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April 25, 2012

VIA E-FILING

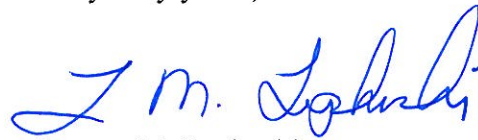
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Re: Connie McRoberts v. Pennsylvania Power Company
Docket No. C-2012-2281317

Dear Secretary Chiavetta:

On behalf of Pennsylvania Power Company, I have enclosed for electronic filing the Motion for Summary Judgment with regard to the above-captioned matter. Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,



Lauren M. Lepkoski

LML/kra
Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CONNIE MCROBERTS :
 :
 v. : Docket No. C-2012-2281317
 :
 PENNSYLVANIA POWER COMPANY :

NOTICE TO PLEAD

TO: Connie McRoberts
369 Enon Road
Enon Valley, Pennsylvania 16120

Pursuant to 52 Pa. Code § 5.62(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion for Summary Judgment of Pennsylvania Power Company within **twenty (20) days** from service of this Notice, the facts set forth by Pennsylvania Power Company in the Motion for Summary Judgment may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Pennsylvania Power Company, and where applicable, the Administrative Law Judge presiding over the case.

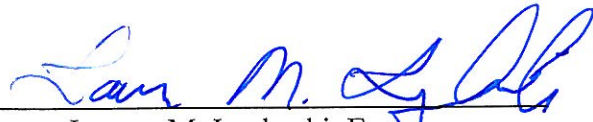
File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Lauren M. Lepkoski, Esq.
Buchanan Ingersoll & Rooney PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101-1503

Dated: April 25, 2012



Lauren M. Lepkoski, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CONNIE MCROBERTS	:
	:
v.	: Docket No. C-2012-2281317
	:
PENNSYLVANIA POWER COMPANY	:
	:

**MOTION FOR SUMMARY JUDGMENT OF
PENNSYLVANIA POWER COMPANY**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Pennsylvania Power Company ("Penn Power" or "Company"), by and through its counsel, Lauren M. Lepkoski, Alan Michael Seltzer, and Buchanan Ingersoll & Rooney P.C., hereby files this Motion for Summary Judgment ("Motion") in the above-referenced matter pursuant to Section 5.102 of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code § 5.102. and states as follows:

I. Introduction

1. In this Motion, the Company seeks a determination that there is no legal basis for the relief sought by Connie McRoberts ("Complainant"), i.e., relief from any obligation to pay the "smart meter charge" on her monthly electric service bill from the Company. As discussed more fully below, the complaint (as defined below) should be dismissed with prejudice.

II. Procedural Background

2. On or about December 17, 2011, the Complainant filed a Formal Complaint with the Commission at the above-referenced docket number alleging that the Commission should prohibit the Company from charging her a "smart meter charge" in connection with her electric service account. Formal Complaint, ¶¶4 and 5.

3. The Formal Complaint was served on the Company by cover letter dated January 3, 2012.

4. On January 24, 2012, the Company timely filed its Answer and New Matter to the Formal Complaint disputing the Complainant's assertion that the Company is not authorized to assess the Smart Meter Technologies Charge ("SMT-C") on her electric service account. Answer and New Matter, ¶¶1 through 24.

5. The Complainant failed to respond to the Company's New Matter contained in the aforementioned responsive pleading.

6. On February 1, 2012, an Interim Order Setting Resolution Conference was issued in this proceeding. The Company has attempted to discuss and resolve the outstanding issues with the Complainant, but to date these efforts have been unsuccessful.

III. Factual Background

7. The Company is an electric distribution company ("EDC") providing electric service to customers within the Commonwealth of Pennsylvania.

8. The Company provides electric service to the Complainant at 369 Enon Road, Enon Valley, Pennsylvania 16120 ("Service Location") at Account No. 110005625501 ("Account"). Answer and New Matter, ¶1.

9. The Complainant has been assessed/charged a SMT-C every month beginning with her billing statement for the period spanning July 15, 2010 through August 13, 2010. Valdes Affidavit, ¶10.

10. The SMT-C is assessed/charged to all applicable customers who reside within the Company's service territory, in accordance with the prevailing rate specified in the Company's Smart Meter Technologies Charge Rider contained in its Commission-approved tariff. Valdes

Affidavit, ¶11; Penn Power Tariff, Electric Pa. P.U.C. No. 35, Smart Meter Technologies Charge Rider, Sixth Revised Sheet No. 61.1 - Twelfth Revised Sheet No. 61.4 ("Smart Meter Technologies Charge Rider").

11. The Complainant does not want to be charged the SMT-C and seeks reimbursement for all such charges she has already paid. Formal Complaint, ¶¶4 and 5.

12. The Service Location does not contain a smart meter because the deployment of smart meters has not yet begun. That effort is expected to begin after the Company files their smart meter deployment plan and Commission approval is received. Valdes Affidavit, ¶¶12 and 13.

IV. Argument

A. Summary Judgment Motion Requirements

13. In accordance with the Commission's regulations at 52 Pa. Code § 5.102 (b), after the pleadings are closed but within such time as to not delay a hearing, a party may move for summary judgment based upon the pleadings, and depositions, answers to interrogatories, admissions and supporting affidavits. 52 Pa. Code § 5.102(b).

14. A presiding officer should grant a motion for summary judgment "...if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving participant is entitled to judgment as a matter of law." 52 Pa. Code § 5.102(b).

15. When deciding whether a motion for summary judgment should be granted the court must examine the record in the light most favorable to the non-moving party and all doubts as to the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *See, Sanchez v. Philadelphia Housing Authority*, 611 A.2d 346 (Pa. Cmwlth.

1992); *See also, South River Power Partners, L.P. v. West Penn Power Company*, 1996 Pa. PUC LEXIS 175.

16. However, the Complainant may not simply rely upon the allegations made in her Formal Complaint, but rather must demonstrate that there are specific facts which present a genuine issue for trial. *Fiffick v. GAF Corporation*, 603 A.2d 208 (Pa. Super. 1991). In this instance and as will be discussed further below, there is no genuine issue of fact for trial. Because there are no facts in question at all in this proceeding, the Company is entitled to relief as a matter of law and this Motion should be granted.

B. The Smart Meter Charge is Mandatory

17. On October 15, 2008, then Governor Edward G. Rendell signed Act 129 of 2008 ("Act 129") into law. Act 129 took effect thirty days thereafter on November 12, 2008. Answer and New Matter, ¶13.

18. Among other things, Act 129 specifically directed EDCs with at least 100,000 customers to file with the 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 cost recovery methods for costs incurred in implementing an approved Plan. 66 Pa. C.S. §§ 2807(f)(7); Answer and New Matter, ¶14.

19. 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").

20. On August 14, 2009, Penn Power, along with the Company's affiliates, 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"). *Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950, ("Smart Meter Proceeding"). The Joint Petition proposed that the costs associated with the Penn Power Plan be recovered through a reconcilable adjustment clause called the Smart Meter Technologies Charge. *Id.* Valdes Affidavit, ¶ 5.

21. The Smart Meter Proceeding was the subject of a public proceeding in which many parties with varying interests fully evaluated and discussed all issues raised by the installation and recovery of costs for smart meters and smart meter technology. Valdes Affidavit, ¶ 7.

22. The Complainant did not participate in this proceeding or otherwise raise any concerns about smart meters or smart meter technology. Answer and New Matter, ¶ 17.

23. By Opinion and Order entered June 9, 2010, the Commission approved Penn Power's Plan, with modifications. *Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Opinion and Order entered June 9, 2010).

24. On June 25, 2010, pursuant to Commission's Order at Docket No. M-2009-2123950, Penn Power filed the Smart Meter Technologies Charge Rider to Penn Power's Tariff, Electric Pa.P.U.C. No. 35, to become effective on August 1, 2010. *Id.*; Valdes Affidavit, ¶ 9.

25. The implementation of the SMT-C and the approval of the costs associated with its implementation are in accordance with Act 129. 66 Pa.C.S. § 2807(f); Answer and New Matter, ¶ 20.

26. A public utility like the Company is required to adhere to its 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; *See, DiSanto v. Dauphin Consolidated Water Supply Company*, 436 A.2d 197 (Pa. Super. 1981); *See also, Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

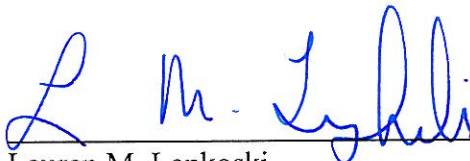
27. Indeed, as confirmed by the Initial Decisions in *Richard Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Final Order entered December 15, 2010), *Dennis Lutherschmidt v. Metropolitan Edison Company*, Docket No. C-2010-2200353 (Final Order entered January 19, 2011), and *Eve McCauley v. Pennsylvania Electric Company*, Docket No. C-2010-2195692 (Final Order entered December 13, 2011), **all** customers are subject to the SMT-C and there is no "opt-out" provision applicable to this charge 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.

IV. Conclusion

26. No factual dispute exists regarding whether Penn Power can lawfully assess/charge the Complainant the SMT-C . And, as explained above, existing law requires the Company to assess, and the Complainant as a customer to pay, the SMT-C. As a result, there is no genuine issue of fact and the Company is entitled to relief in this proceeding as a matter of law.

WHEREFORE, Pennsylvania Power Company respectfully requests that this Motion for Summary Judgment be granted and the Commission grant the Company such other relief as is just and reasonable under the circumstances.

Respectfully submitted,



Dated: April 25, 2012

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Attorneys for
Pennsylvania Power Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CONNIE MCROBERTS

v.

PENNSYLVANIA POWER COMPANY

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Docket No. C-2012-2281317

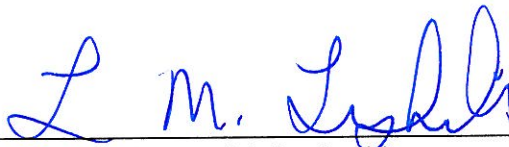
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Motion for Summary Judgment on behalf of Pennsylvania Power Company upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Service by First Class Mail, postage prepaid, addressed as follows:

Connie McRoberts
369 Enon Road
Enon Valley, Pennsylvania 16120

Dated: April 25, 2012



Lauren M. Lepkoski