

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Harrisburg, Pennsylvania 17105-3265

**Catherine J. Frompovich
v.
PECO Energy Company**

**Public Meeting - April 21, 2016
2474602-OSA
Docket No. C-2015-2474602**

STATEMENT OF COMMISSIONER PAMELA A. WITMER

Before the Public Utility Commission (Commission) today for consideration are the Exceptions of Catherine J. Frompovich (Complainant) to the Initial Decision of Administrative Law Judge (ALJ) Elizabeth H. Barnes issued on June 15, 2015. Ms. Frompovich filed a Formal Complaint alleging that PECO Energy Company (PECO) was threatening to terminate her service because she refused to allow access to her meter so that the Company could install a smart meter. The Complainant alleged both general and specific concerns over the health and safety of smart meters, and questioned the legality of Act 129, the authority under which smart meters are being installed.

PECO filed Preliminary Objections and sought dismissal of the Complaint for legal insufficiency under 52 Pa. Code § 5.101(a)(4) on the grounds that Act 129 of 2008 (Act 129) and the Commission's Smart Meter Implementation Order¹ do not allow for an opt out provision. PECO further argued that Commission precedent supports dismissing the Complaint as legally insufficient on Preliminary Objections.² The ALJ granted PECO's Preliminary Objections and dismissed the complaint, finding that PECO was obligated to deploy smart meters and that there is no provision in law for an opt-out.

Consistent with my position on previous similar cases, I agree with the ALJ's Initial Decision to dismiss the Complaint, and disagree with our action today to grant, in part, the Complainant's Exceptions and return the matter to OALJ for further proceedings. While it is well established that the Commission has the authority to hold hearings when a legally sufficient

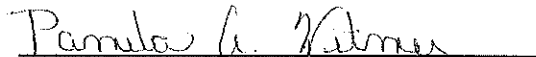
¹ *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009).

² See *Maria Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 (Order entered January 24, 2013); *Gavin v. PECO Energy Company*, Docket No. C-2012-2325258 (Order entered January 24, 2013); *Morgan v. PECO Energy Company*, Docket No. C-2013-2356606 (Order entered July 23, 2013); *McCarey v. PECO Energy Company*, Docket No. C-2013-2354862 (Order entered September 26, 2013); *Thomas v. PECO Energy Company*, Docket No. C-2012-2336225 (Order entered December 31, 2013); *Donnelly v. PECO Energy Company*, Docket No. F-2013-2330663 (Order entered March 18, 2014); and *Francis v. PECO Energy Company*, Docket No. C-2014-2451351 (Order entered March 3, 2015).

claim is presented, I do not believe that the Complaint in this case is legally sufficient. Act 129 is unequivocal in mandating the deployment of smart meters, and the Commission's subsequent approval of electric distribution companies' implementation plans, including PECO's, is consistent with that mandate. I agree with the ALJ and with PECO that no opt-out provision exists in state law, regulation, or Commission order. Consequently, we lack the authority to provide the Complainant in this case with the redress that she seeks.

For these reasons, I respectfully dissent.

DATE: April 21, 2016


Pamela A. Witmer
Commissioner