

PASMA
Pennsylvania Smart Meter Awareness Ad-hoc Citizens Committee

Catherine J Frompovich, Researcher
23 Cavendish Drive, Ambler, PA 19002

Thomas A McCarey, Assistant Researcher
285 Dayleview Road, Berwyn, PA 19312

March 31, 2017

9 Certified * Return Receipt Requested Mail

Pennsylvania Public Utility Commission

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PA State Representative Todd Stephens 151st House District

PA State Representative Thomas P. Murt 152nd House District

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Ladies and Gentlemen of Pennsylvania's Legislative System:

*The PA State PUC is breaking the law as passed by the
State Legislature and is not held accountable for all the
harms being perpetrated upon Pennsylvanians and now
must be rectified immediately.*

"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."¹ However, regarding HB2200 that became Act 129 (2008), the PA PUC

¹ The Legal Intelligencer http://www.cohenseglia.com/library/files/the_legal_intel_-_evaluating_challenging_regulatory_overreach_-_c_coursone_-_4.20.2016.pdf

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PA PUBLIC UTILITY COMMISSION
OFFICE OF
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over-reached as confirmed by Dave Hixson, PA PUC Office of Communications, letter to Mr. McCarey dated 3-22-17 (see pg. 4 attached), *"the Commission believes that it was the intent of the General Assembly to require all covered electric companies to deploy smart meters system-wide."*

That *IS NOT* what the PA State Legislature voted on and passed as published in public records as follows:

The HB2200 §2807(f)7(2) Legislative History as published of public record and enacted into law must be enforced retroactively for all utility customers in the Commonwealth to comply statutorily with the following:

- (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.

Section 2807(f)7(2)(i) above clearly indicates HB2200/Act 129 is an *OPT-IN* statute/law with no need for opt-out language. The AE court contends "there is no opt-out clause" as a point of law upon which they base all their erroneous decisions, especially since the PA PUC had no legal authority to rewrite what the PA Legislature passed into law.

Furthermore, 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."*

Furthermore, 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), and not what the PA PUC believed! Pennsylvania is a Commonwealth!

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Frompovich has a *pro se* case before the PA PUC Administrative Law court with a hearing held Nov. 2-3, 2016 before Deputy Chief Administrative Law Judge Christopher Pell and Administrative Law Judge Darlene Heep. March 24, 2017 the PA PUC sent a letter to Frompovich indicating her case has been changed from Judges Pell and Heep to "Administrative Law Judge Darlene Heep" only!


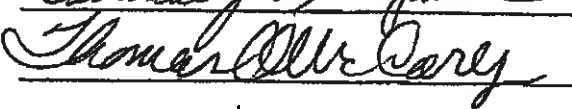
That is not acceptable and apparently is a tactic employed by the PA PUC to obtain an unfavorable decision toward Frompovich when, in fact, Frompovich is not the law breaker but the PA PUC and all PA utility companies that are harassing customers, with the PA PUC's dogmatic and bureaucratic tyranny to have unlawful AMI Smart Meters placed on to their electric, natural gas and water utilities.

Frompovich requests Judge Pell be reassigned to the case since he officiated with Judge Heep and both Judges should be rendering the decision, not one Judge at the apparent whim of the PA PUC Commission and 'kangaroo-court-like' discretion.

Attached are four pages with the *Conclusion and Proposed Ordering Paragraphs* Frompovich filed in her Respondent's Brief February 10, 2017, which explains what needs to be done to rectify the untenable malfeasance of the PA PUC's over-reach in rulemaking, which has led to numerous Pennsylvanians experiencing adverse health effects, including the late Susan Kreider, who was a complainant before the PA PUC and its court.

Mr. McCarey and Mrs. Frompovich are calling upon Governor Wolf, *who has turned a blind eye to the problem*, and Attorney General Shapiro to enforce the code of law in the Commonwealth of Pennsylvania and implement Act 129 (2008) as it legally should be carried out: an OPT-IN AMI Smart Meter law with all necessary apologies and corrective measures by the PA PUC and utility companies to all harmed Pennsylvanians.

Respectfully yours,

cc: Andy Maykuth / Philadelphia Inquirer
Tony Romeo / KYW Newsradio Harrisburg Bureau Chief
Eldon Kibler / Berks County Patriots
Kerriellen Wilder / Independent Journalist
Josh del Sol / Take Back Your Power
Joshua Hart / Pennsylvania Stop Smart Meters
PASMA Ad-hoc Members

PA PUC Docket No. C-2015-2474602 / Frompovich v. PECO

As a result of the Nov. 2-3, 2016 PA PUC Administrative Law Court hearing before Deputy Chief Administrative Law Judge Christopher Pell and Administrative Law Judge Darlene Heep, Catherine J Frompovich filed a Respondent's Brief due Feb. 15, 2015 with the following *Conclusion and Proposed Ordering Paragraphs the PA PUC must take into consideration*, especially since Judge Pell has been removed from the case, and since Dave Hixson, of PA PUC Office of Communications, stated in his 3-22-17 letter (copy attached) to Thomas A McCarey of Berwyn, PA, the following incriminating admission PA PUC overstepped its powers regarding HB2200/Act 129 (2008): "As I stated in my earlier email correspondence with you, the Commission believes that it was the intent of the General Assembly to require all covered electric companies to deploy smart meters system-wide." Therefore, it is the PA PUC who is breaking the law and not PA customers who either refuse or do not request and pay for at time of request a Smart Meter. PA PUC's admitted "belief" does not comply with the PA State Legislature's enactment and passage of HB2200 into law. No. 5 below actually states HB2200/Act 129 is an OPT-IN AMI Smart Meter statute in HB2200 §2807(f)7(2)(i), so no opt-outs are necessary. PA State Senator Fumo is quoted in the Senate Journal October 8, 2008 (pp. 2626-2631) with, "In addition we did not mandate smart meters, but we made them optional." PA PUC is the law breaker.

RESPONDENT'S BRIEF

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.¹

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 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.

¹ The Legal Intelligencer http://www.cohenseglia.com/library/files/the_legal_intel_-_evaluating_challenging_regulatory_overreach_-_c_caurson_e_-_4.20.2016.pdf

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 Code² 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 Rights³**, which in Article 3 states: ***"Everyone has the right to life, liberty and security of person."***

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

² <https://history.nih.gov/research/downloads/nuremberg.pdf>

³ <http://www.un.org/en/universal-declaration-human-rights/>



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

March 22, 2017

Mr. Thomas A. McCarey
285 Dayleview Road
Berwyn, PA 19312

Dear Mr. McCarey:

Chairman Gladys M. Brown of the Pennsylvania Public Utility Commission (Commission) asked me to respond to your email to Gov. Tom Wolf regarding smart meters and subsequent charges on monthly electric bills for smart meter technology.

For several years, PECO and the state's other six largest electric distribution companies (EDCs) who must comply with Act 129 of 2008 have included smart meter charges on customer bills to pay for the development and deployment of smart meter technology. The smart meter charges are non-bypassable and are applied to customer bills consistent with the terms and conditions found in the utility's tariff, which is approved by the Commission. These charges are permissible by law, and offset costs incurred by the EDCs specifically for smart meter deployment in their service territories.

The Commission must, of course, implement the smart meter legislation that is currently law. The Commission does not have the authority to allow customers to opt out of smart meter legislation. Your organization has already been in contact with elected state officials, who ultimately must decide whether or not to change any law.

That being said, the Commission does recognize that smart meters bring many benefits to the Commonwealth by empowering customers to take control of their electricity usage, reducing outage times, saving customers money, and increasing overall system reliability. With smart meters, EDCs restore service faster during power outages and reduce meter-reading costs; customers better understand how much electricity they are using throughout the day, and the theft of electricity can be detected more quickly and effectively.

As I stated in my earlier email correspondence with you, the Commission believes that it was the intent of the General Assembly to require all covered electric companies to deploy smart meters system-wide. Thus, the Commission continues to ensure that electric utilities implement the universal installation of smart meter technology in a manner that meets the intent of the General Assembly. Thank you again for your letter. I have copied Chairman Brown's office on my reply.

Sincerely,

Dave Hixson
PA Public Utility Commission
Office of Communications
dhixson@pa.gov
(717) 787-5722

cc: Office of Chairman Gladys M. Brown

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