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May 15, 2017

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**Re: Charles F. Jackson v. Pennsylvania Electric Company**  
**Docket No. C-2017-2600495**

Dear Secretary Chiavetta:

Attached please find the Preliminary Objection of Pennsylvania Electric Company in the above-referenced matter. This document has been served on the Complainant as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Teresa Schmittberger

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Enclosures

c: As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**CHARLES F. JACKSON**

**v.**

**PENNSYLVANIA ELECTRIC COMPANY**

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:  
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**DOCKET NO. C-2017-2600495**

**NOTICE TO PLEAD**

TO: Charles F. Jackson

Pursuant to 52 Pa. Code § 5.101, you are hereby notified that if you do not file a reply to the enclosed Preliminary Objection of Pennsylvania Electric Company within ten (10) days from service of this notice, the facts set forth by Pennsylvania Electric Company in the Preliminary Objection may be deemed to be admitted, thereby requiring no other proof. All pleadings, such as a Reply to Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service to counsel for Pennsylvania Electric Company, and where applicable, the Administrative Law Judge presiding over the case.


File with:

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

With a copy to:

Teresa Schmittberger  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001

Date: May 15, 2017

  
\_\_\_\_\_  
Teresa Schmittberger

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>CHARLES F. JACKSON</b>	:	
	:	
v.	:	<b>DOCKET NO. C-2017-2600495</b>
	:	
<b>PENNSYLVANIA ELECTRIC COMPANY</b>	:	

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF  
CHARLES F. JACKSON**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Pennsylvania Electric Company ("Penelec" or the "Company"), by and through its counsel, Teresa K. Schmittberger, files this Preliminary Objection pursuant to Section 5.101(a) of Pennsylvania Public Utility Commission ("Commission") regulations, 52 Pa. Code § 5.101(a)(1), and in support thereof, avers as follows:

**I. Introduction**

1. In his recently filed Formal Complaint, Charles F. Jackson ("Complainant") who resides at 5112 Dorchester Drive, Erie, Pennsylvania 16509 ("Service Location"), alleges that he does not want to have a smart meter installed at the Service Location. (Compl. ¶ 5.) The Complainant states as requested relief: "(1) I DO NOT WANT A SMART METER INSTALLED. (2) Please have utility stop sending threatening letters about stopping my electric service. I pay my bills. I have been a good customer for over 40 years at this location! I don't want smart meter installation. I have offered to read the meter and send them the readings monthly to save the cost of a meter reader. Nice way to treat a long term customer!" (Complaint ¶ 5.)

2. Penelec is an electric distribution company that is certificated as a public utility in Pennsylvania.

3. The Company is in the process of deploying smart meters in its service territory in accordance with Act 129 of 2008 (“Act 129”).<sup>1</sup>

4. On April 3, 2016, a smart meter pre-installation letter was sent to the Complainant. On April 8, 2016, the Company received a letter from the Complainant refusing to permit a smart meter to be installed at the Service Location. On April 11, 2016, a Company representative attempted to contact the Complainant, but the Company did not have a telephone number listed on the Account. On April 12, 2016, a smart meter refusal tag was placed on the Complainant’s Account. On April 13, 2017, a pre-disconnection warning letter was sent to the Complainant due to his failure to permit smart meter installation. On April 24, 2017, a 10-Day Shut-Off Notice was issued pursuant to 52 Pa. Code § 56.81 and Rules 9 and 20 of the Company’s Commission-approved Tariff.<sup>2</sup> On April 25, 2017, the Company was notified by the Commission that the instant Formal Complaint was filed. To date, a smart meter has not been installed at the Service Location.

5. Penelec is timely filing its Answer and New Matter contemporaneously with this Preliminary Objection, which Answer and New Matter is incorporated into this Preliminary Objection as if fully set forth herein.

### **III. Preliminary Objections**

6. The Commission’s Rules of Practice and Procedure permit parties to file preliminary objections. 52 Pa. Code § 5.101(a) provides the grounds for preliminary objections, which include:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

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<sup>1</sup> 66 Pa.C.S. §§ 2806.1, *et seq.* Among other things, Act 129 specifically directed that electric distribution companies with at least 100,000 customers file a smart meter technology procurement and installation plan with the Commission for approval. 66 Pa.C.S. §§ 2807(f)(1) and (2).

<sup>2</sup> *Pennsylvania Electric Company Retail Electric Service Tariff*, Electric Pa. PUC No. 81 (Supp. 37), pp. 45, 60, issued May 1, 2015, effective May 3, 2015.

- (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.
- (7) Standing of a party to participate in the proceeding.

7. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered August 10, 1994). When the facts set forth in the non-moving party's pleading are accepted as true, preliminary objections should be granted where the moving party would still prevail as a matter of law. *See id.*; *see also Cty. Of Allegheny v. Pa.*, 490 A.2d 402 (Pa. 1985); *Pa. v. The Bell Tele. Co. of Pa.*, 551 A.2d 602 (Pa. Commw. Ct. 1988).

8. The Commission's regulations allow a party to object to pleadings that are legally insufficient. *See* 52 Pa. Code § 5.10l(a)(4). In other words, where the facts in the Formal Complaint are accepted as true, if the Commission may not grant the relief sought by the Complainant, the preliminary objection should be granted and the Formal Complaint should be dismissed.

9. The facts and relief presented within the Complaint are the following: "(1) I DO NOT WANT A SMART METER INSTALLED. (2) Please have utility stop sending threatening letters about stopping my electric service. I pay my bills. I have been a good customer for over 40 years at this location! I don't want smart meter installation. I have offered to read the meter and send them the readings monthly to save the cost of a meter reader. Nice way to treat a long term customer!" (Complaint ¶ 5.)

10. The Complainant's only requested relief is that the Commission order the Company not to install a smart meter at his residence. The Complainant provides no facts to support his position that a smart meter should not be installed.

11. The Penelec Smart Meter Deployment Plan ("SMP") provides for the deployment of approximately 584,000 smart meters beginning in January 2016 through 2022 and applies to all Penelec customers.<sup>3</sup> Neither the law<sup>4</sup> that requires the filing and implementation of the Company's SMP, nor the SMP itself as approved by the Commission, permit the Company to forego smart meter installation at a customer's residence. Along these same lines, the Commission and the Company may not permit a customer to opt out of smart meter installation.

12. Commission precedent clearly establishes that it cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to opt out.<sup>5</sup>

13. Assuming the facts pleaded in the Complaint are true, as the Commission must for the purposes of a preliminary objection, the Complainant has failed to allege that Penelec has committed or omitted an act in violation of a Commission statute, regulation, order, or Penelec's tariff. *Cty. of Allegheny*, supra. (Compl. ¶ 4). Therefore, the Formal Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief. *See* 52 Pa. Code § 5.101(a)(4).

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<sup>3</sup> *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994.

<sup>4</sup> 66 Pa.C.S. §§ 2806.1, *et seq.*

<sup>5</sup> *Negley v. Metro. Edison Co.*, Docket No. C-2010-2205305 (Initial Decision dated January 3, 2011 became final without Commission action); *Lutherschmidt v. Metro. Edison Co.*, Docket No. C-2010-2200353 (Final Order entered March 25, 2011); *Corbett v. Pa. Power Co.*, Docket No. C-2011-2219898 (Final Order entered May 27, 2011); *Jones v. Metro. Edison Co.*, Docket No. C-2011-2224380 (Final Order entered June 28, 2011); *Griffin v. Metro. Edison Co.*, Docket No. C-2012-2300172 (Final Order entered July 31, 2012); *Brake v. West Penn Power Co.*, Docket No. C-2013-2367308 (Final Order entered November 14, 2013); *Drake v. Pa. Electric Co.*, Docket No. C-2014-2413771 (Final Order entered June 12, 2014); *Efaw v West Penn Power Co.*, Docket No. C-2014-2413744 (Final Order entered June 12, 2014); *McElwain v. Pennsylvania Power Co.*, Docket No. C-2014-2451478 (Initial Decision issued December 3, 2015).

14. Because Act 129 and the Commission's orders not only authorize but require the Company to develop and implement a smart meter plan, and do not allow a customer to opt out of having a smart meter installed, the Formal Complaint must be dismissed. As a matter of law, the Company is required to install a smart meter at the Service Location. It cannot be a violation for the Company to follow the law as it has done here.

15. Moreover, the Commission should dismiss the Formal Complaint without hearing as a hearing is not necessary in the public interest. *See* 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d).

16. Recently, the Commission set for hearing two cases in which the Complainant was opposed to the installation of a smart meter at his or her premises.<sup>6</sup> These cases represent a departure from past Commission practice of dismissing such complaints at the preliminary objections stage. In both cases, the Commission stated that it would evaluate specific factual allegations in each smart meter complaint under the circumstances in each case and reach a conclusion based on those particular circumstances.<sup>7</sup> The Company respectfully submits that this Formal Complaint is distinguishable, as the Complainant fails to include any factual allegations within his Formal Complaint that provide the basis for his smart meter refusal.

17. Accordingly, the Commission should grant the Company's Preliminary Objections and this Formal Complaint should be dismissed for legal insufficiency.

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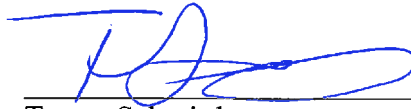
<sup>6</sup> *Susan Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016); *Stephen and Diane Van Schoyck v. PECO Energy Co.*, Docket No. C-2015-2478239 (Opinion and Order entered February 25, 2016).

<sup>7</sup> *See, Kreider* at 21; *Van Schoyck* at 8.

**IV. Conclusion**

WHEREFORE, for the foregoing reasons, Pennsylvania Electric Company respectfully requests that the Commission: (1) grant its Preliminary Objections and strike the Complainant's request for an exemption from the installation of a smart meter; (2) dismiss the Formal Complaint in its entirety with prejudice; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,



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2800 Pottsville Pike  
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Dated: May 15, 2017

Counsel for Pennsylvania Electric Company

**BEFORE THE  
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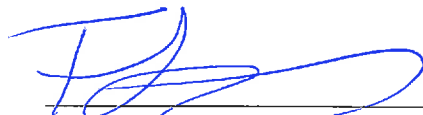
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Preliminary Objections of Pennsylvania Electric Company to the Formal Complaint of Charles F. Jackson upon the individual listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant).

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

Charles F. Jackson  
5112 Dorchester Drive  
Erie, PA 16509

Dated: May 15, 2017



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Teresa Schmittberger  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001  
(610) 921-6783  
[tschmittberger@firstenergycorp.com](mailto:tschmittberger@firstenergycorp.com)