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Catherine J Frompovich v. PECO Energy Company, C-2015-2474602

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Case No. C-2015-2474602
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CATHERINE J. FROMPOVICH

vs.

PECO ENERGY COMPANY

CATHERINE J. FROMPOVICH MOTION FOR
DECREE OF RELIEF FROM ACT 129 AND RESPONDENT'S BRIEF

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Catherine J. Frompovich

v.

PECO Energy Company

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Docket No. C-2015-2474602

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RESPONDENT'S BRIEF

FEB 10 2017

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I. INTRODUCTION

Respondent Catherine J. Frompovich appeared before the Pennsylvania Public Utility Commission Administrative Law Court November 2 and 3, 2016 and gave testimony as to why she refused a PECO AMI Smart Meter. Frompovich presented documentation regarding microwave non-thermal waves implication in electromagnetic hypersensitivity (EHS) or "idiopathy environmental intolerance" (IEI) as PECO expert Dr. Mark A. Israel, MD, identified it and said it's the medical term physicians use. Non-thermal health effects can cause cancer per published peer review studies, which PECO and its expert witnesses dispute and even deny.

Frompovich tried introducing various published studies (e.g., approximately 240) regarding breast and other cancers from EMF/RF/ELF frequencies exposures but those were summarily objected to by PECO and not permitted into the record. Much of the documentation regarding cancer and microwave EMF/RF/ELF exposure Frompovich tried introducing was objected to and/or denied admission into the record therefore creating a Catch-22 situation for

Frompovich regarding her ability to establish any preponderance of EMF/RF/ELF association with breast or any type of cancer(s).

Frompovich contends she is not in violation of Act 129 (2008), which was violated and administratively usurped during and by the PA PUC rule and regulation making processes for AMI Smart Meters implementations, which are legally contrary to the Legislative History of HB2200 published in *Pennsylvania Senate and House Journals*.

Specifically, PA State Senator Furno is on record in *PA Senate Journal* October 8, 2008 (pp. 2626-2631) stating, **"In addition we did not mandate smart meters, but we made them optional."**

Whereas, Act 129 (2008) implementation regulations generated by the PA PUC and PECO's smart meter retrofits are illegal regulations forced on Pennsylvania utility customers, which are in variance with **HB2200 §2807(f)7(2) Legislative History** as published of record:

(2) Electric distribution companies shall furnish smart meter technology as follows:

- (i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.**
- (ii) In new building construction.**
- (iii) In accordance with a depreciation schedule not to exceed 15 years.**

Frompovich has never complied with (2)(i) above and, furthermore, sent legal notice to PECO of her denial of a smart meter thus leading up to Frompovich's filing a formal complaint with the PA PUC March 24, 2015.

Under federal law, an agency "has no power to tailor legislation to bureaucratic policy goals by rewriting unambiguous statutory terms," as held in *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427, 2445 (2014). Similarly, "Commonwealth agencies have no inherent power to make law or otherwise bind the public or regulated entities. Rather, an administrative agency may do so only in the

fashion authorized by the General Assembly,” as in *Northwestern Youth Services v. Commonwealth Department of Public Welfare*, 66 A.3d 301, 310 (Pa. 2013). [....]

Similarly, regulations in Pennsylvania are subject to the procedures set forth in the Commonwealth Documents Law, Regulatory Review Act, Commonwealth Attorneys Act, and review by the Independent Regulatory Review Commission (IRRC). The IRRC looks at nine factors in determining **whether a regulation is “in the public interest,”** including, but not limited to, the economic or fiscal impact of the proposed regulation, the clarity, feasibility and reasonableness of the regulation, and whether the regulation is supported by acceptable data.¹

There is a preponderance of evidence the PA PUC overreached its administrative powers when formulating implementation regulations for HB2200/Act 129 (2008).

PECO contends Frompovich did not provide a preponderance of evidence about her breast cancer in the PECO Brief dated January 25, 2017 and, therefore, asks this Honorable Court to mandate Frompovich accept a PECO *FlexNet* Smart Meter and if she refuses, PECO can terminate electric power service to her home.

II. STATEMENT OF FACTS

1. PECO in its January 25, 2017 Brief misstated the facts at Pg. 5 (21): “On February 14, 2015, Ms. Frompovich responded that she did want an AMI meter installed at her resident, and requested an “opt out” from installation. Tr. 107-08. That statement in “Proposed Findings of Fact” certainly indicates PECO’s sloppy and questionable legal work plus willful falsification and impugning information about Frompovich, who never made such a statement. *Cf. PECO Brief Pg. 5 (25) for the facts, including Frompovich’s supplying a letter from her physician,*

¹ The Legal Intelligencer, April 20, 2016 http://www.cohenseglia.com/library/files/the_legal_intel_-_evaluating_challenging_regulatory_overreach_-_c._caursone_-_4.20.2016.pdf

which is written proof of her status as a cancer patient/survivor and should be sufficient for the record in view of HIPPA² laws.

2. PECO, through its expert witnesses, stated throughout the hearing their *FlexNet* AMI Smart Meters do not create “dirty electricity” or what PECO defines as sinusoidal waves. However, at Pg. 34, Bullet 6, PECO admits: “PECO’s meters do create “dirty electricity” or use “pulses.” Frompovich is compelled to ask, “Which is it? Their *FlexNet* meters do or don’t create dirty electricity. Or, is this another indication of sloppy legal work on the part of PECO, which Frompovich respectfully wants to bring to this Honorable Court’s attention in this seminal case. *Cf. PECO Brief Pg. 9 (60)* “PECO AMI meters do not meaningfully contribute to harmonics and disruption of the sinusoidal wave.” TR. 142, 200.

3. PECO’s medical expert is attributed with saying on Page 29 of PECO’s Brief, line 4, *“he [Dr. Israel] considered both the studies that showed an effect and the studies that did not show an effect...”* That represents another blatant contradiction in Dr. Israel’s expert testimony that there were no cancer studies showing non-thermal adverse cancers from EMF/Rf/ELF frequencies. However, when Frompovich introduced Exhibit O indicating **30% of Industry-sponsored studies found effects**, PECO objected and stated there was no accepted *medical or microwave consensus science* regarding adverse effects. **Just because PECO lawyers don’t want to accept them does not mean they don’t exist and are not published in peer review journals.** By PECO expert Dr. Israel’s own admission, he considered both studies, so why are Frompovich’s exhibits regarding published breast and other cancers attributed to EMF/Rf/ELF not permitted into the record? Is there some sort of discrimination against Frompovich?

4. Another point of PECO legal intimidation regarding Frompovich’s testimony appears on Page 21, lines 10-13: “She introduced a study to support her view that radiofrequency fields

² Pub. L. 104-191 HIPPA

cause non-thermal effects that cause cancer, even though that study stated exactly the opposite: “Evidence to support a causal relationship between exposure to RFR, radiofrequency radiation, and human cancers is scant.” The meaning of the word scant is limited in size or quantity—not none. Does scant qualify as a descriptor for the Non-industry research studies finding 30%. Cf. Complainant Exhibit 2 or Frompovich Exhibit O. There are sufficient science studies (**almost one-third of Non-industry research studies-32%**) which find non-thermal adverse health effects from EMF/RF/ELF, some being cancers.

5. PECO has taken authority for an only voluntary smart meter program as published of public record in PA *Senate and House Journals* and in the **Energy Policy Act of 2005³**, specifically **Sec. 1252. Smart Metering**, and is attempting to turn it into a “mandatory” program, thereby complicating further, while acting as an accomplice to, the PA PUC’s regulatory overreach.

6. There are other misrepresentations PECO makes in its Brief, which will be discussed in the Argument section herewith.

7. Frompovich is a breast cancer patient/survivor since being diagnosed July 24, 2011.

8. Frompovich earned a Ph.D. in Nutrition and Holistic Health Sciences and has been a consumer health researcher/journalist/writer since the late 1970s tracking and reporting about human health issues attributed to chemicals, technologies, fraudulent medical research such as occurs in pharmacology and vaccines, and incompatible life styles compromising optimum health.

³ Pub. L. 109-58 Energy Policy Act of 2005
<https://www.gpo.gov/fdsys/pkg/PLAW-109publ58/html/PLAW-109publ58.htm>

9. Frompovich was recognized by this Honorable Court as an expert witness. Cf. *Transcript Pg. 33 (9-12)*: “Judge Heep: All right. We’re going to recognize you as an expert in a very limited area on nutrition, natural healing and treating cancers from that perspective.”

Throughout the hearing and testimony, Frompovich tried presenting cancer-EMF/RF/ELF documents, research studies and information on the basis as an expert witness in natural healing and treating her breast cancer from that perspective, and as recognized by this Honorable Court. One such example cf. *Transcript Pg. 44 (16-21)*: “*The Witness: From my area and expertise as a natural nutrition consultant and holistic health expert, I’d like to introduce a report stating one type of brain tumor is going up, the deadliest kind; and it recites what was written in the NTP cancer study that was done just recently.*”

Another example of Frompovich’s expert witness testimony cf. *Transcript 37 (7-17)*: “*The Witness: In my expert opinion, I do not want to be subjected to the dirty electricity, to the EMFs, to all the radiation or nonthermal possibilities that can affect my body especially since the Americans with Disabilities Act has said that anyone who has had cancer should now be considered as a person who is covered by that, the ADAAA. And any agency or company that deals with and receives federal funding has to abide by that, and I believe PECO has received a fair amount of funds to implement the Smart Meters.*”

Frompovich’s frustration at trying to introduce cancer-EMF/RF/ELF scientific studies, etc., considering she was accepted as an expert in her field and healing cancer holistically, surfaces in her dialogue with Judge Heep cf. *Transcript Pg. 38 (1-11)*: “*The Witness: Your Honor, what I’m going to tell you is this. Obviously this case isn’t going to go anywhere because none of my information is going to be acceptable to the Court because it is all published documents which you don’t want to accept, and I don’t understand that. I did not manufacture*

them. I have with me a jump drive if you want to look at it on your computer that you can pull it all up. Everybody does research on computers anymore, so it's all there; and I just don't understand how this Court is acting."

In the Transcript *cf.* Pg. 51 (19-25) – 52 (1), Frompovich reiterates her qualifications for the record and this Honorable Court: *"The Witness: I have before me and in my opinion as an expert in natural nutrition and holistic health sciences and alternative modalities of healing a three-page report called the Microwave Syndrome wherein it says there's a cancerous pathology; and they state leukemia, glutathionine, and melanoma, and breast cancer, breast cancer per se. That is Exhibit K and it's underscored. Would you like to see it?"*

10. Frompovich has written numerous books, five of which currently are available on the Internet and Amazon.com, and presently writes for the Internet media *ActivistPost.com*.

11. Frompovich's background, education and beliefs are steeped in holistic health principles, lifestyle, complementary and alternative medicine (CAM), which she practices and lives by in contrast to PECO's medical expert who espouses allopathic medicine, which is at odds with CAM, often referring to it as "quackery" or "non-science-based medicine."

*"In the United States, approximately 38 percent of adults (about 4 in 10) and approximately 12 percent of children (about 1 in 9) are using some form of CAM,"*⁴ per the National Institutes of Health.

12. Frompovich is constitutionally entitled to her expert opinions, beliefs and practices as to how she lives her life and wants to protect her health and wellbeing from exposures she knows from published scientific research contributes to cancer(s), i.e., microwave non-thermal radiation waves, which are emitted by two-way transmission AMI Smart Meters.

⁴ https://nccih.nih.gov/research/statistics/2007/camsurvey_fs1.htm

13. PECO and the PA PUC legislative overreach are in total contradiction to, plus guilty of violating, Act 129/HB2200 as published of public record, and also violating U.S. **Public Law 109-58 (Aug. 8, 2005) the Energy Policy Act of 2005⁵**, specifically **Sec. 1252. Smart Metering** wherein no language or text indicates smart meters are to be mandatory. *Cf. Respondent Brief Exhibit No. 1*

14. Furthermore, PECO and the PA PUC are violating Frompovich's rights under several federal laws: the **American with Disabilities Act Amendments Act⁶ Section 1630.2 (G) Disability; Section 1630.2 (J) Substantially Limits; Section 1630.2 (I) Major Life Activities; Section 1630.2(j)(1)(ii) Significant or Severe Restriction Not Required Nonetheless, Not Every Impairment Is Substantially Limiting; Section 1630.2(j)(1)(iii) Substantial Limitation Should Not Be Primary Object of Attention; Extensive Analysis Not Needed** (*cf. Brief pp. 14-16*) as her health condition of having had breast cancer is covered under prong three of that act; **Section 504 of the Rehabilitation Act of 1973⁷** (*cf. Brief pg. 15*); and her U.S. **Constitutional⁸⁻⁹ and Pennsylvania Constitutional rights¹⁰** (*cf. Brief pp. 4, 12, 17, 19*)

15. Therefore, Frompovich has established a preponderance of evidence that she is not in violation of Act 129; nor should she be forced to have a PECO *FlexNet* Smart Meter; but must be accommodated accordingly by PECO and the PA PUC to comply with federal rules, regulations and statutes, including Pennsylvania's, which they are violating.

⁵ Pub. L. 109-58 Energy Policy Act of 2005
<https://www.gpo.gov/fdsys/pkg/PLAW-109publ58/html/PLAW-109publ58.htm>

⁶ Pub. L. 110-325 ADAAA

⁷ 29 USC §794: Nondiscrimination under Federal grants and programs

⁸ U.S. Const. amend. IV, V, XIV

⁹ Article VI, cl. 2

¹⁰ Pa. Const., art. 1 §1

III. ARGUMENT

1. Frompovich presented, prior to the November 2-3 hearing date, 195 pages of testimony (18 pages) and Exhibits she was prepared to present at court but was not permitted to do so. Frompovich has testified before the U.S. Congress, the FDA and various states legislatures and their committee hearings so she is familiar with how to present testimony. Frompovich's apparent damaging expert testimony and 32 Exhibits were something PECO could not allow to get on public record, so the hearing became a trial format rather than Frompovich being allowed to present her testimony as originally presented prior to the hearing.

2. Particular exhibits Frompovich tried introducing often were objected to, especially anything having to do with cancer(s) and EMF/Rf/ELF microwave radiation exposures since her case is the "seminal case" regarding cancer and EMF/Rf/ELF for not only PECO but probably the entire microwave industry.

3. As a *Pro Se* litigant Frompovich should be entitled to more tolerant construction of technicalities and procedural rules and should have been permitted to admit the numerous peer review studies showing a link between breast cancer (15 male and female human breast cancer studies 1986 to 2005) and other cancers relating to EMF/Rf/ELF exposures (almost 240 total studies involved), which are highly relevant and competent evidence in Frompovich's defense. Those studies are easily accessible at www.justproveit.net/studies (cancer). Those studies are in the public domain of which this Honorable Court can confirm and take judicial notice, since Frompovich's health literally is at stake. So, when PECO states there is no evidence of a link between radiofrequency fields and adverse health effects—including cancers, we can see that PECO's statement is simply false.

4. PECO experts presented scientific indication regarding no such thing as non-thermal radiation adverse health effects are accepted by consensus microwave industry science, however, PECO's medical expert identified non-thermal radiation adverse health effects medically as "idiopathy environmental intolerance" (IEI). *Cf. transcript*

Page 278 (14-18)

PECO Attorney Watson Q. Let me ask you this. Is it generally accepted in the scientific or medical communities that idiopathic environmental intolerance to EMF and the variety of symptoms and conditions attributed to it are caused, contributed to or exacerbated by exposure to radiofrequency fields?

Page 278 (25) Dr. Israel A. **It is not generally accepted.**

Page 272 (14-16)

Dr. Israel A. We typically refer to them as IEI, **idiopathy environmental intolerance**, and followed by whatever that intolerance is, EMF, some chemical, whatever.

Page 274 (8-9)

PECO Attorney Watson Q. Do I understand that you're telling us that IEI is simply neutral, a neutral way to describe –

Page 274 (10-12)

Dr. Israel A. That's the way the World Health Organization proposed, and I think that's what's generally used amongst physicians today.

5. Idiopathy is a disease or condition that arises spontaneously or for which the cause is unknown, according to medicine. Dr. Israel even admitted [on page 272 (14-16)] EMF could be a cause of cancer, by enumerating EMF as one of the possible causes followed by his disinterested "whatever" comment – all being instances of "**uncertain science**" admissions from PECO.

Furthermore, the above example of "**uncertain science**" is emphasized with regard to PECO's "pulse" vs "no pulse" internal contradictions regarding their AMI Smart Meter demonstrating even from PECO's viewpoint, PECO really has not shown the FlexNet meters to be "safe." That brings up the "Burden of Proof" argument.

6. PECO, through its expert Dr. Mark Israel, takes the position the only views which "count" are its own, and then, after discounting the contrary evidence, it denies that any such evidence even exists. *Cf. PECO Brief Pg. 13 (89)*

7. PECO completely discounts the fact that Frompovich was qualified as an expert witness and author in "nutrition and natural healing, and treating cancer from that perspective." Therefore, what PECO denigrates as Frompovich's mere "beliefs" are actually legally admissible expert testimony, which weighs against exposing Frompovich to any further radiation burden upon her health and body, in Frompovich's expert opinion.

As a recognized expert witness, Frompovich was legally entitled to present her expert testimony regarding the adverse effects upon her, based upon her research and review of the scientific literature. Frompovich established herself with this Honorable Court's approval as an expert qualified to give expert testimony and not mere "beliefs." PECO also failed to present any contradictory evidence on those points, as PECO failed to have its own expert in the same field.

Expert witnesses are entitled to present their expert opinions based upon their research and review of the scientific literature, other documents, etc., as PECO's Dr. Mark Israel was permitted to do, within the scope of their court-recognized expertise. Frompovich's testimony was not mere lay "beliefs."

8. PECO, a huge corporation, bears the burden of proof to document via meter icons or signage openly displayed, *just not hearsay testimony from PECO employees, or paid expert witnesses Israel and Davis*, the PECO *FlexNet* AMI Smart Meters are absolutely safe. PECO has failed to do that in view of their admitted uncertainty about science. Furthermore,

Frompovich, an older (almost 79 years old) American cancer survivor, should not have to bear the burden of proof to show that the PECO *FlexNet* Smart Meters are unsafe.

9. In general, PECO has not shown the *FlexNet* AMI Smart Meters to be safe other than by testimony from PECO's employee Mr. Pritchard and their paid expert witness Dr. Davis testimony, and with no outside third party certification on the meters, e.g., Underwriters Laboratories (UL) seal of approval. The PECO litany "there is no danger," and "there is no relationship between radiofrequency and bioeffects" are belied by the admittedly "idiopathic" (unknown) nature of the maladies discussed above, and by the information readily available in the public domain cited above and in the footnote documentary "Take Back Your Power" by Josh del Sol on YouTube.¹¹

10. PECO, as such, is attempting to inflict their unsafe meters upon Frompovich, against Frompovich's consent; against basic fundamental property rights; and in excess of PECO's regulatory authority granted by both federal and Pennsylvania law. Both those government authorities make the smart meter program voluntary only. Cf. *Pub. L. 109-58 the Energy Policy Act of 2005 §1252. Smart Metering; Pennsylvania HB2200 §2807(f)7(2) and PA P.L. 1592, No. 129.*

That action by PECO, a huge Exelon-owned corporation, is forcefully making Frompovich to gamble with her health, home, wellbeing, and serenity. Therefore, PECO, a huge corporation, bears the burden of proof, which they have failed to carry.

11. PECO's "burden of proof" argument, i.e., Frompovich failed to prove she is a cancer survivor when, in fact, Frompovich presented her very competent testimony as an expert in her

¹¹ <https://youtu.be/0hJqs1jwAPc?t=22>

field, as recognized by this Honorable Court, on the record that she is a breast cancer survivor; wrote a book [*A Cancer Answer, Holistic BREAST Cancer Management, A Guide to Effective & Non-Toxic Treatment*] about it, which PECO introduced to the Court; and also provided PECO with a letter from her treating physician as to her cancer patient status.

12. Therein resides the entire legal premise and disconnect in the Frompovich case: denial by PECO of the existence of non-thermal radiation waves adverse health effects, i.e., Electrosensitivity, EHS 1932; Microwave hearing (tinnitus) 1962; Blood-brain barrier leakage 1979; Depression, suicide 1979; Alzheimer's disease 2009; Brain tumors, glioma, etc. 2009; **Tumor production 2015**, which are contrary to PECO's expert Dr. Mark Israel's consensus findings, and other adverse human health effects, one of which is cancer(s), as documented in world-wide research and publications which PECO and apparently the PA PUC accept as not valid science despite 32% of industry-sponsored studies found non-thermal effects. *Cf. Frompovich Exhibit O; Brief pp. 31-32 (82-83)*

13. Frompovich introduced into the hearing record Exhibit O, *Cf. Complainant Exhibit No. 2 (Tr. Pp. 232 & 250)* a graphic with two pie charts indicating the state of industry-sponsored versus independent, non-industry-sponsored research findings. **Thirty-two percent (32%) industry-sponsored research found non-thermal adverse effects** and 68% found no non-thermal effects; whereas **non-industry-sponsored research found 70% non-thermal adverse health effects** and 30% no non-thermal effects. One of the key criteria of **fact-based science** is any scientific finding that contradicts a majority of findings must be given standing. *"Negative findings are a valuable component of the scientific literature because they force us to*

critically evaluate and validate our current thinking, and fundamentally move us towards unabridged science."¹²

14. Frompovich, furthermore, in her Brief introduced the apparent scientific mischief, conflicts of interest and probable fraud regarding EMF/Rf/ELF 'science' as propagandized by industrial professional societies, e.g., ICNIRP, which PECO experts used as their scientific expertise and industry proof. *Cf. Frompovich Brief pp. 39-45 (100-115)*

15. Frompovich introduced into the hearing record the fact that AMI Smart Meters are not safe, and questioned why an Underwriters Laboratories (UL) certificate of compliance and safety icon is not provided with each PECO AMI Smart Meter. *Cf. Brief pp. 24-27; (70 for UL reference); Transcript p. 158 (12-21)*

16. As a result of the retrofit of PECO AMI Smart Meters, "hot sockets" can and do occur. PECO has a built-in monitoring system in its *FlexNet* AMI Smart Meters using microwave technology they can adjust for "alarms" and "false alarms" regarding heat buildup in smart meters, specifically to avoid sun beating down on to PECO meters causing excess heat. Special transmissions back to PECO alarm notification indicate whether a meter is heating up. On hot summer days, however, PECO 'tweaks' the system to adjust for 'sunburn' on smart meters in order to avoid "false alarms," which actually jeopardizes the safety of PECO's smart meters and the households to which they are attached. Hot sockets result from meter jaws being tampered with during retrofitting of PECO's AMI Smart Meters. Furthermore, the new PECO smart meters do not have the safety features of analog meters, e.g., Bakelite (heat/fire-proof) backs and glass domes.

¹² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3917235/>

Current standard AMI Smart Meters contain numerous plastic parts, which are prone to overheating (thus the built-in PECO "alarm system"), especially if or when PECO sends out microwave message instructions to their meters to raise temperature monitoring levels to prevent summer heat buildup "false alarms." Standard AMI Smart Meters are not built with surge resistors. Frompovich questioned whether surge resistors were built into PECO *FlexNet* meters and Mr. Pritchard (PECO employee) said they were. *cf. Transcript p. 157 (3)* However, if PECO's *FlexNet* AMI Smart Meters are not built with surge resistors (***is that the reason for PECO's FlexNet meters' "alarm system"***), then that is/becomes a functionally unsafe meter, especially in view of PECO's actions to prevent "false alarms," as discussed above.

17. That PECO signal-action alone to prevent "false alarms," plus flammable plastic meter parts. **establishes PECO's legal culpability for supplying unsafe and unreliable utility service**, something violating the PA PUC Mission statement: "*The Pennsylvania Public Utility Commission balances the needs of consumers and utilities; ensures safe and reliable utility service at reasonable rates; protects the public interest...*" by retrofitting new unsafe plastic-parts AMI Smart Meters on to customers' homes. The PA PUC should mandate safe, non-plastic-parts meters for all utility customers in the Commonwealth of Pennsylvania with Underwriters Laboratories certification certificates or icons attached, or PA PUC is not doing their administrative due diligence, Frompovich contends.

18. PECO states its *FlexNet* AMI Smart Meters do not operate on a mesh network. *Cf. Transcript*

19. Frompovich respectfully disagrees and challenges PECO's semantical premise asserting a non-mesh network. A mesh network has two decentralized connection arrangements,

i.e., full mesh topology and partial mesh topology [the way in which constituent parts are arranged, integrated and/or operate].

20. Frompovich introduces as *Respondent Exhibit No. 4*, Page 8, “PECO’s Multi-Tiered Smart Grid Network” diagram from Glenn Pritchard’s presentation¹³ before the IEEE *cf. Transcript p. 127 (3-7)* titled “PECO delivers a Reliable and Resilient Smart Grid” wherein several complex networks called “communication tiers” are described: Tier 1, the 375 miles of fiber optic communications; Tier 2, the WiMAX wireless communication network; Tier 3, the low bandwidth network; and Tier 4, HAN the in-home communications network. WiMAX is a 3.5 gigahertz communication. *Cf. Transcript Pg. 148 (17-19)*

Note: one gigahertz equals one billion or 1^9 cycles per second. Megahertz equals one million cycles per second. Hertz denotes cycles per second.

21. Based upon PECO employee Mr. Pritchard’s Page 8 chart discussed above, **PECO’s FlexNet AMI Smart Meters operate on a partial mesh topology.** If the ZigBee radio *cf. Transcript 132 (19-24)* is 2.4 gigahertz frequency *cf. Transcript p. 135 (10-12)* and the WiMAX is a 3.5 gigahertz communication network, something is totally disproportionate regarding the figures PECO states relating to EMF safety of *FlexNet* meters, Frompovich contends. Consumers are forcefully subjected to 3.5 GHz and an added 2.4 GHz without their knowledge or consent with unknown side effects, which basically is an experiment on the human organism. Only part of the PECO *FlexNet* meter communication tier transmits at 901-901.1 megahertz—probably Tier 3.

¹³ http://sites.ieee.org/isgt2014/files/2014/03/Day2_Panel1C_Pritchard.pdf

22. Mr. Pritchard apparently misrepresented or misstated the power of the ZigBee radio on Page 163 (23-24) when he said, "That would be the purpose of the low power ZigBee radio itself." The ZigBee, according to Mr. Pritchard at Pg. 134 (17), "...**would be putting out a message every 30 seconds,**" not only ten times a day, as PECO expert Glenn Pritchard previously testified, "*On average most meters transmit less than ten times a day with the FlexNet radio.*" Cf. Transcript Pg. 133 ((15-17) That indicates yet another misrepresentation of the facts by PECO regarding its AMI Smart Meter(s) made during the Frompovich hearing and which this Honorable Court needs to make note of and factor into its decision-making processes.

23. Furthermore, Mr. Pritchard in answering His Honor Judge Pell's questioning stated, "It could be **once every five minutes to once every hour or maybe once a day** depending on what the device – whether it would be a smart thermostat, a dishwasher as you mentioned or maybe an in-home display device." Cf. Transcript Pg. 169 (1-5)

24. Judge Pell then remarked, "I understand you to say that, **if it doesn't connect with anything, it pulses every 30 seconds?**" PECO employee and expert Pritchard states, "**It continues to seek that, yes.**" Whereas, His Honor Judge Pell then asks, "**Indefinitely or will it decide, okay, I'm not finding anything, stop? Can that be adjusted?**" Mr. Pritchard replied, "No." Judge Pell queries further, "**No. Does it have to be that way?**" Mr. Pritchard replied, "**We have no options with that.**" Cf. Transcript Pg. 169 (1-17)

25. Frompovich respectfully points out to this Honorable Court the grossly contradictory PECO expert's sworn testimony regarding ZigBee radios transmission/communications from and by PECO AMI *FlexNet* Smart Meters.

26. 2.4 gigahertz frequency is the power at which Wi-Fi (Wireless Fidelity) operates. The WiMAX, then, at 3.5 gigahertz is a more powerful Wi-Fi—a network more vulnerable to hack attack than wired connections. The ‘low’ Mr. Pritchard refers to apparently is the lower end of the billion cycle transmission range. Frompovich contends obfuscation on the part of PECO experts inadvertently confusing this Honorable Court while establishing a public record and, hopefully, case law to cite later.

27. His Honor Judge Pell asks some probing questions regarding ZigBee at *Transcript pages 168 to 170*, which ought to be revisited by this Honorable Court, in view of the above information about PECO’s **Multi-Tiered Smart Grid Network**.

28. Christopher Davis, Ph.D., at Transcript Pg. 195 (16-20) states: “In the middle of that region, part of the radiofrequency spectrum is quite often referred as microwaves, and that covers part of the radiation that’s not at the low end of radiofrequencies but it’s not at the very high end of radiofrequencies either.”

29. At (21-25) Dr. Davis is asked, “And smart meters would fit where on Exhibit CD1?” Dr. Davis answered, “Well, smart meters, for example the PECO AMI meters, they actually have two places on this chart. They emit near 900 megahertz and they also emit near 2,400 megahertz. So they’re in the RF part of the spectrum.” Dr. Davis’s remark confirms PECO’s FlexNet AMI Smart Meters are in the radiofrequency (“RF”) part of the spectrum.

30. At Pg. 196 (1-2) Dr. Davis is asked, “Is that in the same vicinity as cell phones?” Dr. Davis answers, “Very similar to the range used by cell phones.”

31. The National Toxicology Program of the U.S. Department of Health and Human Services issued a preliminary report May 27, 2016 on "some important study findings" <http://biorxiv.org/content/early/2016/06/23/055699> which, in part, stated:

"This report presents partial findings from these studies. The occurrences of two tumor types in male Harlan Sprague Dawley rats exposed to RFR, **malignant gliomas in the brain and schwannomas of the heart, were considered of particular interest** and are the subject of this report."

Note both of the above findings indicate carcinomas (cancers).

32. The argument Dr. Christopher Davis, Ph.D., gave that PECO's smart meter emits less radiation than everyday life, is illogical. He is neither a physician nor a natural healing expert. Radiation is cumulative and impedes natural healing, in Frompovich's expert opinion, based upon her research and review of the scientific literature. Therefore, smart meters add to the radiation present in everyday life and, therefore, increase the total amount of radiation to which Frompovich would be or is exposed. Arguing that radiation does not contribute to cancers of all types is sadly reminiscent of the argument that smoking does not cause cancer either. The extra smart meter EMF radiation becomes an added burden upon already overstressed everyday life.

33. However, another report coming out of the Ramazzini Institute of Bologna, Italy, during the Forum held in Jerusalem, Israel, in late January 2017, states the Institute's "Rethinking the classification on the carcinogenic effects of electromagnetic fields" RFR study will be published by the end of 2017 regarding the waves emitted from the cell phone antenna and the cell phone itself using guinea pigs as the laboratory rats, with findings that parallel similar findings of the NTP's 2016 preliminary study report.

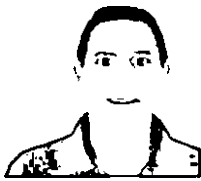
34. Regarding the lack of a preponderance of evidence concerning Frompovich's health status and not producing medical records, etc. as frequently stated in the PECO Brief, Frompovich did not need to produce a preponderance of evidence since such activity would conflict with the HIPPA Act's Privacy Rule in **Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191.**

35. However, Frompovich provided PECO with an authentic letter from her managing physician as to the status of her condition as a breast cancer patient/survivor, which should be more than satisfactory in view of not violating HIPPA's requirements **considering the Frompovich case is in the public record and published online.**

36. Frompovich further contends her right to redress is abrogated by the actions of PA House Consumer Affairs Chairman Robert Godshall's actions not calling for a vote several Opt-out bills Pennsylvania legislators introduced to fix the PA PUC's administrative overreach mandating AMI Smart Meters, *cf. Frompovich Brief IV. Summary of the Argument With Statement of Facts Pg. 10 (22)* when the PA Legislature originally passed a non-mandatory smart meter bill, HB2200, as published of public record.

37. Furthermore, this Honorable Court and the PA PUC should censure Representative Robert Godshall, plus demand Godshall recuse himself from his position as Committee Chair regarding Smart Meter Opt-out bills in the House Consumer Affairs Committee since Godshall's son, Grey, is an employee of PECO/Exelon (originally reported at <http://www.linkedin.com/pub/grey-godshall/33/ba7/58> but that LinkedIn site is no longer available), as there is an apparent conflict of interest involved. Here's what was on Grey Godshall's LinkedIn site:

Linked...



Grey Godshall

Project Manager at Exelon

Connect with Grey

Wasn't Grey Godshall promoted to EMI installation supervisor immediately after PECO received their \$200 million in Stimulus Funds?

38. Frompovich introduces as **Respondent Brief Exhibit No. 2**, the March 20, 2015 letter she received from Robert W. Godshall, State Representative, stating "*I am not going to continue a dialog on the issue as you have your preconceived opinions on the issue and I have mine based on the evidence I have,*" which indicates Godshall's "preconceived opinions" and intent to deprive Frompovich of her right to redress government officials, especially a state legislator whose son is an employee of Exelon, the parent company of PECO, and who adamantly refuses to call Opt-out bills for a vote, leaving them to become *sine die* for four years.

39. PECO states at 47 (Pg. 8) in its Brief, "The FlexNet communication module, which communicates from the AMI meter to the Tower Gateway Basestation [*is that part of a network*], operates at a licensed frequency of 901.1 MHz. In its service territory, PECO is the sole user of its licensed spectrum." Shouldn't that radio frequency license number be exhibited on PECO's *FlexNet* AMI Smart Meter along with the Underwriters Laboratories (UL) certification PECO states it has obtained? Without such public documentation, Frompovich, all PECO customers and even this Honorable Court should be questioning whether that is fact or fiction, since there is no legitimate proof on PECO's meters to substantiate their claims. Where is compliance with "truth in advertising"?

40. Frompovich invokes her Constitutional right(s) regarding PECO's Brief statement at Pg. 16, lines 7-8: "It is axiomatic in all Commission formal complaint proceeding that the Complainant has the burden of proof" since she is being singled out specifically 1) because of her breast cancer and PECO/PA PUC wanting to make this a "seminal case" regarding cancers and EMF/Rf/ELF/ Smart Meters; and 2) she has provided more than a preponderance of evidence that it is not she who is breaking the law (Act 129) but PECO and the PA PUC who are in violation of Act 129/SB2200¹⁴ as published in the public record along with U.S. Public Law 109-58 (Aug. 8, 2005) the Energy Policy Act of 2005, specifically Sec. 1252. Smart Metering, which does not mandate smart meters. Therefore, Frompovich has no burden of proof regarding her breast cancer patient/survivor status, medical records, etc., as she is not violating Act 129.

41. Furthermore, Frompovich contends she is being harassed regarding having had breast cancer to the point where PECO wants to make a public spectacle of her health issues for their gains and benefits. She alleges discrimination on the part of PECO.

42. Furthermore, PECO expert Dr. Mark Israel "...concluded that there is no basis to consider that radiofrequency fields could affect the immune system. Tr. 269-70." Cf. *Brief Pg. 33*.

In July 1991, J. Walleczek, Research Medicine and Radiation Biophysics Division, Lawrence Berkeley Laboratory, University of California, Berkeley, California 94720, published "Electromagnetic field effects on cells of the immune system: the role of calcium signaling," a 47-page paper, of which Frompovich submits the *PubMed* Abstract as *Respondent's Exhibit No. 3*. **Contrary to Dr. Israel's statement, there is scientific basis regarding EMF fields effects on the immune system.** Immune system effects studies include Boscolo et al. 2001; Novoselova et al. 1999.

¹⁴ HB2200 §2807(f)7(2)(i)

43. PECO stipulates at Brief Pp. 37-39 that various states utilities commissions find "...the use of such meters is reasonable." Note the word "safe" is not used, but the term "reasonable." However, PECO omitted very important and most significant facts regarding each of the states mentioned, to wit:

California has OPT-OUT from AMI Smart Meters provisions
Florida has OPT-OUT from AMI Smart Meters provisions
Maine has OPT-OUT from AMI Smart Meters provisions
Massachusetts has OPT-OUT from AMI Smart Meters provisions
Michigan has OPT-OUT from AMI Smart Meters provisions
Nevada has OPT-OUT from AMI Smart Meters provisions
New Hampshire has OPT-IN required
Texas has OPT-OUT from AMI Smart Meters provisions
Vermont has OPT-OUT from AMI Smart Meters provisions
Cf. Frompovich Brief p. 4

44. However, PECO fails to provide additional incriminating information: the Port Angeles City Council Public Works and Utilities in Washington State **ended the Smart Meter program and approved a \$1.8 million settlement** so that "*All water and electric meters will be free of the controversial, electromagnetic Smart Meter components.*" *Cf. Frompovich Brief p. 4*

45. PECO in its "Proposed Conclusions of Law" states in No. 3, Pg. 40:

"The complainant has not met her burden of proof of establishing an offense in violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701."

46. Based upon the preponderance of evidence Frompovich has provided to this Honorable Court, she is not violating Act 129 (2008).

47. Based upon the preponderance of evidence presented and of public record, Act 129/SB2200 as published in the public record did not mandate AMI Smart Meters.

48. Based upon the preponderance of evidence that the Pennsylvania State Legislature did not vote into law a mandatory smart meter bill/act, as published in the public record, the PA PUC is guilty of administrative agency overreach in creating regulations

contradictory to legislation passed by the only law-making entity in the state—the State Legislature. For several years Smart Meter Opt-out bills have been introduced by PA legislators only to be maneuvered to *sine die* by apparent conflicts of interest from Consumer Affairs Committee Robert W. Godshall, whose son Grey is a PECO/Exelon employee.

49. Therefore, according to the laws of the Commonwealth of Pennsylvania and the United States of America, Frompovich should not be made to accept an uncertified as ‘safe’ PECO *FlexNet* AMI Smart Meter, nor have her electric service terminated because Frompovich is not in violation of Act 129/SB2200.

50. Furthermore, the PA PUC must correct its egregious lawmaking overreach protocol, which the PA Legislature has tried to correct by introducing numerous Opt-out bills only to be hindered from becoming law by the actions of one specific person, House Consumer Affairs Committee Chairman Robert W. Godshall, who should be censured and mandated to recuse himself immediately, considering a conflict of interest exists within Godshall’s family since his son Grey works for Exelon, parent company of PECO.

IV. CONCLUSION AND PROPOSED ORDERING PARAGRAPHS

1. Whereas, Frompovich comes before this Honorable Court seeking a decree of relief from legal and customer harassment tactics by PECO and the PA PUC regarding the mandated retrofitting of an AMI Smart Meter on to her property at 23 Cavendish Drive, Ambler, Pennsylvania.

2. That Frompovich is not in violation of Act 129 with no termination of electric power service to her home as she has provided a preponderance of evidence that Act 129/HB2200 is illegally enforced due to the administrative overreach of the PA PUC which, therefore, makes the act as implemented and administered by the PA PUC not enforceable.

3. Whereas, Frompovich seeks her U.S. Constitution and Pennsylvania Constitution rights to remain intact; enforced; not violated; nor impinged upon by PECO and/or the PA PUC.

4. Whereas the ADAAA requires, Frompovich should at minimum be reasonably accommodated, and not forced to have a smart meter, which may kill her or adversely affect her health, as so many other cases before this Honorable Court have claimed but have been overruled.

Furthermore, Frompovich's electricity (as an older American in winter cold and summer heat and humidity) should not be disconnected. This is a threat against Frompovich's very life. PECO seems unaware of the consequences of their draconian demands. Reasonable accommodation on the part of PECO, including the PA PUC's erroneous interpretation of HB2200/Act 129 (2008), are required at minimum.

5. Whereas, Act 129 (2008) implementation regulations generated by the PA PUC and PECO's smart meter retrofits are at legal variance with **HB2200 §2807(f)7(2) Legislative**

History as published of public record and enacted into law, and must be enforced retroactively for all utility customers in the Commonwealth:

(2) Electric distribution companies shall furnish smart meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

6. Frompovich requests this Honorable Court to instruct the Pennsylvania Public Utility Commission to issue immediately revised and corrected implementation rules and regulations for AMI Smart Meters for electric, natural gas and water utilities customer services **to reflect the non-mandatory status of smart meters the Pennsylvania State Legislature intended, enacted and was published of public record** in the *Pennsylvania House and Senate Journals*, and further issue automatic opt-outs with no special service fees, as Pennsylvania consumers have suffered greatly due to misinformation and faulty implementation rules and regulations, including utility company harassment in some cases, as various Complainants had and still have pending cases before the PA PUC and this Honorable Court.

It is well established under federal and state law that administrative agencies are creatures of statute and may not establish regulations outside the boundaries established by the legislature.¹⁵

7. PA State Senator Fumo is on record in *PA Senate Journal* October 8, 2008 (pp. 2626-2631) stating, **"In addition we did not mandate smart meters, but we made them optional."** Therefore, the PA PUC, PECO and all public utilities in Pennsylvania by law must adhere to and abide by the optional smart meter mandate enacted by the Pennsylvania State

¹⁵ The Legal Intelligencer http://www.cohenseglia.com/library/files/the_legal_intel_-_evaluating_challenging_regulatory_overreach_-_c._caursone_-_4.20.2016.pdf

Legislature, as only the Pennsylvania State Legislature can make law, not the Pennsylvania Public Utility Commission, a state administrative agency.

8. Whereas, a preponderance of evidence exists that the PA PUC overreached its administrative powers when formulating implementation regulations for HB2200/Act 129 (2008) thereby causing much physical, emotional, mental and health harms to utility customers who are sensitive to EMF/Rf/ELF electronic pollution and or persons with health issues which can be impacted by EMF/Rf/ELF non-thermal radiation waves.

9. Whereas, Frompovich believes she is denied her constitutional right to include relevant published medical-scientific studies regarding 15 human breast cancer studies (1986 to 2005) and other cancers citing EMF/Rf/ELF exposures in a compendium of almost 240 studies she tried introducing as Exhibit A-3 but was overruled. That has to be corrected and those studies should be permitted into the record.

10. Whereas, PECO medical expert Dr. Mark Israel, MD, admitted the science is not certain, therefore, theoretical, prejudices Frompovich's constitutional rights to a fair hearing before this Honorable Court *cf. Transcript Pg. 290 (22-25)*.

"Number two, non-thermal health effects have been widely studied but are still theoretical and have not been recognized by experts as a basis for changing regulatory exposure limits."

11. Whereas, Frompovich's Exhibit of published cancer studies, which counter **Dr. Israel's medical opinion**, should have been admissible evidence because they were relevant to Frompovich's main case, however, Frompovich contends those studies now should be made a part of this record.

12. Whereas, PECO expert Dr. Israel's testimony stating the science is uncertain, i.e., "theoretical," (e.g., speculative, hypothetical, uncertain) cannot be accepted by this Honorable

Court as factual, as that action prejudices Frompovich before this Honorable Court and can make Frompovich the subject of an experiment without her consent, something prohibited by the Nuremberg Code¹⁶ and it also denies Frompovich of her U.S. Constitutional and Pennsylvania Constitutional rights as set forth in her Brief. *Cf. Pp. 4, 12, 14, 17, 19*

13. PECO has no right, nor authority, to make personal decisions for Frompovich, especially regarding her status as a breast cancer survivor wanting to protect her health from further onslaughts that can and will compromise her immune system and general wellbeing.

PECO proffers in its Brief Pg. 36, IV. "State public utility commissions that have examined whether AMI meters cause or contribute to health effects have concluded that AMI meters are *safe and that their use is reasonable*." *Cf. this Brief Pg. 19 (56) referring to PECO's Brief* various states utilities commissions find **"...the use of such meters is reasonable."** Nothing is said about "safe."

However, PECO's opinionated legalese proffers 'safe' and inserts that word. The very fact that PECO's *FlexNet* AMI Smart Meter does not have the Underwriters Laboratories icon prominently displayed anywhere on its display or housing indicates 'safety' is dubious and, therefore, not proven. Consequently, PECO cannot make nor offer spurious decisions regarding Frompovich's mandated acceptance of an unsafe AMI Smart Meter to or by this Honorable Court and/or the PA PUC, which essentially is in violation of Act 129 as published of public record and enacted by the PA Legislature, the only law-making entity in the Commonwealth.

14. There is the UN's **Universal Declaration of Human Rights**¹⁷, which in **Article 3** states: ***"Everyone has the right to life, liberty and security of person."***

¹⁶ <https://history.nih.gov/research/downloads/nuremberg.pdf>

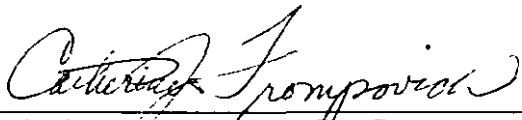
¹⁷ <http://www.un.org/en/universal-declaration-human-rights/>

Article 8: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

Article 19: "*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*" That right, Frompovich contends, was denied her in presenting published peer review studies regarding EMF/Rf/ELF and breast and other cancer(s) by PECO's incessant objections to her Exhibits.

Article 30 "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."

Respectfully submitted,


Catherine J. Frompovich, *Pro Se*

Dated: February 10, 2017

Exhibit No. 1

Public Law 109-58

The Energy Policy Act of 2005
§ 1252 Smart Metering.

RECEIVED

FEB 10 2017

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

(b) COMPLIANCE.—

(1) TIME LIMITATIONS.—Section 112(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(b)) is amended by adding at the end the following: Deadlines.

“(3)(A) Not later than 2 years after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to each standard established by paragraphs (11) through (13) of section 111(d).

“(B) Not later than 3 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by paragraphs (11) through (13) of section 111(d).”.

(2) FAILURE TO COMPLY.—Section 112(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(c)) is amended by adding at the end the following: “In the case of each standard established by paragraphs (11) through (13) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs (11) through (13).”.

(3) PRIOR STATE ACTIONS.—

(A) IN GENERAL.—Section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) is amended by adding at the end the following:

“(d) **PRIOR STATE ACTIONS.**—Subsections (b) and (c) of this section shall not apply to the standards established by paragraphs (11) through (13) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

“(1) the State has implemented for such utility the standard concerned (or a comparable standard);

“(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility; or

“(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.”.

(B) CROSS REFERENCE.—Section 124 of such Act (16 U.S.C. 2634) is amended by adding the following at the end thereof: “In the case of each standard established by paragraphs (11) through (13) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs (11) through (13).”.

SEC. 1252. SMART METERING.

(a) IN GENERAL.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

“(14) **TIME-BASED METERING AND COMMUNICATIONS.**—(A) Deadline.
Not later than 18 months after the date of enactment of this paragraph, each electric utility shall offer each of its customer

classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

"(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others—

"(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year, based on the utility's cost of generating and/or purchasing such electricity at the wholesale level for the benefit of the consumer. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

"(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and/or purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption;

"(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis, reflecting the utility's cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly; and

"(iv) credits for consumers with large loads who enter into pre-established peak load reduction agreements that reduce a utility's planned capacity obligations.

"(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

"(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

"(E) In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive the same time-based metering and communications device and service as a retail electric consumer of the electric utility.

"(F) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall, not later than 18 months after the date of enactment of this paragraph conduct an investigation in accordance with section 115(i) and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C)."

Deadline.

(b) **STATE INVESTIGATION OF DEMAND RESPONSE AND TIME-BASED METERING.**—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended as follows:

(1) By inserting in subsection (b) after the phrase “the standard for time-of-day rates established by section 111(d)(3)” the following: “and the standard for time-based metering and communications established by section 111(d)(14)”.

(2) By inserting in subsection (b) after the phrase “are likely to exceed the metering” the following: “and communications”.

(3) By adding at the end the following:

“(i) **TIME-BASED METERING AND COMMUNICATIONS.**—In making a determination with respect to the standard established by section 111(d)(14), the investigation requirement of section 111(d)(14)(F) shall be as follows: Each State regulatory authority shall conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.”

(c) **FEDERAL ASSISTANCE ON DEMAND RESPONSE.**—Section 132(a) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by striking “and” at the end of paragraph (3), striking the period at the end of paragraph (4) and inserting “; and”, and by adding the following at the end thereof:

“(5) technologies, techniques, and rate-making methods related to advanced metering and communications and the use of these technologies, techniques and methods in demand response programs.”

(d) **FEDERAL GUIDANCE.**—Section 132 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642) is amended by adding the following at the end thereof:

“(d) **DEMAND RESPONSE.**—The Secretary shall be responsible for—

“(1) educating consumers on the availability, advantages, and benefits of advanced metering and communications technologies, including the funding of demonstration or pilot projects;

“(2) working with States, utilities, other energy providers and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs; and

“(3) not later than 180 days after the date of enactment of the Energy Policy Act of 2005, providing Congress with a report that identifies and quantifies the national benefits of demand response and makes a recommendation on achieving specific levels of such benefits by January 1, 2007.”

(e) **DEMAND RESPONSE AND REGIONAL COORDINATION.**—

(1) **IN GENERAL.**—It is the policy of the United States to encourage States to coordinate, on a regional basis, State energy policies to provide reliable and affordable demand response services to the public.

(2) **TECHNICAL ASSISTANCE.**—The Secretary shall provide technical assistance to States and regional organizations formed by two or more States to assist them in—

(A) identifying the areas with the greatest demand response potential;

Deadline.
Reports.

16 USC 2642
note.

(B) identifying and resolving problems in transmission and distribution networks, including through the use of demand response;

(C) developing plans and programs to use demand response to respond to peak demand or emergency needs; and

(D) identifying specific measures consumers can take to participate in these demand response programs.

(3) REPORT.—Not later than 1 year after the date of enactment of the Energy Policy Act of 2005, the Commission shall prepare and publish an annual report, by appropriate region, that assesses demand response resources, including those available from all consumer classes, and which identifies and reviews—

(A) saturation and penetration rate of advanced meters and communications technologies, devices and systems;

(B) existing demand response programs and time-based rate programs;

(C) the annual resource contribution of demand resources;

(D) the potential for demand response as a quantifiable, reliable resource for regional planning purposes;

(E) steps taken to ensure that, in regional transmission planning and operations, demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider, or transmitting party; and

(F) regulatory barriers to improve customer participation in demand response, peak reduction and critical period pricing programs.

(f) FEDERAL ENCOURAGEMENT OF DEMAND RESPONSE DEVICES.—It is the policy of the United States that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged, the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated, and unnecessary barriers to demand response participation in energy, capacity and ancillary service markets shall be eliminated. It is further the policy of the United States that the benefits of such demand response that accrue to those not deploying such technology and devices, but who are part of the same regional electricity entity, shall be recognized.

Deadlines.

(g) TIME LIMITATIONS.—Section 112(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(b)) is amended by adding at the end the following:

“(4)(A) Not later than 1 year after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to the standard established by paragraph (14) of section 111(d).

“(B) Not later than 2 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority),

and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to the standard established by paragraph (14) of section 111(d)."

(h) **FAILURE TO COMPLY.**—Section 112(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(c)) is amended by adding at the end the following:

"In the case of the standard established by paragraph (14) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraph (14)."

(i) **PRIOR STATE ACTIONS REGARDING SMART METERING STANDARDS.**—

(1) **IN GENERAL.**—Section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) is amended by adding at the end the following:

"(e) **PRIOR STATE ACTIONS.**—Subsections (b) and (c) of this section shall not apply to the standard established by paragraph (14) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

"(1) the State has implemented for such utility the standard concerned (or a comparable standard);

"(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility within the previous 3 years; or

"(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility within the previous 3 years."

(2) **CROSS REFERENCE.**—Section 124 of such Act (16 U.S.C. 2634) is amended by adding the following at the end thereof: "In the case of the standard established by paragraph (14) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraph (14)."

SEC. 1253. COGENERATION AND SMALL POWER PRODUCTION PURCHASE AND SALE REQUIREMENTS.

(a) **TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.**—Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a-3) is amended by adding at the end the following:

"(m) **TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.**—

"(1) **OBLIGATION TO PURCHASE.**—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility has nondiscriminatory access to—

"(A)(i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy; or

Exhibit No. 2

PA Rep. Robert W. Godshall Letter March 20, 2015

To Frompovich

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PA PUBLIC UTILITY COMMISSION
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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

CONSUMER AFFAIRS, CHAIRMAN

INSURANCE
LEGISLATIVE BUDGET AND FINANCE

March 20, 2015

Catherine J. Frompovich
23 Cavendish Drive
Ambler, PA 19002

Dear Mrs. Frompovich:

I am responding to your letter pertaining to advanced metering or smart meters. Personally, I am a young 81 year old male living with a pacemaker due to a total heart blockage some years ago. I am also, like you, a cancer survivor having been diagnosed with multiple myeloma 12 years ago and given 1 to 1.5 years to live and there is still no cure. This is something I have to fight on a daily basis. At the same time I live in a house with a TV, microwave and a host of other appliances that produce RF including a cordless phone, a cell phone and computer.

For more than the last 10 years, as I live in PPL territory, I along with 1.4 million PPL customers have lived with an advanced meter and to the best of my knowledge there hasn't been a single complaint anywhere.

I am not going to continue a dialog on the issue as you have your preconceived opinions on the issue and I have mine based on the evidence I have.

Sincerely,

A handwritten signature in cursive script that reads "Robert W. Godshall".

Robert W. Godshall
State Representative
53rd District

bcc: Representative Kate Harper
Frank Gates, PPL


Exhibit No. 3

Abstract: Electromagnetic field effects on cells of the immune
system: the role of calcium signaling.

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PubMed 

Format: Abstract

Full text links



FASEB J. 1992 Oct;6(13):3177-85.

Electromagnetic field effects on cells of the immune system: the role of calcium signaling.

Walleczek J¹.

Author information

Abstract

During the past decade considerable evidence has accumulated demonstrating that nonthermal exposures of cells of the immune system to extremely low-frequency (ELF) electromagnetic fields (< 300 Hz) can elicit cellular changes that might be relevant to in vivo immune activity. A similar responsiveness to nonionizing electromagnetic energy in this frequency range has also been documented for tissues of the neuroendocrine and musculoskeletal system. However, knowledge about the underlying biological mechanisms by which such fields can induce cellular changes is still very limited. It is generally believed that the cell membrane and Ca(2+)-regulated activity is involved in bioactive ELF field coupling to living systems. This article begins with a short review of the current state of knowledge concerning the effects of nonthermal levels of ELF electromagnetic fields on the biochemistry and activity of immune cells and then closely examines new results that suggest a role for Ca²⁺ in the induction of these cellular field effects. Based on these findings it is proposed that membrane-mediated Ca²⁺ signaling processes are involved in the mediation of field effects on the immune system.

PMID: 1397839

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Publication Types, MeSH Terms, Substances

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Exhibit No. 4

Glenn Pritchard, PE, IEEE Presentation

PECO delivers a Reliable and Resilient Smart Grid

PowerPoint Frame 8:
PECO's Multi-Tiered Smart Grid Network

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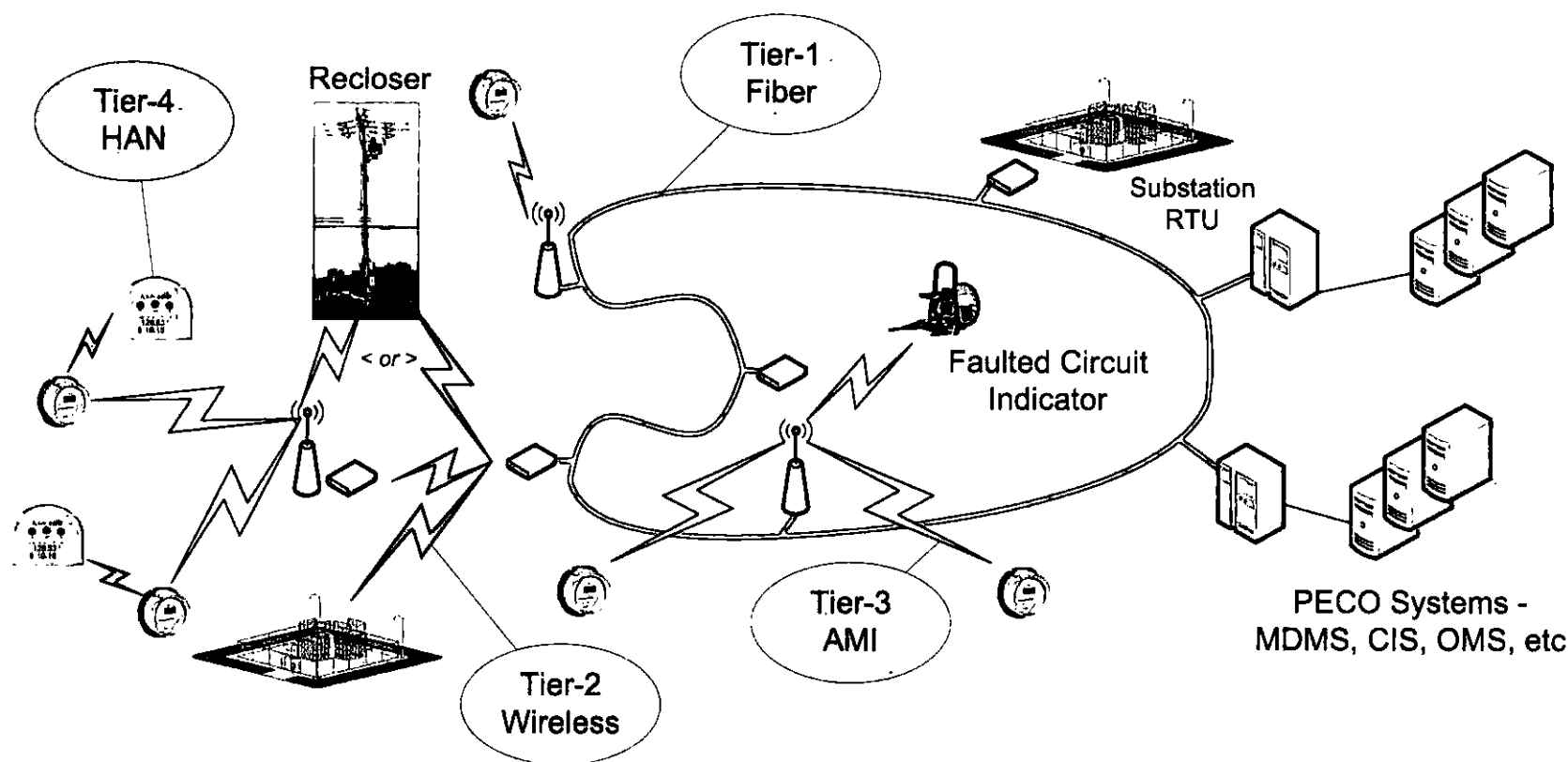
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PECO delivers a Reliable and Resilient Smart Grid

Glenn Pritchard, PE

PECO's Multi-Tiered Smart Grid Network



Communication Tiers:

- ✓ Tier-1: ~375 miles of high speed/high bandwidth fiber optic communications
- ✓ Tier-2: WiMax wireless communication network
- ✓ Tier-3: AMI Network, low-speed, low bandwidth network
- ✓ Tier-4: HAN In-Home Communications

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Catherine J. Frompovich

:
:
:
:
:
:

Docket No. C-2015-2474602

v.

PECO Energy Company

CERTIFICATE OF SERVICE

I, Catherine J. Frompovich, hereby certify that I have this day served a copy of my Respondent's Brief due February 15, 2017 to the following via

Certified Mail * Return Receipt Requested to:

Rosemarie Chiavetta, Secretary
Pennsylvania Public Utility Company
Commonwealth of Pennsylvania
400 North Street, Second Floor
Harrisburg, PA 17120

And by First Class U.S. Postal Service with Tracking mail to:

Administrative Law Judge Darlene D Heep
Administrative Law Judge Christopher P Pell
Pennsylvania Public Utility Commission
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Philadelphia, PA 19107

Ward Smith, Esq.
Shawane Lee, Esq.
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Philadelphia, PA 19103

Dated at Ambler, Pennsylvania, February 10, 2017

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Catherine J. Frompovich, Pro Se
23 Cavendish Drive, Ambler, PA 19002
215-653-7575

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