

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Cynthia Randall and	:	
Paul Albrecht	:	
	:	Docket No. C-2016-2537666
v.	:	
	:	
PECO Energy Company	:	

**ANSWER OF COMPLAINANTS
TO THE PRELIMINARY OBJECTIONS OF
PECO ENERGYS COMPANY**

Pursuant to Section 5.101(f) of the Commission’s regulations, 52 Pa. Code §5.101(f), Complainants Cynthia Randall and Paul Albrecht (“Complainants”), hereby submit their Answer to the Preliminary Objections of PECO Energy Company (“PECO” or “Respondent”) to the Formal Complaint in the above-referenced proceeding. In support of their Answer, Complainants respectfully submit the following.

I. INTRODUCTION

On or about April 1, 2016, Complainants filed a Formal Complaint with the Commission alleging, among other things, that PECO’s installation of a wireless smart meter at their home would create an unsafe and unhealthy condition at the premises in violation of Section 1501 of the Public Utility Code.

On April 21, 2016, Respondent filed an Answer to the Complaint and Preliminary Objections. In its filings, PECO denies all the substantive allegations in the Complaint and argues that the Company is compelled by Act 129 and the Commission’s Orders to install smart meters in every customer’s premises, and there are no “opt-outs” to this requirement.

For the reasons set forth below, Complainants respectfully request that the Commission overrule PECO's Preliminary Objections and allow all issues in this matter to proceed to hearing.

II. ANSWER TO PRELIMINARY OBJECTIONS

1. Admitted. It is admitted that PECO filed a Preliminary Objection in the Tucker matter. However, a copy of the Tucker Preliminary Objection was not attached to Complainant's copy of PECO's Preliminary Objection in this matter. By way of further answer, an Answer to PECO's Tucker Preliminary Objection was filed on March 15, 2016. A copy of the Tucker Answer is attached hereto and incorporated herein.

2. Admitted. It is admitted that PECO's Preliminary Objection in the Tucker matter argues that an "opt-out" is not permissible under Pennsylvania law. It is denied that the "opt-out" issue is relevant in the instant matter, as it was not plead in the Formal Complaint and the Complainants are not seeking an "opt-out" as claimed by PECO.

3. Admitted. It is admitted that the language quoted by PECO in paragraph 2 of the Preliminary Objection is found in the Tucker Order. It is denied that the "opt-out" language in the Tucker Order is relevant to the instant matter. The "opt-out" issue is not relevant to the instant matter because the Formal Complaint does not plead for an "opt-out" and the Complainants are not seeking an "opt-out" as claimed by PECO.

4. Admitted in part, denied in part. It is admitted that the Tucker and Randall Complaints seek similar relief. By way of further answer, it is specifically denied that either complaint is seeking an "opt-out" as claimed by PECO. Both complaints relate to unsafe and unreasonable service and ask the Commission to order PECO to provide safe and reasonable service in compliance with Section 1501 of the Public Utility Code. The Complaints propose alternative relief so as to allow the Commission to craft the most appropriate remedy.

5. Denied. The averments in paragraph 5 of the Preliminary Objection constitute a request for relief to which no answer is required. To the extent that paragraph 5 contains factual allegations, the same are denied. By way of further answer, the Order that PECO requests is inapposite in this case as the “opt-out” issue is not plead in the Complaint and the Complainants are not seeking an “opt-out” as PECO claims.

III. DISCUSSION

At the outset, it is important to note the obvious. The instant complaint is not an “opt-out” complaint. The Formal Complaint does not plead an opt-out or request an opt-out order from the Commission. PECO’s attempt to have the Presiding Officer issue an Order stating that an “opt-out” is not an available remedy is tantamount to asking the Commission to declare that the Complainants are not entitled to monetary damages. The Complaint does not seek damages, so PECO should not be asking the Commission to declare that damages are not available. The parties in the case should focus on the issues raised by the pleadings; they should not waste time seeking declarations from the Commission on issues that have not been raised. There is no basis for PECO’s request and there is no basis for the Commission to rule on the request.

The issue before the Commission is whether PECO is violating Section 1501 of the Public Utility Code by installing, in a compulsory and universal fashion, smart meters that the Complainants maintain are causing harmful health effects. If the Commission finds, after hearing, that a violation exists, then the Commission can fashion the appropriate remedy to address the violation. Complainants have included possible alternative relief in their formal complaint, and the Commission can choose one of those options or craft any other solution it deems appropriate. The Complainants have not requested an “opt-out” and the Commission does

not need to make a declaration that an “opt-out” is not available as PECO requests in its Preliminary Objection.

Further, PECO is requesting the application of an Order in another case which is misguided and overbroad in its language. In the excerpt quoted by PECO in paragraph 3 of the Preliminary Objection, the Presiding Officers state that “the relief request seeking an order preventing meter installation is stricken.” Tucker Order at 5. The language here is misguided because, as argued in Tucker and repeated here, the Complainants are not asking that PECO be prevented from installing a meter. The only argument that Complainants are making is that PECO should be prevented from installing a meter that is harmful to Complainants’ health. That could mean installing a meter that does not emit harmful radiation or it could mean installing a smart meter in a manner that does not harm vulnerable customers like complainants. Again, the Commission will have to decide, after hearing, what the appropriate remedy should be. The Presiding Officers should not countenance PECO’s attempt to tie the Commission’s hands preemptively. Unfortunately, the language in the Tucker Order is too broad and leaves the impression that Complainants are asking that no meter be installed. This is not the case.

The appropriate course of action for the Commission at this point is to allow the matter to proceed to hearing to address the safety and reasonableness of PECO’s compulsory installation of harmful smart meters on the homes of vulnerable customers. The Commission should have at its disposal all the regulatory tools to address a violation of Section 1501, if a violation of the statute is proven. Issuing an Order providing that preventing meter installation is not available relief is inaccurate because it misstates what Complainants are asking, but it is also unduly restrictive for the Commission as it seeks to address possible violations of Section 1501.

The Commission should be cognizant of the effect of ordering that Complainant cannot argue against the installation of smart meters as they are being carried out by PECO currently. Assuming, for the sake of argument, that PECO's smart meters are shown to be harmful, the Commission will be compelled to allow PECO to continue installing these harmful meters because it issued an order saying that customers cannot have an "opt-out." It is more appropriate to say that, if Complainants fail to meet their burden of proof, PECO will continue with its smart meter deployment program as before. However, if PECO's smart meters are shown, by evidence presented at hearing, to cause harm to Complainants, then the Commission can order any appropriate remedy to address a violation of 1501. The remedy can take many forms, including, but not limited to relocating the meter, preventing harmful emissions from infiltrating Complainants' home, hard-wiring the smart meter, adopting different meter technology to meet the demands of Act 129 and Section 1501, etc. It is not appropriate to exclude any particular type of remedy simply because PECO labels it an "opt-out."

Lastly, it is important to emphasize that, even if PECO is in compliance with Act 129 and the Commission's Orders, there is a legal basis to grant the relief sought by Complainants. Nothing in the Public Utility Code, Commission regulations or orders authorizes or compels PECO to create an unsafe condition that is harmful to a customer's health. The legal basis for the Complaint is that PECO has an obligation under the Public Utility Code to "furnish and maintain adequate, efficient, *safe*, and *reasonable* service and facilities." 66 Pa. C.S. § 1501 (emphasis added). Furthermore, PECO is obligated to "make all such repairs, *changes*, *alterations*, *substitutions*, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the *accommodation*, *convenience*, and *safety of its patrons*, employees, and the public." *Id.* (emphasis added). Under Section 1501 of the Public Utility

Code, the Commission is authorized to compel PECO to fulfill its obligations to provide safe and reasonable service and to make changes, alterations, substitutions and accommodations for the safety of its customers, including the Complainants. The Presiding Officers and the Commission should leave the door open to consider possible remedies if a violation of the Public Utility Code is established. More to the point, the Commission has repeatedly and specifically declined PECO's invitation to find that there was no possibility of remedy based on the then-current state of the law. The Commission has the authority to order PECO to fulfill its obligations under Section 1501 of the Public Utility Code, and therefore, a number of appropriate remedies are available to address safety issues with PECO's smart meters.

IV. CONCLUSION

Based on the foregoing, Complainants Cynthia Randall and Paul Albrecht respectfully request that PECO's Preliminary Objection be overruled and dismissed and that the relief sought by PECO in its Preliminary Objection be denied. Complainant respectfully requests that this matter be allowed to proceed to hearing for a determination on all legitimate issues raised and all available remedies.

Respectfully, submitted,



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Date: May 2, 2016

Counsel for Complainants

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

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Shawane.Lee@exeloncorp.com

Date: May 2, 2016



Edward G. Lanza, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Charles M. Tucker	:	
Barbara Tucker	:	
	:	Docket No. C-2015-2515592
v.	:	
	:	
PECO Energy Company	:	

**ANSWER OF COMPLAINANTS
TO THE PRELIMINARY OBJECTIONS OF
PECO ENERGYS COMPANY**

Pursuant to Section 5.101(f) of the Commission’s regulations, 52 Pa. Code §5.101(f), Complainants Charles M. Tucker and Barbara Tucker (“Tuckers” or “Complainants”), hereby submit their Answer to the Preliminary Objections of PECO Energy Company (“PECO” or “Respondent”) to the Amended Complaint of the Tuckers in the above-referenced proceeding. In support of their Answer, Complainants respectfully submit the following.

I. INTRODUCTION

On or about November 21, 2015, Complainants filed a Formal Complaint with the Commission alleging, among other things, that PECO threatened to terminate electric service to Complainants’ premises as a result of the Tuckers’ request to PECO that the Company refrain from installing a smart meter that would negatively affect Mrs. Tucker’s poor health. The Complainants request in their Complaint that the Commission order PECO to not install a smart meter in their home. The Complaint was served on PECO on December 1, 2015, and on December 14, 2015, Respondent filed an Answer to the Complaint that included New Matter pursuant to Section 5.62(b) of the Commission’s regulations. 52 Pa. Code § 5.62(b). PECO’s Answer denies all the substantive allegations in the Complaint. Respondent’s New Matter, in

essence, argues that PECO is compelled by Act 129 and the Commission's Orders to install smart meters in every customer's premises and there are no "opt-outs" to this requirement.

On January 4, 2016, Complainants filed a Reply to PECO's New Matter asking that PECO's claims be denied and that the case be permitted to proceed to hearing. On February 3, 2016, Complainants filed and served an Amended Complaint. On February 24, 2016, PECO filed an Answer to the Amended Complaint and Preliminary Objections to the same. For the reasons set forth below, Complainants respectfully request that the Commission overrule PECO's Preliminary Objections and allow this matter to proceed to hearing.

II. ANSWER TO PRELIMINARY OBJECTIONS

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted. By way of further answer, it is specifically denied that the Tuckers' complaint should be dismissed for legal insufficiency.

6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.
12. Admitted.
13. Denied.

14. Admitted in part, denied in part. Complainants request that PECO refrain from installing a smart meter that Mrs. Tucker cannot have for reasons of her poor health. *See*, Amended Complaint at ¶ 14. By way of further answer, the instant Complaint is not an “opt-out” Complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health. It is admitted that PECO’s smart meter installation plan was approved by the Commission.

15. Admitted in part, denied in part. It is admitted that PECO was required by Act 129 to file a smart meter technology procurement and installation plan with the Commission. Further, it is admitted that the statute does not provide an option to “opt-out” of smart meter installation. However, by way of further answer, nothing in Act 129 authorizes or compels PECO to create an unsafe condition that is harmful to a customer’s health.

16. Admitted. By way of further answer, nothing in the Commission’s Smart Meter Implementation Order authorized or compelled PECO to create an unsafe condition that is harmful to a customer’s health.

17. Admitted. The Commission’s Implementation Order speaks for itself. By way of further answer, nothing in the Commission’s Smart Meter Implementation Order authorized or compelled PECO to create an unsafe condition that is harmful to a customer’s health.

18. Admitted. By way of further answer, this is not an “opt-out” Complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health.

19. Admitted. By way of further answer, nothing in the Commission’s Implementation Order or policies authorized or compelled PECO to create an unsafe condition that is harmful to a customer’s health.

20. Admitted. Commissioner Powell's statement speaks for itself. By way of further answer, Complainants respectfully submit that the universal, compulsory installation of smart meters is not a "win-win" situation for customers as themselves, and that the health concerns associated with emissions from smart meters are not justified by the claimed benefits.

21. Admitted. By way of further answer, and based upon information and belief, nothing in PECO's Petition for Approval of its Smart Meter Plan authorized or compelled PECO to create an unsafe condition that is harmful to a customer's health.

22. Admitted. By way of further answer, and based upon information and belief, nothing in PECO's Petition for Approval of its Smart Meter Plan authorized or compelled PECO to create an unsafe condition that is harmful to a customer's health.

23. Admitted.

24. Admitted. By way of further answer, this is not an "opt-out" Complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants' premises that is harmful to Complainants' health.

25. Admitted. By way of further answer, nothing in the Commission's Order of May 6, 2010 approving PECO's Smart Meter Plan authorized or compelled PECO to create an unsafe condition that is harmful to a customer's health.

26. Admitted. By way of further answer, this is not an "opt-out" Complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants' premises that is harmful to Complainants' health.

27. Denied. Complainants' lack sufficient information to ascertain the veracity of PECO's statement in paragraph 27, and therefore, the allegations are denied. In response to discovery, PECO stated that as of February 16, 2016 the number of AMI meters installed was

1,715,631. *See*, Attached Exhibit A. Strict proof of PECO's claims are demanded at the time of hearing in this matter.

28. Admitted. By way of further answer, this is not an "opt-out" Complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants' premises that is harmful to Complainants' health. In addition, nothing in Act 129 or the Commission's Implementation Order or any other Commission Order authorizes or compels PECO to create an unsafe condition that is harmful to a customer's health.

29. Denied as stated. Whether a recent bill introduced at the General Assembly underscores the absence of an "opt-out" is conjecture and opinion on behalf of PECO, and as such, the allegations in paragraph 29 constitute legal conclusions to which no answer is required. By way of further answer, this is not an "opt-out" complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants' premises that is harmful to Complainants' health.

30. Denied as stated. House Bill 394 speaks for itself. Whether House Bill 394 seeks to change existing law is a matter of opinion on behalf of PECO, and as such, the allegations in paragraph 30 constitute legal conclusions to which no answer is required. By way of further answer, this is not an "opt-out" complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants' premises that is harmful to Complainants' health.

31. Denied as stated. House Bill 394 speaks for itself. Whether House Bill 394 attempts to create a smart meter "opt-out" is a matter of opinion on behalf of PECO, and as such, the allegations in paragraph 31 constitute legal conclusions to which no answer is required. By way of further answer, this is not an "opt-out" complaint. It is a Complaint about keeping PECO

from creating an unsafe condition at Complainants' premises that is harmful to Complainants' health.

32. Denied. Complainants' lack sufficient information to ascertain the veracity of PECO's allegations in paragraph 32, and therefore, the allegations are denied. Strict proof of PECO's claims are demanded at the time of hearing in this matter. By way of further answer, this is not an "opt-out" complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants' premises that is harmful to Complainants' health.

33. Denied. By way of further answer, this is not an "opt-out" complaint. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants' premises that is harmful to Complainants' health. A complaint against a regulated utility that seeks to prevent the utility from creating an unsafe condition that is harmful to a customer's health should not be dismissed as a matter of law under the pretext that there is no smart meter "opt-out." Nothing in the Public Utility Code, Commission regulations or orders authorizes or compels PECO to create an unsafe condition that is harmful to a customer's health.

34. Admitted in part, denied in part. It is admitted that ALJ Cheskis issued an Order dismissing the *Povacz* matter. It is specifically denied that the *Povacz* matter is similar to the instant case. This is not opt-out case. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants' premises that is harmful to Complainants' health. The *Povacz* decision is not applicable to this matter.

35. Admitted. ALJ Cheskis' Initial Decision speaks for itself. By way of further answer, this is not an opt-out case. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants' premises that is harmful to Complainants' health. The *Povacz* decision is not applicable to this matter.

36. Admitted in part, denied in part. It is admitted that the Commission has dismissed a number of complaints that have sought “opt-outs.” It is denied that this case is an “opt-out” case and that the cases cited by PECO in paragraph 36 are applicable or controlling in this case.

37. Admitted. Complainants’ Amended Complaint speaks for itself.

38. Denied. Nothing in Act 129 or the Commission’s Implementation Order authorizes or compels PECO to create an unsafe condition at Complainants’ premises that is harmful to Complainants’ health.

39. Admitted in part, denied in part. It is admitted that under Act 129 and the Commission’s Implementation Order customers do not have the ability to “opt-out” of smart meter installation. It is denied that this case is an “opt-out” case. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health.

40. Denied. Even if PECO is in compliance with Act 129 and the Commission’s Orders, and even if there are no “opt-outs,” there is a legal basis to grant the relief sought by Complainants. Nothing in the Public Utility Code, Commission regulations or orders authorizes or compels PECO to create an unsafe condition that is harmful to a customer’s health. The legal basis for the Complaint is that PECO has an obligation under the Public Utility Code to “furnish and maintain adequate, efficient, *safe*, and *reasonable* service and facilities.” 66 Pa. C.S. § 1501 (emphasis added). Furthermore, PECO is obligated to “make all such repairs, *changes*, *alterations*, *substitutions*, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the *accommodation*, *convenience*, and *safety of its patrons*, employees, and the public.” *Id.* (emphasis added). Under Section 1501 of the Public Utility Code, the Commission is authorized to compel PECO to fulfill its obligations to provide safe and

reasonable service and to make changes, alterations, substitutions and accommodations for the safety of its customers, including the Complainants.

41. Admitted in part, denied in part. Although the “opt-out” issue was not preserved for hearing in the *Kreider* matter, health effects related to smart meters will be considered by the Commission. In addition, the Commission left the door open to consider possible remedies if a violation of the Public Utility Code is established. More to the point, the Commission specifically declined PECO’s invitation to find that there was no possibility of remedy based on the then-current state of the law.

42. Admitted in part, denied in part. It is admitted that “opt-out” remedies are not within the scope of the *Kreider* proceeding. It is denied that this case is an “opt-out” case. It is a Complaint about keeping PECO from creating an unsafe condition at Complainants’ premises that is harmful to Complainants’ health. In accordance with the ruling in *Kreider*, the Commission can and should order remedies consistent with Section 1501 if a violation of PECO’s obligation to provide safe and adequate service is found. Under Section 1501, PECO is required to make changes, alterations, substitutions and accommodations for the safety and convenience of its customers. The Commission has the authority to order PECO to fulfill its obligations under Section 1501 of the Public Utility Code, and therefore, a number of appropriate remedies are available to address safety issues with PECO’s smart meters.

III. CONCLUSION

Based on the foregoing, Complainants Charles and Barbara Tucker respectfully request that PECO's Preliminary Objections be overruled and dismissed and that the relief sought by PECO in its Preliminary Objections be denied. Alternatively, Complainant respectfully requests that this matter be allowed to proceed to hearing or be referred to the Office of Administrative Law Judge's Mediation Unit for possible resolution.

Respectfully, submitted,



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Date: March 15, 2016

Counsel for Complainants

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

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Date: March 15, 2016



Edward G. Lanza, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
BARBARA AND CHARLES TUCKER V. PECO
C-2015-2515592
PECO ENERGY COMPANY'S ANSWERS TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS, SET I**

Tucker I-22: How many customer accounts have been switched to Wireless Smart Meters?

PECO Answer to Tucker I-22: PECO continues to install AMI meters, so this number changes on a daily basis. However, as of February 16, 2016 the number of AMI meters installed was 1,715,631.

Responsible Witness: Glenn Pritchard