inter alia that Complainant

To the extent that Ms. Frompovich desires the ability to opt out of the smart meter installation, she should advocate for such ability before the General Assembly. The Commission simply does not have the authority, absent a directive in the form of legislation, to prohibit the Respondent from installing a smart meter where a customer does not want one. Similarly the Respondent would be in violation of law if it did not install a smart meter at the Complainant’s residence. The Commission cannot grant the relief requested by the Complainant.

See Catherine J. Frompovich. v. PECO Energy Company, C-2015-2474602, (Order entered, May 27, 2015).

In her Exceptions, Complainant states there are comments and remarks made by various legislators during legislative sessions that installation of smart meters is not mandatory. The

Complainant claims that the clear intent of Act 129 did not make smart meter installation mandatory and the Public Utility Commission is overreaching and creating a different law than the one in place. The Complainant additionally alleges in her exceptions that PECO and the Public Utility Commission are ignoring scientific studies that say smart meters cause adverse biological effects through electromagnetic frequencies. The Complainant states that California and Maine are also pushing the smart meter agenda on customers and they are ignoring the scientific studies.

None of the above arguments challenges the key question of law – whether Act 129 or any other legislation permits the Complainant to refuse the smart meter installation. In her Exceptions, Complainant has provided no legal justification to support her allegations, regarding opting out of smart meter installation. Complainant's Exceptions do not present any grounds for overturning the Initial Decision. The Exceptions do not allege any misstatement of facts or misapplication of the law. Complainant does not provide any argument regarding why the Initial Decision was incorrect or improper. The Exceptions provide no grounds for overturning the Initial Decision whatsoever, and consist solely of policy arguments. The Exceptions, raising either irrelevant legislative comments that were not enacted into law are without any merit. Nothing in the Complainant's Exceptions warrants a reversal of ALJ Barnes' decision.

The issues the Complainant raises in her Exceptions, even if true, are not pertinent to (1) whether she has the ability to refuse meter installation pursuant to state law; and (2) whether PECO Energy violated The Public Utility Code, Commission Order or Commission-approved tariff by following the Act 129 provision to install a meter at her property. The Complainant additionally argues in her Exceptions regarding the health affects of the smart meter and cites articles from various scientists to support her argument. The Complainant's health policy

argument regarding whether the Commission should consider the health concerns surrounding the AMI meter still does not challenge ALJ Barnes' ruling that there is no "opt out" provision in Act 129 or any Implementation Order; and therefore, is an irrelevant basis to overturn the Initial Decision.

The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. 52 Pa. Code Section 5.101. Pursuant to 52 Pa. Code §5.101(a)(4), a formal complaint may be dismissed without a hearing for legal insufficiency. The Complainant was served with a copy of PECO's Preliminary Objections with a Notice to Plead and was given an opportunity to respond. Where a question presented to the Commission is one of law, there is no necessity to hold a hearing. White Oak Borough Authority v. Pennsylvania Public Utility Commission, 183 A.2d. 502, 175 Pa.Super. 114. The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. Dee-Dee Cab, Inc. v. Pa. Public Utility Comm., 817 A.2d 593, petition for allowance of appeal denied, 836 A.2d 123 (Pa. Commw. 2003); Lehigh Valley Power Committee v. Pa. Public Utility Comm., 563 A.2d 548 (Pa. Commw. 1989); Edan Transportation Corp. v. Pa. Public Utility Comm., 623 A.2d 6 (Pa. Commw. 1993).

Here, as noted by ALJ Barnes in the Initial Decision, it is clear from the pleadings that PECO has not violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff with regard to its smart meter installation policies and procedures. Consistent with 66 Pa.C.S. §2807(f)(2), ALJ determined that there is no "opt out"

provision, giving the Complainant a right to “opt out” of meter installation. As ALJ Barnes correctly concluded:

Viewing the Complaint in the instant case in the light most favorable to the Complainant, the Complainant asks that the Commission instruct PECO to perform onsite broadcasting tests at each customer’s smart meter, that her electric service not be turned off, and that the Commission consider the health implications of smart meters as well as the legal implications in conjunction with the American with Disabilities Act and the U.S. Constitution. The Complainant contends that smart meters are a health and safety risk. Accepting these facts as alleged as true for the purpose of disposing of preliminary objections, Respondent avers that the Complaint fails to allege that Respondent has violated the Public Utility Code, Commission regulations or orders. The Respondent contends that the complaint is legally insufficient. I agree.

ALJ Barnes’ Initial Decision correctly applied the standard for resolving preliminary objections and assumed for decisional purposes that the factual allegations of the Complaint are true. None of the facts asserted in Complainant’s formal complaint states a case against PECO Energy and as a matter of law the Complainant has no ability to “opt out” of meter installation. As such, it was proper and appropriate to dismiss the Complaint based on PECO Energy’s preliminary objections without holding a hearing. Accordingly, ALJ Barnes’ Initial Decision 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,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841
Fax: 215.568.3389

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CATHERINE J. FROMPOVICH

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

:
:
:
:
:
:
:
:
:
:
:

Docket No. C-2015-2474602

VERIFICATION

I, Shawane L. Lee, 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: July 13, 2015

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CATHERINE J. FROMPOVICH

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

:
:
:
:
:
:
:
:
:
:
:

Docket No. C-2015-2474602

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a true copy of the foregoing
Reply Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa.
Code § 1.54 (relating to service by a party).

**Catherine J. Frompovich
23 Cavendish Drive
Ambler, PA 19002**

Dated at Philadelphia, Pennsylvania, July 13, 2015



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841;
Fax: 215.568.3389