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July 28, 2015

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

**RE: Susan Kreider v. PECO Energy Company**  
**PUC Docket No.: C-2015-2469655**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Brief in Support of Petition for Interlocutory Review* 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,



Shawane Lee  
Counsel for PECO Energy Company

cc: Certificate of Satisfaction

SL/ab

PENNSYLVANIA PUBLIC UTILITY COMMISSION

SUSAN KREIDER :  
Complainant :  
v. : DOCKET NO. C-2015-2469655  
PECO ENERGY COMPANY :  
Respondent :  
:

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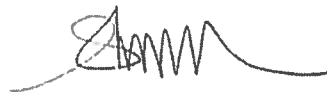
NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.302(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Brief in Support of Petition for Interlocutory Review of PECO Energy Company within 10 days from service of this notice, a decision may be rendered against you. All pleadings, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

File with:  
Rosemarie Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

With a copy to:  
Shawane L. Lee, Esq.  
PECO Energy Company  
2301 Market Street, S-23  
Philadelphia, PA 19103

Dated at Philadelphia, PA, July 28, 2015



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**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>SUSAN KREIDER</b>	:	
<b>Complainant</b>	:	
v.	:	<b>DOCKET NO. C-2015-2469655</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

**PECO ENERGY COMPANY'S  
BRIEF IN SUPPORT OF PETITION FOR INTERLOCUTORY REVIEW**

Pursuant to 52 Pa. Code § 5.302, PECO Energy Company (PECO) petitions the Public Utility Commission (Commission) for interlocutory review of (a) the June 3, 2015 Prehearing Order of Administrative Law Judge Darlene Davis Heep allowing Complainant Susan Kreider's (Complainant) claims of health effects and disability arising from the smart meter installed at her residence to be addressed in this proceeding and (b) the July 23, 2015 Order of ALJ Heep denying PECO's Motion in Limine to exclude evidence and testimony regarding the Complainant's disability claims arising from the smart meter. In accordance with well-established Commission precedent, these issues had previously been dismissed from this proceeding by Order dated April 8, 2015, issued by Administrative Law Judge David A. Salapa, who granted PECO's Preliminary Objection and ruled specifically that the only issues to proceed to hearing are the "portion of the complaint of Susan Kreider at Docket No. C-2015-2469655 alleging incorrect charges and the failure of PECO Energy Company to accept her meter readings." Given the nature of these issues and these conflicting rulings, there can be no question that the Commission's interlocutory review of and answer in the affirmative of the material question presented will prevent substantial prejudice and/or expedite the conduct of the proceeding. In support of its Petition, PECO states:

## I. INTRODUCTION

On March 2, 2015, PECO Energy was served with a formal complaint filed by Complainant Susan Kreider. In her Complaint, the Complainant alleges the following:

[PECO] would not respect my notice of self-help and offer any alternative despite that Act 129 does not require installation until 2023.

In her request for relief, the Complainant states:

I want to be permitted to keep an analog meter either until 2023 or, better yet, allow opt out as per legislation being introduced week of February 9, 2015 by State Representative Mike Reese.

The Complainant additionally alleged that PECO would not accept meter readings from an analog meter she had an electrician install after she removed the smart meter installed by PECO. The Complainant's formal complaint requested the ability to keep the analog meter and to "opt out" of the use of a smart meter stating health and disability issues as the reason for the request.

On March 10, 2015, PECO filed an Answer and New Matter denying that Complainant had been improperly billed and denying the request to "opt out." PECO simultaneously filed a Preliminary Objection to Complainant's Complaint, requesting dismissal of the Complainant's request to "opt out" of AMI meter installation for alleged health reasons pursuant to Act 129. In PECO's Preliminary Objection, the company cited 66 Pa. C.S. § 2807(f), which requires PECO to install smart meters and does not provide customers with an opportunity to "opt out" of AMI meter installation. PECO averred in the company's Preliminary Objection that the Commission ordered PECO through the Smart Meter Procurement and Installation Implementation Order, entered on June 24, 2009, at Docket No. M-2009-2092655 to install smart meters for all PECO customers. PECO additionally averred while several House Bills were introduced to give

customers (such as the Complainant) the ability to “opt out” of AMI meter installation for health reasons, none of these bills were ever scheduled for a vote by the General Assembly.

Accordingly, the ability to opt out of smart meter installation (whatever the reason, health or otherwise) is not currently permissible under the law.

On March 27, 2015, the case was assigned to ALJ Salapa. On April 8, 2015, ALJ Salapa issued an Order, stating that PECO properly complied with relevant statutes, regulations and orders by attempting to install a smart meter at Complainant’s residence and by threatening termination for lack of access to the meter. ALJ Salapa’s Order further stated that the Commission approved PECO’s smart meter procurement and installation plan and that the Commission has previously addressed complaints opposing smart meter installation and charges. ALJ Salapa’s Order expressly stated that the “allegations in the complaint at Docket No. C-2015-2469655 concerning smart meter installation are dismissed for legal insufficiency.” ALJ Salapa’s Order expressly limited the scope of the remaining allegations in Complainant’s formal complaint that would proceed to hearing to “the portion of the complaint of Susan Kreider at Docket No. C-2015-2469655 alleging incorrect charges and the failure of PECO Energy Company to accept her meter readings shall be scheduled for a hearing before an administrative law judge.”

On May 26, 2015, the Complainant requested that the telephonic hearing scheduled before ALJ Salapa be changed to an in person hearing to take place in Philadelphia. ALJ Salapa granted the Complainant’s request. The case was reassigned to ALJ Heep and scheduled for hearing on July 29, 2015.

On June 3, 2015, ALJ Heep issued a Prehearing Order, stating in part, that the issue to proceed to hearing would be “whether PECO provided or is providing unreasonable service given Complainant’s allegations of ‘deleterious health symptoms’ caused by the smart meter.”

On July 1, 2015, PECO filed a Motion in Limine, requesting to exclude testimony and evidence regarding the smart meter; health symptoms allegedly caused by the smart meter; radiation issues; claims of discrimination based on disability; or any other allegation concerning health and the smart meter. The Complainant filed a response to PECO’s Motion in Limine on July 6, 2015.

On July 23, 2015, ALJ Heep denied PECO’s Motion in Limine in part and ruled in relevant part:

The Motion in Limine is denied with respect to the following claims to be addressed at hearing:

- a. that the Respondent was threatening to terminate her service or has already terminated her service;
- b. that the Respondent would not respect her notice of self-help or offer any alternative, including whether the Respondent has provided or is providing unreasonable service given Complainant’s allegations of “deleterious health symptoms” caused by the smart meter;

The hearing in this matter is scheduled for July 29, 2015, before ALJ Heep. On July 28, 2015, PECO filed a Petition for Interlocutory Review of ALJ Heep’s June 3, 2015 Pre Hearing Order and July 23, 2015 Order denying PECO’s Motion in Limine, and requested that the matter be stayed pending the Commission’s consideration of the Petition for Interlocutory review

As explained below, ALJ Heep’s rulings are incorrect as a matter of law and are inconsistent with the Commission’s prior determinations on the issues, in this and other cases. To allow these issues, which were properly rejected in a prior order, to be addressed at hearing

would be a waste of the resources of both the Commission and the parties, and would result in substantial prejudice to PECO as the company is constrained by Act 129 and is required to follow the law and the Implementation Order issued by the Commission. These issues are a matter of law and have already been addressed by the Commission. Therefore, the scheduled hearing should be stayed, and the Commission should affirm its previous decisions by granting the material questions in the affirmative. Resolving these issues now not only will prevent substantial prejudice to PECO, but will expedite the conduct of the proceeding, as well as future complaints that may be filed.

## II. ARGUMENT

### A. Compelling Reasons for Review

Interlocutory review of the questions presented is necessary to prevent significant prejudice to PECO. PECO should not have to defend against allegations which have no legal or factual basis, and which have been rejected by the Commission in numerous decisions. To allow these issues to be addressed would not only require the expenditure of the Commission's and the parties' resources in a meaningless exercise,<sup>1</sup> it also exposes PECO (and the other jurisdictional electric utilities) to other similar complaints that may be filed.

The issue of smart meters and a customers' ability to "opt out" of meter installation due to concerns about health effects or disability has been addressed by the Commission in numerous cases. Together, the applicable rulings establish that complaints concerning alleged smart meter health effects or the ability to "opt out" of installation for fear of disability reasons are not actionable claims, and therefore are properly dismissed without the necessity of hearing.

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<sup>1</sup> Given the nature of the allegations, it is likely that medical and/or other expert testimony would be required to rebut Complainant's contentions of adverse health effects.

Claims alleging that smart meters cause injurious health issues and PECO's right to terminate a customer's service pursuant to Section 18.3 of PECO's tariff when a customer refuses the meter for health reasons, have been determined not to constitute violations of the Public Utility Code and are therefore properly dismissed. See, *Paul v. PECO Energy*, Docket No. C-2015-2475355 (Initial Decision issued July 1, 2015), *Gavin v. PECO Energy*, Docket No. C-2012-2325258 (Final Order entered Jan. 24, 2013), *Thomas v. PECO Energy*, Docket No. C-2012-2336225 (Final Order entered Dec. 31, 2013). All of these cases, as well as many others objecting to the installation of smart meters on other grounds, have been summarily dismissed as the complainant would not be entitled to relief under any circumstances as a matter of law because the electric distribution company is required by law to install smart meters throughout its service territory, and there is no provision providing customers with an option of "opting out."

Here, Ms. Kreider claims that the installation of a smart meter causes her health issues and she requests the ability to "opt out" of the meter installation for disability reasons. 66 Pa.C.S. §2807(f)(2) is still in effect and PECO has not violated the provision by threatening to terminate Ms. Kreider's service for her refusal to have the meter installed. It cannot be held that PECO is acting unreasonably by installing the meters because meter installation is mandatory pursuant to Act 129, the PUC's Implementation Order, and 66 Pa.C.S. §2807(f)(2).

Resolving these issues now will prevent substantial prejudice to PECO, and expedite the conduct of the hearing by eliminating the need for expert testimony. To allow the Orders to remain in effect, will open the door for complainants to litigate potentially countless individual health and disability related smart meter complaints. In this scenario, utilities would be forced to defend – and then appeal – such claims time and time again. The result of such process would be



to increase costs and devour the Commission's resources, ultimately harming customers and frustrating any prospect of orderly and efficient formal complaint process

Further, this issue has already been decided and dismissed by ALJ Salapa on PECO's Preliminary Objection. Permitting any testimony or evidence concerning the smart meter and whether PECO is acting unreasonably by not permitting Complainant to "opt out" for disability or health reasons will cause substantial prejudice to PECO as the company is constrained by Act 129 and is required to follow the law set in place by the legislature and the Implementation Order set by the Commission. These issues are a matter of law and have already been decided. Therefore, the scheduled hearing should be stayed and these previously decided issues should be precluded.

#### B. MATERIAL QUESTIONS

1) Should Administrative Law Judge Darlene Davis Heep's June 3, 2015, Pre-Hearing Order and July 23, 2015, Order denying PECO's Motion in Limine allowing Complainant's claims of health effects and disability arising from the smart meter be revised because the Orders are inconsistent with the Commission's previous orders, regulations and case law?

2) Should the question of whether PECO has provided or is providing unreasonable service given Complainant's allegations of "deleterious health symptoms" caused by the Smart Meter be excluded from the hearing as well as any evidence, testimony or discussion to support this claim?

As explained above, ALJ Heep's Orders, by allowing the Complainant to proceed on her allegations concerning alleged health effects from the installation and operation of a smart meter at her residence, and her use of "self-help" to have her electric service charges based on readings from a meter that she had installed by an electrician, should be revised to preclude consideration of these issues. They are inconsistent with prior Commission rulings, and are incorrect as a matter of law.

As stated by ALJ Salapa in his Order Sustaining Preliminary Objections In Part dated April 8, 2015, at 5-8, “Here, the Respondent has not violated any statute, regulation or order which the Commission has jurisdiction to administer by attempting to install a smart meter at the Complainant’s residence or by threatening termination for lack of access to the meter. Rather, the Respondent is complying with relevant statutes, regulations and orders. . . . The Commission’s decisions cited above are controlling. Because Act 129 of 2008 and the Commission’s orders authorize the Respondent to develop and implement a smart meter procurement and installation plan, the issues related to the installation of a smart meter and termination of service notices in the complaint are dismissed for legal insufficiency.”

Here, Complainant would not be entitled to relief under any circumstances as a matter of law because PECO is required by law to install smart meters throughout its service territory. A hearing on these issues is not necessary, and in fact, given the nature of the allegations, would require the expenditure of substantial resources to address.

The implications of these rulings extend far beyond this case. It is unfair, impractical and substantially prejudicial to require PECO to adhere to Act 129 and then allow litigation from PECO customers concerning the health effects of the meter and their desire to “opt out” because of health and disability reasons. Under these conditions, a flood gate of smart meter health effect and disability cases could be opened by customers and the utilities would be compelled to defend and appeal every case. Indeed, failing to uphold ALJ Salapa’s Order would result in an unmanageable process, thereby wasting administrative, judicial, utility, and ratepayer resources. That is precisely why the Commission has previously dismissed this claim and other similar claims. It is also why the scheduled hearing should be stayed and ALJ Salapa’s Order should be reinstated, precluding smart meter issues from being discussed.

**III. CONCLUSION**

For the foregoing reasons, PECO Energy Company respectfully requests that the Commission stay the proceeding so as to allow interlocutory review and answer the material questions presented in affirmative.

Dated: July 28, 2015

Respectfully submitted,  
PECO ENERGY COMPANY



By: \_\_\_\_\_  
Romulo L. Diaz, Jr.  
Shawane L. Lee  
Counsel for PECO Energy Company

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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VERIFICATION

I, Shawane 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.

Dated at Philadelphia, Pennsylvania, July 28, 2015.



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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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CERTIFICATE OF SERVICE

I, Shawane Lee, hereby certify that I have this day served a copy of PECO Energy Company's Brief in Support of the Petition for Interlocutory Review in the above matter upon all interested parties by hand delivering a copy to:

**Susan Kreider**  
169 W Queen Lane  
Philadelphia, PA 19144  
*Via Hand Delivery*

**Administrative Law Judge Darlene Davis Heep**  
Pennsylvania Public Utility Commission  
801 Market Street, Suite 4063  
Philadelphia, PA 19107  
*Via Email*

**Secretary Rosemary Chiavetta**  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
*Via Email*

Dated at Philadelphia, Pennsylvania, July 28, 2015.



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