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September 18, 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's Petition for Reconsideration of the Commission's September 3, 2015 Order*** 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

SL/lo

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PECO ENERGY COMPANY'S REQUEST FOR RECONSIDERATION OF THE COMMISSION'S SEPTEMBER 3, 2015 ORDER

The Commission's September 3, 2015 order in this docket (the "*Kreider Order*") is a significant reversal of established law and policy with respect to universal advanced metering infrastructure ("AMI") meter deployment five years into the deployment of 1.68 million electric AMI meters. PECO, therefore, respectfully requests that the Commission reconsider and reverse the *Kreider Order.*

Since 2008, the General Assembly and the Commission have, in an unbroken line of legislation, rulemaking orders, and individual case decisions, directed PECO to install AMI meters for all of its electric service customers. The General Assembly spoke through Act 129 of 2008, codified as to AMI meters at 66 Pa. C.S. §2807 *et seq.* ("Act 129"). Act 129 states that the state-wide deployment of certain energy efficiency and conservation technologies – including AMI meters - is in the public interest, and directs the Commission and affected jurisdictional utilities to proceed with state-wide deployment of that technology.

The Commission implemented that legislative directive through a number of proceedings and decisions. In 2008-09, the Commission convened a statewide examination of AMI meters that enjoyed wide participation, including by customer representatives such as the Office of Consumer Advocate, and which resulted in direction to PECO and other utilities to file expeditiously AMI meter deployment plans with the Commission. PECO subsequently filed a plan for pilot deployment (in 2009) and then, in 2012, filed its Universal Deployment Plan. Again, these proceedings had wide stakeholder participation. The Universal Deployment Plan resulted in a settlement under which PECO was to materially complete universal deployment of AMI meters by the end of 2014. All signatories to that settlement filed Statements in Support indicating that, in their view, the Universal Deployment Plan is in the public interest. The Administrative Law Judge ("ALJ") subsequently concurred, specifically finding that PECO's Universal Deployment Plan is "just, *reasonable*, and in the public interest." The Commission subsequently adopted the ALJs Recommended Decision, thus adopting that same conclusion.

During this period, the Commission also issued dozens of decisions in individual complaint cases holding that the underlying statute does not allow a customer to "opt-out" from the installation of an AMI meter, with those orders uniformly denying customers the opportunity for individual evidentiary hearings based on their concerns about AMI meters.

For its part, during this period PECO – with the full knowledge and enthusiastic support of the Commission – obtained a $200 million U.S. Department of Energy grant to accelerate the deployment of AMI meters in its service territory. PECO has now deployed more than 1.68 million AMI meters in its service territory – approximately 98% of the mandated installations –

and has spent more than $733 million deploying its AMI meter infrastructure.[1] Those expenditures are included in PECO's rates and are being recovered from its customer base, again with the knowledge and approval of the Commission. Only a few months remain before PECO will retire the infrastructure supporting its historic meter system.

Now, at this late date, the *Kreider Order* posits that, notwithstanding the law and history noted above, the Commission is willing to entertain a claim that PECO's planned installation of an AMI meter at the residence of Ms. Kreider constitutes unreasonable utility service under Section 1501 of the Public Utility Code. The *Kreider Order* therefore directs that a factual hearing be held on the Section 1501 question.

PECO respectfully submits that the *Kreider Order* should be understood as a significant change of course in Commission law and policy on universal AMI meter deployment. PECO further respectfully submits that, given the fact that its AMI installation is nearly complete, now is not the time to change the rules of the road related to universal installation of this technology. PECO therefore respectfully requests that the Commission reconsider the *Kreider Orde*r and issue an order consistent with the existing body of Commission jurisprudence on this issue – that AMI meter installation has already been determined by both the General Assembly and the Commission to be reasonable and in the public interest, and that PECO should proceed with such installation at the Kreider residence.

[1]Attached to the Petition is an affidavit from Derrick Dickens, Director of AMI Strategy, establishing the facts set forth herein.

Procedural History

On March 2, 2015, PECO was served with a formal Complaint filed by Susan Kreider, alleging that she experienced adverse health effects caused by an AMI meter installed by PECO. Ms. Kreider hired an electrician to remove the AMI meter and replaced it with an analog meter. In her complaint, Ms. Kreider requested 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." PECO filed an Answer and New Matter along with Preliminary Objections on March 10, 2015.

On March 27, 2015, this matter was assigned to Administrative Law Judge David A. Salapa, and on April 8, 2015, ALJ Salapa issued an order that in part sustained PECO's Preliminary Objections. Specifically, ALJ Salapa ruled that the Commission's prior orders — concluding that "there is no statutory provision, regulation, or order that allows a customer to opt out of smart meter installation"— control whether a hearing is allowed on the issues raised by Ms. Kreider. Accordingly, ALJ Salapa ordered that "the allegations in the Complaint . . . concerning smart meter installation are dismissed for legal insufficiency." The order expressly limited the hearing of this matter to separate billing and meter reading issues raised by Ms. Kreider's complaint, none of which implicate the alleged health effects of AMI meters.

Thereafter, this case was reassigned to ALJ Darlene Heep. In a pre-hearing order dated June 3, 2015, ALJ Heep, acting *sua sponte*, reversed ALJ Salapa, and ruled that the hearing in this matter would address (1) "whether PECO provided or is providing unreasonable service given Complainant's allegations of 'deleterious health symptoms' caused by the smart meter,"

and (2) PECO's notice that service would be terminated based on Complainant's refusal of the meter. On July 1, 2015, PECO filed a motion *in limine* seeking to exclude from the hearing any evidence regarding the alleged health effects of the AMI meter, or the right to "opt out" of AMI meter installation based on those alleged health effects. In other words, like ALJ Salapa's original order, PECO sought to exclude from the hearing those matters that this Commission has consistently found lacking as a matter of law.

On July 23, 2015, ALJ Heep granted, in part, and denied, in part, PECO's motion *in limine.* Specifically, ALJ Heep ruled that Ms. Kreider would be permitted to present evidence of the alleged adverse health effects caused by AMI meters, but she nonetheless would be precluded from introducing evidence regarding the only remedy for those alleged health effects: opting out of AMI meter installation.

PECO believed (and continues to believe) that this order is internally contradictory because it ordered a hearing on an issue while at the same time effectively admitted that the law required an AMI meter to be installed at the Kreider residence. Faced with that apparent contradiction, on July 28, 2015, PECO sought interlocutory review based, in part, on the fact that ALJ Heep's order conflicts with numerous prior orders of the Commission regarding customer requests to opt out of AMI meter installation based on alleged adverse health effects.

On September 3, 2015, the Commission issued an opinion and order granting interlocutory review of the following issues:

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?

The Commission answered both questions in the negative, concluding that ALJ Heep's decision was not "inconsistent with the Commission's prior Orders . . . or inconsistent with other law." *Kreider Order* at 15. The Commission grounded its ruling in two distinctions that PECO, after detailed review of the cases in question, does not believe exist: (1) that Ms. Kreider is the first Complainant to allege "specific health effects she has experienced," whereas prior cases involved "general claims that smart meters pose potential safety and fire hazards or health hazards," and (2) that Ms. Kreider's (and more specifically the *amicus* brief filed in this matter) for the first time raises the question of whether installation of an AMI meter can constitute "a potential violation of Section 1501 of the Code for unsafe and/or unreasonable service." *Id.* at 16.

I. Standard

The Pennsylvania Public Utility Code ("Code") provides that a party may seek reconsideration of a Commission order within 15 days after it is entered. *See* 52 Pa. Code § 5.572. A petition for reconsideration is proper where the party raises "new or novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." *Duick v. Penn. Gas & Water Co.*, 56 Pa. PUC 553, 559 (1982).

The *Kreider Order* — which on its face is limited to the narrow issue of whether Ms. Kreider's health claims state a violation of Section 1501 — overlooks two important considerations.

First, the General Assembly, in passing Act 129, and the Commission, in implementing it, have previously determined that the universal deployment of AMI meters is reasonable and in the public interest. That issue should not be examined again at this late date. In addition, PECO notes that accommodating Ms. Kreider's claims, and those of other customers, would require a parallel system of analog meters. PECO is not authorized to establish such a parallel system; nor has the General Assembly or the Commission considered the logistics, cost impacts or cost recovery associated with establishing and maintaining such a parallel system.

Second, the *Kreider Order* is inconsistent with the unbroken precedent of the Commission dismissing claims based on specific health effects allegedly experienced by customers after the installation of AMI meters.

These considerations, which involve "new or novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission," justify reconsideration of the *Kreider Order* pursuant to Section 5.572 of the Code. *Id.*

II. Argument

A. The General Assembly and the Commission have concluded that AMI constitutes safe and reasonable utility service in accordance with Section 1501.

Act 129 was an important policy change for the Commonwealth in which the General Assembly directed the Commission and utilities to move forward with robust new energy efficiency and conservation measures, of which the universal installation of AMI meters is one material component. *See* 66 Pa. C.S. § 2807(f). The General Assembly stated that these measures, including the universal installation of AMI meters, are for the purpose of enhancing the "health, safety and prosperity" of Pennsylvania's citizens through the "availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost." H.B. 2200, 192d Gen. Assemb., Reg. Sess. (Pa. 2008). The General Assembly further found and declared that "it is in the public interest" to adopt and implement the measures described in Act 129. *Id.*

For its part, the Commission initiated a statewide docket to determine how to implement this legislative mandate. Docket No. M-2009-2092655. In its June 18, 2009 Implementation Order in that proceeding, the Commission noted that Act 129 states that Electric Distribution Companies "shall furnish smart meter technology . . . in accordance with a depreciation schedule

not to exceed 15 years." *Id.* at § 207(f)(2)(iii). The Commission therefore ordered universal deployment within that time frame. In the Implementation Order, the Commission concluded "that it was the intent of the General Assembly to require all covered EDCs to deploy smart meters system-wide when it included a requirement for smart meter deployment 'in accordance with a depreciation schedule not to exceed 15 years.'" *Id.* The Commission further determined that system-wide deployment was consistent with utilities' obligations under Section 1501. *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L-2009-2095604, 2011 Pa. PUC LEXIS 114 (Oct. 4, 2011) (emphasis added).

With respect to PECO's Universal Deployment Plan, the record is also clear that the Commission has already determined that PECO's universal deployment of AMI meters is just, reasonable, and in the public interest. PECO's Universal Deployment Plan was resolved by settlement, with all parties submitting Statements in Support of the Settlement. On July 12, 2013, Administrative Law Judge Angela T. Jones ("ALJ Jones") issued a Recommended Decision that stated the following with respect to PECO's plan to deploy universally AMI meters (Conclusions of Law 5 and 6):

> 5. To determine whether the settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pennsylvania Public Utility Comm'n v. C.S. Water and Sewer Associates*, 74 Pa. PUC 767 (1991); *Pennsylvania Public Utility Comm'n v. Philadelphia Electric Company,* 60 Pa. PUC 1 (1985).
>
> 6. The settlement rates, terms and conditions contained in the Joint Petition for Settlement filed at Docket No. M-2009-2123944 by PECO Energy Company, the Office of Consumer Advocate, the Office of Small Business Advocate, Direct Energy Services, LLC and Sensus Metering Systems *are just, reasonable and in the public interest.*

On August 15, 2013, the Commission issued an Order, adopting ALJ Jones' Recommended Decision. *See* Petition of PECO Energy Company for Approval of its Smart Meter Universal Deployment Plan, Docket No. M-2009-2123944 (Order entered, Aug. 15, 2013). Neither Act 129 nor the Implementation Order allows for a customer to opt out of the system-wide deployment of AMI meters for any reason, including alleged health effects. In other words, the General Assembly and the Commission already have concluded that universal installation of AMI meters is in the public interest, and that an opt-out remedy is not available.[2] It is for this reason that the Commission has held that the installation of an AMI meter "[does] not violate any Statute, Regulation or Commission Order," and that there "is no provision in the Code, the Commission's Regulations or Commission Orders that permits a customer to opt out of having a smart meter installed on his or her premises." *Smith v. PECO*, Docket No. C-2014-2443198.

Finally, it should be noted that, to provide Ms. Kreider the relief she seeks, PECO would effectively be required to establish and maintain a parallel system of analog meters. Act 129 does not authorize such a parallel system, and neither the General Assembly nor the Commission has considered the logistics, cost impacts or cost recovery of such a parallel system. Indeed, the absence of an opt-out provision is highlighted by the recent introduction of House Bills 394 and 396—introduced on February 9, 2015—which seek to amend Section 2807(f)(2)(iii) to provide

[2] This distinguishes the present case from those cited in the *Kreider Order* as having proceeded to a hearing under Section 1501. *See Kreider Order* at 17 (citing *Young v. Nat'l Fuel Gas Dist. Corp.*, Docket No. C-2008-2059233 (Final Order entered July 28, 2009; *Kelley v. Penn. Electric Co.*, Docket No. C-20066673 (Order entered May 1, 2008; *Strickhouser v. Metropolitan Edison Co.*, Docket No. c-20077273 (Order entered December 20, 2007)). The cited cases involved discrete safety concerns related to way in which otherwise safe equipment was installed or inspected. Here, Ms. Kreider alleges that the equipment itself is inherently unsafe and should not be installed at all.

that "[c]ustomers may opt out of receiving smart meter technology under this subparagraph by notifying, in writing, the [EDC]." That proposed legislation recognizes the fundamental fact overlooked by the *Kreider Order*: any remedy allowing consumers to opt out of system-wide AMI meter deployment must come from the General Assembly, through amendment of Act 129.

Because the law does not allow for the relief that Ms. Kreider seeks, there can be no purpose to a costly and time-consuming hearing regarding her alleged health claims. In other words, although Ms. Kreider's claim may raise an issue of fact, *see Kreider Order* at 15, it is not an issue of material fact because no relief can be granted based on it. The law requires universal deployments. Moreover, an equally time-consuming and costly hearing would be required for every new case in which a consumer alleges adverse health effects following the installation of an AMI meter, despite that the hearing could produce no meaningful result.[3]

Simply stated, the *Kreider Order* overlooks the overriding legal tenet: Act 129 reflects a legislative determination that AMI constitutes safe and reasonable service. That straightforward conclusion underlies the Commission's orders directing utilities to proceed with universal

[3] In fact, those hearings would not even be limited to deployment of AMI on a complainant's property. Claimants already have alleged harm from AMI installed on neighboring properties. *See Gavin v. PECO*, Docket No. C-2012-2325258 (Final Order entered, Jan. 24, 2012). The Commission appears to have misunderstood the claim in *Gavin* as requesting relief on behalf of others. *See Kreider Order* at 16. But Ms. Gavin was alleging her own adverse health effects from infrastructure unrelated to her property. If the rule of the *Kreider Order* is allowed to remain intact, there is no reason to limit the evidentiary examination to whether an AMI meter in the customer's own residence is an issue. Instead, the door would be open to claims, such as the *Gavin* claim, that the meter next door is causing health effects. Moreover, it should be noted that the entire AMI system is dependent upon system-wide transmission of radiofrequencies that blanket the entire service territory. The *Kreider Order* thus arguably opens the door to individual claims that a complainant's health is being affected by meters on the block or in the neighborhood, or in the township or county, or system-wide or state-wide – with the inevitable request for relief to remove the meters from the designated geographic area.

deployment, as well as the Commission's many previous orders that held that customers are not entitled to hearings on health claims, privacy, or other concerns in an attempt to opt out of AMI deployment.

B. The Commission has previously ruled that hearings are not appropriate in cases of individual health claims. The Commission has also already reconciled Sections 2807 and 1501 of the Public Utility Code. The *Kreider Order* is thus inconsistent with the Commission's prior orders on the same issue.

Consistent with the above understanding of Act 129, the Commission has previously dismissed every claim grounded in the alleged health effects of AMI meters or which asks to opt out of an AMI meter for other policy reasons, such as privacy.[4]

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[4] Indeed, no AMI meter cases have proceeded to a hearing on the right to opt out; each of PECO's cases has been dismissed on preliminary objection. *See Francis v. PECO*, Docket No. C-2014-2451351 (Final Opinion and Ordered entered, August 20, 2015); *Van Schoyck v. PECO*, Docket No. C-2015-2478239 (Initial Decision entered, June 19, 2015); *Larson v. PECO*, Docket No. C-2014-2451754 (Final Opinion and Ordered entered, June 11, 2015); *Antonio Romeo v. PECO Energy*, Docket No. C-2015-2479260 (Initial Decision entered, June 4, 2015); *Gerald H. Smith v. PECO*, Docket No. C-2014-2443198 (Final Opinion and Order entered April 23, 2015); *Vincent Feldman v. PECO*, Docket No. C-2015-2442308 (Initial Decision entered, April 1, 2015); *Margaret Hager, M.D. v. PECO Energy*, C-2014-2444961 (Final Order entered, March 12, 2015); *Ellen Donnelly v. PECO Energy*, Docket No. F-2013-2330663 (Final Order Entered March 18, 2014); *Douglas Evans v. PECO Energy*, Docket No. C-2013-2368477 (Final Order entered, February 6, 2014); *Theresa Gavin v. PECO Energy*, Docket No. C-2012-2325258 (Order entered January 24, 2013); *Jeff Morgan v. PECO Energy*, Docket No. C-2013-2356606 (Final Order entered July 23, 2013); *Thomas McCarey v. PECO Energy*, Docket No. C-2013-2354862 (Final Order entered September 26, 2013); *Renney Thomas v. PECO Energy*, Docket No. C-2012-2336225 (Final Order entered December 31, 2013); *Maria Povacz v. PECO Energy*, Docket No. C-2012-2317176 (Order entered September 28, 2012).

Moreover, the Commission has ruled consistently on the right to opt out issue with respect to other EDCs. *Gloria Corbett v. Pennsylvania Power Company*, Docket No. C-2011-2219898 (Final Order entered, May 27, 2011); *Richard Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Final Order entered, March 3, 2011); *Richard Secrest v. West Penn Power Company,* Docket No. C-2013-2356667 (Final Order entered, Jun. 11, 2013); *Corbett v. Pennsylvania Power Company*, Docket No. C-2011-2219898 (Order entered May 27, 2011); *Jones v. Metropolitan Edison Company*, Docket No. C-2011-2224380 (Order entered June 28, 2011); *Griffin v. Metropolitan Edison Company*, Docket No. C-2012-2300172 (Order entered July 31, 2012); *Brake v. West Penn Power Company*, Docket No. C-2013-2367308 (Order entered November 14, 2013); *Drake v. Pennsylvania Electric Company*, Docket No. C-2014-2413771 (Order entered June 12, 2014); *Efaw v West Penn Power Company*, Docket No. C-2014-

In this case, however, the Commission distinguished Ms. Kreider's claim on two bases: (1) that Ms. Kreider is the first Complainant to allege "specific health effects she has experienced," whereas prior cases involved "general claims that smart meters pose potential safety and fire hazards or health hazards," and (2) that Ms. Kreider's (and more specifically the *amicus* brief filed in this matter) for the first time raises the question of whether installation of an AMI meter can constitute "a potential violation of Section 1501 of the Code for unsafe and/or unreasonable service." *Id.* at 16.

A careful review of the Commission's prior orders reveals that many of those orders included "factual averments regarding the specific health effects" that the Complainant claimed to be directly related to an AMI meter. *See Paul v. PECO*, Docket No. C-2015-2475355 (Order entered, Jun. 23, 2015) (alleging "physical symptoms" associated with alleged "biological effects" of AMI meters); *Smith v. PECO*, Docket No. C-2014-2443198 (Final Opinion and Order entered, Apr. 23, 2015) (alleging fatigue, difficulty concentrating, memory loss and tachycardia following installation of AMI meter); *Hager v. PECO*, Docket No. C-2014-2444961 (Final Ordered entered, March 12, 2015) (alleging aggravation of son's cystic fibrosis following installation of AMI meter); *Gavin v. PECO*, Docket No. C-2012-2325258 (Final Order entered, Jan. 24, 2012) (requesting removal of neighbor's AMI meter due to sleeplessness, memory loss and ringing in ears). The conclusion that Ms. Kreider's claim is unique because it is the first to involve a specific health claim is thus not supported by a review of the existing cases.

2413744 (Order entered June 12, 2014); *Sean Loughry v. PPL Electric Utilities Corp.*, Docket No. C-2014-2445932 (Order entered March 2, 2015).

As to the claim that none of the prior cases raised Section 1501, PECO agrees with that factual statement, but that in no way means that the Commission (and the General Assembly) failed to address and reconcile Sections 1501 and 2807. Section 1501 states in relevant part that a utility is required to provide "adequate, safe, efficient and reliable service and facilities." Commission practice is to allow *pro se* litigants very substantial latitude in forms of pleading so that they can simply state that "my service is unreasonable" without having to state that such a claim is made under Section 1501 of the Public Utility Code. But, notwithstanding that latitude in pleading, PECO respectfully submits that such claims are understood by the Commission and members of the bar as being claims under Section 1501 – otherwise, the Commission would not have jurisdiction over such claims.

Moreover, as discussed at length in Section A of this Argument, the General Assembly and the Commission have stated on numerous occasions that universal deployment of AMI meters is "in the public interest" and is "reasonable." It is simply not plausible to conclude that, in all of those situations, the General Assembly and the Commission simply overlooked the Section 1501 requirement to provide "reasonable service and facilities" in reaching the conclusion that universal deployment is "reasonable" and in the public interest. The far better reading, which reconciles all of the actions of the General Assembly and the Commission, is that both of those bodies evaluated universal deployment and concluded that universal deployment of AMI meters, by law, constitutes "reasonable" utility service, and is thus allowed – required, actually – by Section 1501.

This conclusion is underscored by an argument in the *amicus* brief. Page 7 of the *amicus* brief makes the point that "In reality, the Commission has read Section 1501 and Act 129 in tandem," citing to the *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L-2009-2095604, 2011 Pa. PUC LEXIS 114 (Oct. 4, 2011). The *amicus* is correct that the Commission has read Section 1501 and Act 129 in tandem, but misses the implications of that fact. The *amicus* brief argues that, because the two laws have been read in tandem, this means that the Commission should, in the *Kreider* case, engage in an examination of whether the implementation of Act 129 is causing a violation of Section 1501. The exact opposite is true. The correct conclusion is that, in the cited order, the Commission already evaluated and reached the conclusion that its Act 129 regulations are consistent with Section 1501. Here is the "read together" language from page 78 of the slip op.:

> In summary, we are adopting these final-form regulations in order to implement the Act 129 changes to the statutory standards for the acquisition of electric generation supply by EDCs for their default service customers, including: requirements in regard to competitive procurement, a prudent mix of contract types, least cost to customers over time, and adequate and reliable service.
>
> Accordingly, under Sections 501,1301, 1501 and 2807 of the Public Utility Code, 66 Pa. C.S. §§ 501,1301, 1501 and 2807; Sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202 and the regulations promulgated at 1 Pa. Code §§ 7.1, 7.2 and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 745.5 and Section 612 of the Administrative Code of 1929, 71 P.S. § 732 and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231-7.324, we are considering adopting the proposed regulations set forth in Annex A, attached hereto; **THEREFORE,** [etc.]

PECO respectfully submits that this language is better read as saying that the Commission was concluding that its Act 129 regulations meet the requirements of Section 1501 – not that the Commission was deferring a 1501 examination to some future time.

The specific order relied upon by *amicus* for this argument is an Act 129 order that only tangentially touches on AMI meters, but PECO submits that the rationale remains the same for other Orders issued by the Commission, whether they specifically mention Section 1501 or not. In particular, PECO notes that in its Universal Deployment Plan proceeding, one party – Direct Energy – specifically stated in its prehearing memorandum that one of the issues to be examined in that proceeding was: "Whether the company's overall smart meter deployment plan is consistent with the Commission's regulations and the Public Utility Code." See Direct Energy Prehearing Memorandum, March 22, 2013, at page 3 (available on the Commission's website at http://www.puc.state.pa.us//pcdocs/1220521.pdf.) Direct Energy later joined in the Settlement, stating that it was in the public interest (Direct's Statement in Support is available on the Commission's website as Appendix D to the Joint Petition at http://www.puc.state.pa.us//pcdocs/1232503.pdf.) It is therefore clear that at least one stakeholder in that proceeding was satisfied that the Company's AMI meter plan was consistent with the Public Utility Code – presumably including Section 1501. That conclusion must be presumed to be incorporated into the Commission's later approval of the Universal Deployment Plan as being in the public interest.

The inconsistency of the *Kreider Order* is further highlighted by the internal contradiction inherent in ALJ Heep's order. That is, ALJ Heep precluded Ms. Kreider from introducing "any evidence concerning whether a statutory provision, Regulation, or Order allows a customer to opt out of smart meter installation." *Kreider Order* at 6. That portion of the order reflects the Commission's longstanding determination that customers — even those "uniquely susceptible" to AMI meter emissions — may not opt out of AMI installation. Yet, in that same order, ALJ Heep permits Ms. Kreider to introduce evidence that PECO is providing unreasonable service by failing to offer an AMI meter alternative. *Id.* Those two provisions cannot be reconciled, and only the first provision — precluding any evidence related to opting out — comports with Act 129 and the Commission's prior orders.

Accordingly, consistent with its prior decisions, PECO respectfully requests that the Commission reconsider the *Kreider Order*, answer PECO's questions in the affirmative, and limit the hearing of this matter to the issues identified in ALJ Salapa's April 8, 2015 Order.

WHEREFORE, PECO respectfully requests that the Commission reconsider the *Kreider Order* to answer PECO's questions in the affirmative, and confine the hearing of this matter to the issues identified in ALJ Salapa's April 8, 2015 Order.

Dated: September 18, 2015

Respectfully submitted,

PECO ENERGY COMPANY

By: _____

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I, Shawane Lee, hereby certify that I have this day served a true and correct copy of the foregoing pleading upon the interested parties and in the manner indicated below.

Service by first class mail:
Susan Kreider
169 West Queen Lane
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Dated: September 18, 2015

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA :

BEFORE ME, the undersigned authority, on this day personally appeared Derrick Dickens who swore, under penalties provided by law subject to the penalties of 18 Pa. C.S. § 4904, and said:

My name is Derrick Dickens. The statements set forth in this Affidavit are true and correct, except as to such matters therein stated to be on information and belief, and as to such matters, I certify that I believe the same to be true.

I make this Affidavit in my capacity as Director of Advanced Metering Infrastructure ("AMI") Strategy for PECO Energy Company ("PECO"). I am familiar with the AMI data contained in this Affidavit by virtue of my duties and responsibilities.

I swear and affirm that as of September 17, 2015, PECO has deployed 1,688,841 AMI electric meters in its service territory, which is approximately 98% of the mandated installations. PECO has spent approximately $733 million dollars deploying the AMI electric meters, including building the network infrastructure, IT solutions and meter installation. Only a few months remain before PECO will retire the infrastructure supporting its historic meter system.

Affiant – Derrick Dickens

SWORN to and Subscribed
before me this 18th day of September, 2015.

Notary Public for the
Commonwealth of Pennsylvania

My commission expires on 4/2/19.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
LESLIE O' NEILL, Notary Public
City of Philadelphia, Phila. County
My Commission Expires April 2, 2019