

December 6, 2016

*Via Electronic Filing*

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

**RE: Michele Hriadil and Francis Hriadil v. Duquesne Light Company**  
Docket No. C-2016-2571726

Dear Secretary Chiavetta:

Enclosed please find a copy of Duquesne Light Company's Corrected Preliminary Objections to the Complaint filed by Michele and Francis Hriadil. Duquesne Light respectfully requests that these Corrected Preliminary Objections be: (1) considered by the Commission in place of the Company's original Preliminary Objections, which were filed on November 4, 2016; and (2) filed effective on November 4, 2016.

Duquesne Light makes this request because Complainant's opposition to Duquesne Light's Preliminary Objections advised the Company that its Preliminary Objections omitted page 5 and instead included two copies of page 4. The Corrected Preliminary Objections correct that error. The only changes that Duquesne Light made to the Corrected Preliminary Objections were to add page 5 (which was inadvertently omitted from the original Preliminary Objections) and change the title of the pleading from Preliminary Objections to Corrected Preliminary Objections.

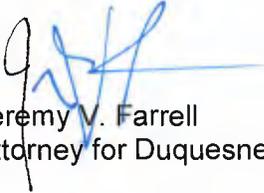
Undersigned counsel has spoken with Complainants about this issue. Complainants have kindly consented to the procedure requested by Duquesne Light in the opening paragraph of this correspondence. The Parties have further agreed as follows:

- Complainants need not re-submit or re-file their Response to Preliminary Objections to Formal Complaint dated November 29, 2016 ("Complainants' Response"), and the Parties agree that Complainants' Response should be considered by the Commission in resolving Duquesne Light's Corrected Preliminary Objections;
- Complainants may file an addendum to Complainants' Response to respond specifically to the arguments asserted on page 5 of Duquesne Light's Corrected Preliminary Objections by Wednesday, December 21, 2016; and
- Duquesne Light has agreed to extend the current deadline for Complainants' response to Duquesne Light's Answer and New Matter to Wednesday, January 11, 2016.

Please feel free to contact me at the telephone number above if you have any questions about Duquesne Light's request or the new deadlines agreed to by the Parties. A copy of this document has been served upon Complainants in accordance with Commission regulations.

Thank you for your attention to this matter.

Sincerely,



Jeremy V. Farrell  
Attorney for Duquesne Light Company

Enclosure

cc: Michele Hriadlil and Francis Hriadil (with enclosure, via email and regular mail)

LIT:614143-1 014657-158498

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHELE HRIADIL and  
FRANCIS HRIADIL,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2016-2571726

**CORRECTED PRELIMINARY  
OBJECTIONS**

Filed on behalf of Respondent  
Duquesne Light Company

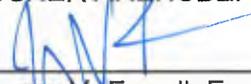
Counsel of Record for this Party:  
Jeremy V. Farrell, Esquire  
PA I.D. No. 316258  
[jfarrell@tuckerlaw.com](mailto:jfarrell@tuckerlaw.com)  
Lauren N. Rulli, Esquire  
PA I.D. No. 313768  
[lrulli@tuckerlaw.com](mailto:lrulli@tuckerlaw.com)  
(412) 566-1212  
1500 One PPG Place  
Pittsburgh, PA 15222

**NOTICE TO PLEAD**

**TO: COMPLAINANTS MICHELE AND FRANCIS HRIADIL:**

**YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE WITHIN CORRECTED PRELIMINARY OBJECTIONS OF RESPONDENT DUQUESNE LIGHT COMPANY BY DECEMBER 21, 2016, OR A JUDGMENT MAY BE ENTERED AGAINST YOU.**

TUCKER ARENSBERG, P.C.

  
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Jeremy V. Farrell, Esquire  
Lauren N. Rulli, Esquire  
Counsel for Duquesne Light Company



done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” Drake v. Pennsylvania Electric Co., Docket No. C-2014-2413771, 2014 WL 2003281 at \*1 (Pa. P.U.C. May 7, 2014) (Salapa, ALJ).

3. Section 703(b) of the Public Utility Code allows the Commission to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessarily in the public interest. 66 Pa. C.S. § 703(b). See also, Campisi v. PECO Energy Co., Docket No. 2014-2434501, 2014 WL 4644282 at \*1 (Pa. P.U.C. Sept. 3, 2014) (Salapa, ALJ) (“The provision at 52 Pa. Code § 5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists.”).

4. Even accepting as true all well-pleaded material facts and reasonable inferences, the Complaint does not raise a violation of the Public Utility Code, Commission Order or regulation, or any Commission-approved tariff. It is, therefore, legally insufficient.

5. Governor Edward Rendell signed Act 129 of 2008 into law on October 15, 2008. The Act took effect on November 14, 2008, and amended Section 2807 of the Public Utility Code. Act 129 directed Duquesne Light and other EDCs to file smart meter procurement and installation plans with the Commission, which Duquesne Light did. On May 6, 2013, at Docket No. M-2009-2123948, the Commission approved Duquesne Light’s smart meter procurement and installation plan. Thus, by planning to install a smart meter at Complainant’s residence, Duquesne Light is *complying* with Pennsylvania law as well as the Commission’s express directives, which renders the Formal Complaint legally insufficient. See Campisi, supra (granting preliminary objections for legal insufficiency where the complainant sought to opt out of PECO’s smart meter program) (citing additional cases).

6. Section 2807 of the Public Utility Code provides:

- (f) Smart meter technology<sup>2</sup> and time of use rates.

\* \* \*

- (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.***

66 Pa. C.S. § 2807(f)(2) (emphasis added).

7. The Commission has ruled that “[***t***]***he use of the word ‘shall’ in the statutes indicates the General Assembly’s direction that all customers will receive a smart meter.”*** Evans v. PECO Energy Co., Docket No. C-2013-2368477, 2013 WL 7019103 at \*3 (Pa. P.U.C. Dec. 19, 2013) (Hoyer, ALJ) (emphasis added). Likewise, the Commission Implementation Order relating to the installation of smart meters provides: “The Commission believes that it was the intent of the General Assembly ***to require all covered EDCs to deploy smart meters system-wide when it included a requirement for smart meter deployment ‘in accordance with a depreciation schedule not to exceed 15 years.’***” Id. (quoting Smart Meter Procurement and Installation Implementation Order, Docket No. M-2009-2092655 (entered June 24, 2009)) (emphasis added).

8. Simply put, “there is no provision in the statute that allows customers to ‘opt out’ of smart meter installation, as Complainants desire.” Evans, 2013 WL 7019103 at \*3. See also, Francis v. PECO Energy Co., Docket No. C-2014-2451351, 2015 WL 5011620 at \*7 (Pa. P.U.C. August 20, 2015) (noting that “there is no provision in the Code, the Commission’s Regulations,

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<sup>2</sup> The Commission defines “smart meter technology” as “technology, including metering technology and network communications technology capable of bidirectional communication, that records electricity usage on at least an hourly basis, including related electric distribution system upgrades to enable the technology.” 66 Pa. C.S. § 2807(g).

or Commission Orders that permits a customer to opt out of having a smart meter installed on his or her premises.”); Povacz v. PECO Energy Co., Docket NO. C-2012-2317176, 2013 WL 392699 (Pa. P.U.C. Jan. 24, 2013).

9. In light of the foregoing precedent, the Commission routinely dismisses as legally insufficient cases like the instant one filed by customers who oppose the installation of smart meters. See, e.g., Campisi, supra (collecting cases); Evans, supra.

10. For example, in Evans, supra, the complainants wanted to opt out of PECO’s smart meter program “because they believe smart meters are not safe and could potentially cause a fire.” Id. at \*1. Relying on the mandatory language of Section 2807, ALJ Hoyer ruled:

Whereas the statute provides that PECO ‘shall’ install these meters and there is no provision in the statute or the Commission’s Implementation Order that allows a customer to opt out of the smart meter installation, coupled with the ability of the Commission to dismiss a complaint without a hearing if it is in the public interest, I find that Complainants in this case are unable to demonstrate that PECO has violated the Public Utility Code, any Commission Order or regulation, or any Commission-approved tariff. The complaint here is legally insufficient and must be dismissed.

Id. at \*3.

11. Similarly in Campisi, supra, ALJ Salapa granted PECO’s preliminary objections and dismissed as legally insufficient a formal complaint filed by a customer who did not want a smart meter installed at her residence. In pertinent part, ALJ Salapa noted: “The Commission has continued to uphold smart meter installation and charges and dismiss complaints opposing smart meter installation and charges on the basis of legal insufficiency.” Id. The ruling further provides:

Because Act 129 of 2008 and the Commission’s orders authorize the Respondent to develop and implement a smart meter procurement and installation plan, and impose a smart meter charge on its customers to pay for that development, implementation, procurement and installation and do not allow a customer to opt out of having a smart meter installed, the Complainant has not

set forth in her complaint any act done by the Respondent that violates a Commission regulation, statute, or order.

*Id.* See also, Drake v. Pennsylvania Electric Co., Docket No. C-2014-2413771, 2014 WL 2003281 at \*1 (Pa. P.U.C. May 7, 2014) (Salapa, ALJ) (dismissing the complaint of a customer who wanted to opt out of the company's smart meter program due to privacy and safety concerns); Negley v. Metropolitan Edison Co., Docket No. C-2010-2205305 (Initial Decision Jan. 3, 2011) (Colwell, ALJ) (ruling that the Commission regulations relating to smart meter plans did not exempt any customers from the plans or empower the Commission to allow customers to opt out of having smart meters installed at their residence); Lutherschmidt v. Metropolitan Edison Co., Docket No. C-2010-2200353 (Initial Decision Jan. 3, 2011) (Weismandel, ALJ) (same); Ratcliffe Sour v. Duquesne Light Co., [Docket No. C-2016-2523603, 2016 WL 1301692 (Pa. P.U.C. March 9, 2016) (Colwell, ALJ) (same)]; Driscoll v. Duquesne Light Co., Docket No. C-2015-2514759 (Final Order entered Feb. 22, 2016) (same).

12. The Commission has made clear that public policy arguments like the ones Complainants raises throughout the Complaint are insufficient to state a cognizable claim: "Moreover, in Povacz we rejected the complainant's citation to public policy arguments which included studies relating to the alleged dangers of smart meter technology. Here, Mr. Starr's Complaint relies primarily on public policy arguments about the claimed health concerns of smart meters. Under the circumstances of this case, a hearing was not required to resolve such issues of policy, see e.g., Dee-Dee Cab, and we find no error in the ALJ's granting of the preliminary objections." Starr v. PECO Energy Co., Docket No. C-2015-2516061, 2016 WL 4699145, at \* 7 (Pa. P.U.C. Sept. 1, 2016).

13. In short, Complainants -- who concede that they have not yet even had a smart meter installed at their residence -- have failed to state a legally sufficient claim. As recently noted by ALJ Salapa in granting preliminary objections in a similar case:

In this case, the complaint does not allege that the Respondent has installed a smart meter at the Complainant's residence. The complaint does not allege that a smart meter has caused the Complainant to experience adverse health effects, let alone specific physical symptoms. Since the complaint in this case does not allege that the Respondent installed a smart meter at the Complainant's residence and does not allege that the Complainant has suffered specific physical symptoms resulting from the installation of a smart meter, Kreider is not applicable to this case.

White v. Pa. Elec. Co., Docket No. 2016-2553449, 2016 WL 4987948, at \*6 (Pa. P.U.C. Aug. 23, 2016) (Salapa, ALJ).

14. Since Duquesne Light's installation of smart meters is consistent with, and not a violation of, the Code and Commission regulations and orders, the Formal Complaint is legally insufficient and must be dismissed in accordance with Commission precedent.

WHEREFORE, Respondent Duquesne Light Company respectfully requests that the Commission sustain its Preliminary Objections and dismiss the Complaint with prejudice and without a hearing.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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Jeremy V. Farrell, Esquire  
PA I.D. No. 316258  
(412) 594-3938  
Lauren N. Rulli  
PA I.D. No. 313768  
(412) 594-5510  
1500 One PPG Place  
Pittsburgh, PA 15222  
Counsel for Respondent, Duquesne Light  
Company

