

Buchanan Ingersoll & Rooney PC
Attorneys & Government Relations Professionals

Bridgid M. Good
610 372 4761
bridgid.good@bipc.com

1150 Berkshire Blvd., Suite 210
Wyomissing, PA 19610-1208
T 610 372 4761
www.buchananingersoll.com

January 31, 2011

VIA UPS

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Re: Gloria Corbett v. Pennsylvania Power Company
Docket No. C-2011-2219898

Dear Secretary Chiavetta:

Enclosed please find an original and three (3) copies of an Answer and New Matter, Preliminary Objections, and Notices to Plead on behalf of Pennsylvania Power Company in the above-captioned proceeding. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,



Bridgid M. Good

BMG/lds
0078979-000013
Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GLORIA CORBETT

v.

PENNSYLVANIA POWER COMPANY

TO: Gloria Corbett
P.O. Box 24
Carlton, Pennsylvania 16311

Docket No. C-2011-2219898

RECEIVED

JAN 31 2011

NOTICE TO PLEAD

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

You are hereby notified that, if you do not file a written response to the enclosed Preliminary Objections within ten (10) days from service of this notice, the facts set forth by Pennsylvania Power Company in the Preliminary Objections may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Response to the enclosed Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with copies served on all other parties to this proceeding. Failure to respond to the Preliminary Objections could result in the dismissal of your case.

Dated: January 31, 2011



Bridgid M. Good
Jeffrey A. Franklin
BUCHANAN INGERSOLL & ROONEY PC
(formerly Ryan, Russell, Ogden & Seltzer P.C.)
1150 Berkshire Boulevard, Suite 210
Wyomissing, PA 19610-1208
(610) 372-4761

Counsel for Pennsylvania Power Company

RECEIVED

JAN 31 2011

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

GLORIA V. CORBETT

v.

PENNSYLVANIA POWER COMPANY

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No. C-2011-2219898

**PRELIMINARY OBJECTIONS TO THE COMPLAINT OF GLORIA V.
CORBETT**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pennsylvania Power Company ("Penn Power" or the "Company") by and through its counsel Bridgid M. Good, Jeffrey A. Franklin, and Buchanan Ingersoll & Rooney PC, pursuant to Section 5.101 of this Commission's regulations, 52 Pa. Code § 5.101, requests that the Commission dismiss the Complaint of Gloria V. Corbett, and in support of its Preliminary Objections ("Motion") states as follows:

I. Introduction

1. This Motion requests the dismissal of the Complaint of Gloria Corbett ("Complainant") because her Formal Complaint is legally insufficient, as a matter of law, because she does not claim -- as required by Section 701 of the Public Utility Code, 66 Pa. C. S. § 701 -- that the Company has taken any action or failed to take an action in violation of any law or regulation that it is required to follow.

II. Factual Background

2. The Complainant is a residential customer receiving electric service from the Company at 16 Blair Lane, Carlton, Pennsylvania 16311 at Account No. 110004922628 and 1393 Sheakleyville Road, Cochranon, Pennsylvania 16314, Account No. 110061190390 ("Service Locations").

3. The Complainant filed a formal complaint with the Commission at Docket No. C-2011-2219898 alleging that she is concerned about the installation of Smart Meters¹ and the potential for third parties to obtain her personal information through the Smart Meters, either wirelessly or through the Company sharing such information ("Formal Complaint"). Formal Complaint, ¶ 4. In her Prayer for Relief, the Complainant states that she wants Penn Power to consider all customers to have "opted out" of the smart meter plan and the sharing of personal information. Formal Complaint, ¶ 5. The Complainant also wants the Company to update Smart Meters to provide increased security at the utility's expense. Formal Complaint, ¶ 5.

4. In an Answer and New Matter being served contemporaneously with this Motion, Penn Power has denied the material allegations in the Formal Complaint and requested that it be dismissed.

III. The Complaint is Insufficient as a Matter of Law

6. In accordance with Section 5.101 of the Pennsylvania Public Utility Commission's ("Commission") regulations, preliminary objections may be filed where the complaint is legally insufficient. 52 Pa. Code §5.101 (4).

7. The Public Utility Code requires that "...any person...may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or any regulation or order of the Commission." 66 Pa. C.S. §701.

¹ In accordance with 66 Pa. C.S. §2807(g), smart meter technology means "...technology, including metering technology and network communications technology capable of bidirectional communication, that records electricity on at least an hourly basis, including related electric distribution system upgrades to enable the technology. 66 Pa. C.S. §2807(g). Smart Meters have not yet been deployed in the Company's service territory.

8. On October 15, 2008, Governor Edward G. Rendell signed Act 129 of 2008 ("Act 129") into law. The Act took effect thirty days thereafter on November 12, 2008.

9. Among other things, Act 129 specifically directed that electric distribution companies ("EDCs") with at least 100,000 customers file, with the Pennsylvania Public Utility Commission ("Commission") for approval, a smart meter technology procurement and installation plan ("Plan"). 66 Pa. C.S. §§2807(f)(1) and (2). Act 129 also established acceptable cost recovery methods. 66 Pa. C.S. §§2807(f)(7). Pursuant to Act 129, each Plan was required to describe the smart meter technologies proposed to be installed in new construction and in accordance with a depreciation schedule not to exceed 15 years. 66 Pa. C.S. §§2807(f)(1) and (2).

10. On June 24, 2009, the Commission outlined the standards each Plan must meet, and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of each Plan. *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 ("Implementation Order").

11. The Commission interpreted Act 129 to require all covered EDCs to deploy smart meters system-wide within 15 years, i.e. by April 2025, when it included a requirement that smart meters deployment be "in accordance with a depreciation schedule not to exceed 15 years." Implementation Order.

12. On August 14, 2009, Penn Power, along with its sister EDCs, Metropolitan Edison Company and Pennsylvania Electric Company, filed with the Commission a Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan ("Joint Petition"). The Joint Petition proposed that smart meters be

installed and the costs associated with the Installation Plan be recovered through a reconcilable adjustment clause called the Smart Meter Technologies Charge ("SMT-C").

13. The Joint Petition was the subject of a public proceeding where many parties with varying interests fully evaluated and vetted all issues raised by the installation and recovery of costs for smart meters, including privacy issues and third party access. The Complainant did not avail herself of her opportunity to voice her concerns in this proceeding. Indeed, the Initial Decision, dated January 28, 2010, expressly addressed security, privacy and third party access and approved the position of Penn Power that it will "...monitor the development of relevant industry standards and employ adequate consumer protections before moving forward with deployment. Joint Petition, Initial Decision, Docket M-2009-2123950, 2010 Pa. PUC LEXIS 157, Dated: January 28, 2010.

14. By Opinion and Order entered June 9, 2010, the Commission approved Penn Power's Plan, with modifications and the portion of the Initial Decision discussed in paragraph 13 above.

15. On June 25, 2010, Penn Power filed Supplement No. 67 to Penn Power's Tariff, Electric Pa.P.U.C. No. 35 in compliance with the Commission's Order at M-2009-2123950 to become effective on August 1, 2010.

16. The Commission's approval of the implementation and cost recovery of the Plan are in accordance with 66 Pa. C.S. § 2807(f).

17. Penn Power is required by statute, its duly filed and Commission-approved tariff and Commission order to install Smart Meters throughout its certificated territory and charge a SMT-C to all of its customers pursuant to approved tariff provision.

18. As confirmed by the recent Initial Decision in *Richard Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305, entered December 15, 2010, there is no "opt-out" provision in Act 129, the Commission's regulations, the Implementation Order, the Joint Petition, the Commission's June 9, 2010 Order or the Commission-approved tariff. A copy of said decision is attached hereto as Exhibit A.

19. Because the Complainant fails to claim that the Company has committed or omitted an act in violation of any Commission statutes, regulations, orders or its tariff, as required by Section 701 of the Public Utility Code, 66 Pa. C. S. § 701, she has failed to state a claim upon which relief can be granted, and her Formal Complaint should be dismissed as legally insufficient. 52 Pa. Code §5.101 (4).

IV. Conclusion

WHEREFORE, Pennsylvania Power Company requests that the Commission dismiss the Formal Complaint of Gloria V. Corbett with prejudice because her Formal Complaint is legally insufficient as a matter of law.

Dated: January 31, 2011

Respectfully submitted,



Bridgid M. Good, Esquire
Jeffrey A. Franklin, Esquire
Buchanan Ingersoll & Rooney PC
1150 Berkshire Boulevard, Suite 210
Wyomissing, Pennsylvania 19610-1208
(610) 372-4761

Attorneys for
Pennsylvania Power Company

RECEIVED

JAN 31 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RECEIVED

JAN 31 2011

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Exhibit "A"

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Richard Negley

v.

Metropolitan Edison Company

:
:
:
:
:

C-2010-2205305

INITIAL DECISION

Before
Susan D. Colwell
Administrative Law Judge

HISTORY OF THE PROCEEDING

On October 12, 2010, Richard Negley (Complainant) filed a formal Complaint against Metropolitan Edison Company (Met Ed or Respondent) asking that he be removed from the Respondent's Smart Meter program because it does not fit his lifestyle. If he cannot be removed due to legislative action and is forced to participate against his will, then the fee should be reflected on the electric bill as a tax and not as a usage fee.

On November 12, 2010, Met Ed filed its Answer with New Matter, and Preliminary Objections. The Answer denies that the Smart Meter Plan is a program in which a customer can participate and enroll. Rather, all customers on Rate Schedule RS are charged an extra charge on the monthly bill beginning August 2010, and the tariff does not provide for exceptions. The Answer describes the charge as a fixed monthly customer charge to recover the cost of the implementation of Met Ed's Smart Meter Plan. In New Matter, Respondent states that the charge is imposed pursuant to legislative mandate and according to the guidelines set forth by the Commission. Met Ed states that its actions are consistent with applicable regulations, statutes, and tariffs.

The Preliminary Objections ask for dismissal of the case because it is legally insufficient in that it does not claim that Respondent has committed or omitted an act in violation of Commission statutes, regulations, order, or Met Ed's own tariff. The Complaint has failed to state a claim upon which relief can be granted, and therefore, it should be dismissed in its entirety.

On December 2, 2010, a Motion Judge Assignment was issued which assigned this matter to Administrative Law Judge Herbert R. Smolen. On December 9, 2010, the case was reassigned to me.

The time for filing a response to both New Matter and to Preliminary Objections has expired, and no responses were filed. The Preliminary Objections are ready for decision.

FINDINGS OF FACT

1. Complainant is Richard Negley, 1927 Queenswood Drive, B-103, York PA 17403.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility providing residential electric service in the Commonwealth of Pennsylvania.
3. On October 12, 2010, Complainant filed his formal Complaint with the Commission against Respondent.
4. On November 12, 2010, Respondent filed an Answer, New Matter, and Preliminary Objections.
5. No response was filed to the New Matter or to the Preliminary Objections.

DISCUSSION

Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-000935435 (July 18, 1994).

The rules regarding preliminary objections are simple and specific:

§ 5.101. Preliminary objections.

- (a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:
 - (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
 - (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
 - (3) Insufficient specificity of a pleading.
 - (4) Legal insufficiency of a pleading.
 - (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
 - (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

* * *

52 Pa. Code § 5.101(a).

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Petitioners, recovery or relief is possible. *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003), 2003 Pa.

Commw. LEXIS 849; *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996), 1996 Pa. Commw. LEXIS 11. Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002), 2002 Pa. Commw. LEXIS 580. All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997) 1997 Pa. Commw. LEXIS 148.

Therefore, it is only the facts in the Complaint which can be presumed to be true in order to determine whether recovery is possible.

The facts are short and simple: Complainant would like to be removed from the Respondent's Smart Meter Plan (Plan), or if that cannot be accomplished, then he would like the charge to be listed as a tax and not a usage fee.

Met Ed responds that the circumstances leading to the imposition of the charge, including the enabling law, regulations, implementation order and Commission-approved tariff do not permit the removal of a customer from the program, nor does it have the ability to exempt a customer from the charge associated with the Plan. The explanation given is quite thorough:

3. On October 15, 2008, Governor Edward G. Rendell signed Act 129 of 2008 (the Act or Act 129) into law, which became effective on November 14, 2008. Among other things, the Act specifically directed that electric distribution companies (EDCs) with at least 100,000 customers file, with the Commission for approval, a smart meter technology procurement and installation plan. 66 Pa. C.S. § 2807(f)(1). Each plan was to describe the smart meter technologies the EDC proposes to install, upon request from a customer at the customer's expense, in new construction, and in accordance with a depreciation schedule not to exceed 15 years. 66 Pa. C.S. §§ 2807(f)(1) and (2).

4. On June 24, 2009, the Commission outlined the standards each smart meter plan must meet and provided guidance on the procedures to be followed for submittal, review and

approval of all aspects of each smart meter plan. *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (*Implementation Order*).

5. With regard to Act 129, the Commission interpreted the intent of the General Assembly to require all covered EDCs to deploy smart meters system-wide within 15 years, i.e. by April 2025, when it included a requirement for smart meter deployment “in accordance with a depreciation schedule not to exceed 15 years.” *Implementation Order*.

6. On August 14, 2009, Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company filed with the Commission a Joint Petition for Approval of Smart Meter Technology Procurement and Installation plan. To recover the costs associated with the Plan, each Company filed a Smart Meter Technologies Charge Rider proposing, *inter alia*, to recover their smart meter technology costs through a reconcilable adjustment clause called the Smart Meter Technologies.

7. Met Ed’s Plan provided, *inter alia*, that the SMT-Charge (or SMT-C) will be expressed as a monthly customer charge, will be billed to all metered customer accounts eligible for the installation of smart meters, and will be non-bypassable.

8. By Opinion and Order entered June 9, 2010, the Commission approved the Smart Meter Technology Procurement and Installation Plan filed by Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company at Docket No. M-2009-2123950, with modifications.

9. On June 25, 2010, Metropolitan Edison Company filed Supplement No. 21 to Met Ed’s Tariff Electric Pa. P.U.C. No. 50 in compliance with the Commission’s Order at Docket No. M-2009-2123950 to become effective on August 1, 2010.

10. In July of 2010, Met Ed included the following message in its bills to residential customers:
Act 129 of 2008 – passed by the Pennsylvania General Assembly and signed into law by the Governor – requires the deployment of a smart meter technology system. As mandated by Act 129, the deployment of smart meter technology is to be funded through customer rates. This monthly charge, which will appear on the bill as the Smart Meter Charge line item, will be \$2.64 for residential customers.

11. As explained above, the implementation of Smart Meter Technologies and the approval of the costs associated with the implementation are in accordance with 66 Pa. C.S. § 2807(f). The Company's Smart Meter Plan is not a program in which a customer can participate or enroll, and the SMT-Charge does not represent a tax or "usage fee." Instead, the SMT-Charge is a "customer fee" contained in Met Ed's duly filed and Commission-approved tariff. See Met Ed Tariff, Electric Pa. P.U.C. No. 50 (Supp. 21), Rider P, Original Pages 182-185, Effective August 1, 2010.

12. A public utility is required to adhere to its duly filed and Commission-approved tariff. Such tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66 Pa. C.S. § 1303; *DiSanto v. Dauphin County Water Supply Company*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa. Cmwlth. 1981). The Commonwealth Court of Pennsylvania construed Section 1303 of the Code, 66 Pa. C.S. § 1303, and stated that "[t]here can be no lawful rate *except* the last tariff published as provided by law Further, it is well established that in the absence of an exception by the Commission, a public utility may not charge any rate for services other than that lawfully tariffed" *Bell Telephone Co. v. Pennsylvania Public Utility Commission*, 53 Pa. Commonwealth Ct. 241, 244, 41 A.2d 827, 828-29 (1980), citing *Duquesne Light Co. v. Public Service Commission*, 273 Pa. 287, 117 A. 63 (1922); *Leiper v. Baltimore and Philadelphia R.R. Co.*, 262 Pa. 328, 105 A. 551 (1918); *Byer v. Peoples Natural Gas Co.*, 251 Pa. Superior Ct. 75, 380 A.2d 383 (1977). *Blythe Township Municipal Authority v. Pennsylvania Public Utility Commission*, 199 Pa. Superior Ct. 334, 185 A.2d 628 (1962).
Met Ed Preliminary Objections, 1-4.

Met Ed's references and legal citations are correct. Met Ed and the other EDCs were required by law to submit smart meter plans and to implement them accordingly. Their costs for this deployment are recoverable from the customers. As part of the smart meter plan, Met Ed submitted a proposed tariff with the method for recovery from customers, and this tariff was approved by the Commission. A Commission-approved tariff has the force and effect of law, and the utility must charge its customers using the approved terms. 66 Pa.C.S § 1303. The tariff does not exempt a customer from the smart meter plan nor from paying the charge

associated with it, and therefore, neither the Company nor the Commission may excuse Complainant from participation in the Plan or from the charge used to pay for it.

The SMT-charge is used to fund an initiative required by law, but the charge itself pays for the initiative and is not passed directly to a taxing authority. Therefore, it would not be proper to label it a "tax," even though it is required.

Complainant makes the point that he does not plan to take advantage of the benefits of a smart meter, and therefore, it is unfair to require him to foot the bill for it. He is not alone in this situation, as there are many electric customers state-wide who will not or cannot take advantage of it as intended in conjunction with time of use rates or by closely watching consumption. However, underlying the legislation is the policy that the customer base itself is better served through the upgrade of the existing meters, and all customers are charged for its development and implementation.

The result is that the Complainant has failed to state a claim upon which relief can be granted, and therefore the Preliminary Objections are granted. The Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this case.
2. Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-000935435 (July 18, 1994).
3. When considering the preliminary objection, the Commission must determine "whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. *P. J. S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

4. Legal insufficiency of a pleading is a proper basis for a preliminary objection. 52 Pa. Code § 5.101(a)(4).

5. Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002), 2002 Pa. Commw. LEXIS 580.

6. All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997) 1997 Pa. Commw. LEXIS 148.

7. On October 15, 2008, Governor Edward G. Rendell signed Act 129 of 2008 (the Act or Act 129) into law, which became effective on November 14, 2008. Among other things, the Act specifically directed that electric distribution companies (EDCs) with at least 100,000 customers file, with the Commission for approval, a smart meter technology procurement and installation plan. 66 Pa. C.S. § 2807(f)(1). Each plan was to describe the smart meter technologies the EDC proposes to install, upon request from a customer at the customer's expense, in new construction, and in accordance with a depreciation schedule not to exceed 15 years. 66 Pa. C.S. §§ 2807(f)(1) and (2).

8. On June 24, 2009, the Commission outlined the standards each smart meter plan must meet and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of each smart meter plan. *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (*Implementation Order*).

9. With regard to Act 129, the Commission interpreted the intent of the General Assembly to require all covered EDCs to deploy smart meters system-wide within 15 years, i.e. by April 2025, when it included a requirement for smart meter deployment "in accordance with a depreciation schedule not to exceed 15 years." *Implementation Order*.

10. On August 14, 2009, Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company filed with the Commission a Joint Petition for Approval of Smart Meter Technology Procurement and Installation plan. To recover the costs associated with the Plan, each Company filed a Smart Meter Technologies Charge Rider propose, *inter alia*, to recover their smart meter technology costs through a reconcilable adjustment clause called the Smart Meter Technologies.

11. Met Ed's Plan provided, *inter alia*, that the SMT-Charge (or SMT-C) will be expressed as a monthly customer charge, will be billed to all metered customer accounts eligible for the installation of smart meters, and will be non-bypassable.

12. By Opinion and Order entered June 9, 2010, the Commission approved the Smart Meter Technology Procurement and Installation Plan filed by Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company at Docket No. M-2009-2123950, with modifications.

13. On June 25, 2010, Metropolitan Edison Company filed Supplement No. 21 to Met Ed's Tariff Electric Pa. P.U.C. No. 50 in compliance with the Commission's Order at Docket No. M-2009-2123950 to become effective on August 1, 2010.

14. The SMT-Charge is a customer fee contained in Met Ed's duly filed and Commission-approved tariff. See Met Ed Tariff, Electric Pa. P.U.C. No. 50 (Supp. 21), Rider P, Original Pages 182-185, Effective August 1, 2010.

15. A public utility is required to adhere to its duly filed and Commission-approved tariff. Such tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66 Pa. C.S. § 1303; *DiSanto v. Dauphin County Water Supply Company*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa. Cmwlth. 1981). The Commonwealth Court of Pennsylvania construed Section 1303 of the Code, 66 Pa. C.S. § 1303, and stated that "[t]here can be no lawful rate *except* the last tariff published as provided by law . .

.. Further, it is well established that in the absence of an exception by the Commission, a public utility may not charge any rate for services other than that lawfully tarified" *Bell Telephone Co. v. Pennsylvania Public Utility Commission*, 53 Pa. Commonwealth Ct. 241, 244, 41 A.2d 827, 828-29 (1980), citing *Duquesne Light Co. v. Public Service Commission*, 273 Pa. 287, 117 A. 63 (1922); *Leiper v. Baltimore and Philadelphia R.R. Co.*, 262 Pa. 328, 105 A. 551 (1918); *Byer v. Peoples Natural Gas Co.*, 251 Pa. Superior Ct. 75, 380 A.2d 383 (1977). *Blythe Township Municipal Authority v. Pennsylvania Public Utility Commission*, 199 Pa. Superior Ct. 334, 185 A.2d 628 (1962).

16. Complainant has failed to state a claim upon which relief can be granted.

ORDER

THEREFORE,


IT IS ORDERED:

1. That the Preliminary Objections filed by Metropolitan Edison Company in the case captioned *Richard Negley v. Metropolitan Edison Company* at Docket No. C-2010-2205305 are granted.

2. That the Complaint filed in the case captioned *Richard Negley v. Metropolitan Edison Company* at Docket No. C-2010-2205305 is dismissed.

3. That the Secretary mark this docket closed.

Dated: December 15, 2010


Susan D. Colwell
Administrative Law Judge

RECEIVED

JAN 31 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU