

Teresa Schmittberger, Esq.
(610) 921-6783
(330) 315-9263 (Fax)

610-929-3601

June 26, 2017

VIA ELECTRONIC FILING

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

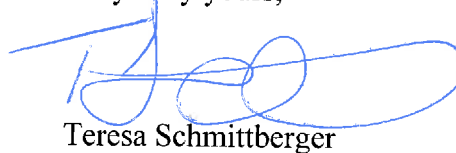
Re: Catherine LaMagna v. Pennsylvania Electric Company
Docket No. C-2017-2608014

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**

CATHERINE LAMAGNA

v.

PENNSYLVANIA ELECTRIC COMPANY

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DOCKET NO. C-2017-2608014

NOTICE TO PLEAD

TO: Catherin Lamagna

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.

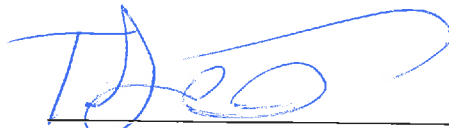
File with:

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: June 26, 2017



Teresa Schmittberger

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CATHERINE LAMAGNA	:	
	:	
v.	:	DOCKET NO. C-2017-2608014
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF
CATHERIN LAMAGNA**

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 her recently filed Formal Complaint, Catherine LaMagna ("Complainant") who resides at 616 Main Street, Thompson, Pennsylvania 18465 ("Service Location"), alleges that she does not want to have a smart meter installed at the Service Location. (Compl. ¶¶ 4, 5.) The Complainant states as requested relief: "The PUC should resolve my case by ordering Penelec/FirstEnergy to: A. Stop threatening to shut off my electricity; and B. stop requesting consent for access to my property for smart meter deployment, until, (1) their product is proven safe and cybersecure by independent third party testing such as Underwriters Laboratories (UL); (2) their product incorporates the superior quality, construction, and safety features already found in analog meters; and (3) their employees, representatives, and experts certify – under sanction of criminal & personal civil liability – their product is (A) not a threat to my health, or the health of anyone accessing my property; (B) my safety or the safety of my property." (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”).¹

4. On December 19, 2016, a smart meter pre-installation letter was sent to the Complainant. On January 16, 2017, the Complainant refused to allow the Company contractor to install the smart meter. On January 17, 2017, a smart meter refusal tag was placed on the Complainant’s Account. On May 8, 2017, a pre-disconnection warning letter was sent to the Complainant due to her failure to permit smart meter installation. On May 18, 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.² On June 6, 2017, termination efforts ceased upon notification of the filing of the instant Formal Complaint. 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.

II. 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 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).

² *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.

- (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.
- (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 § 5.101(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 requested relief presented within the Complaint is the following: "The PUC should resolve my case by ordering Penelec/FirstEnergy to: A. Stop threatening to shut off my electricity; and B. stop requesting consent for access to my property for smart meter deployment, until, (1) their product is proven safe and cybersecure by independent third party testing such as Underwriters Laboratories (UL); (2) their product incorporates the superior quality, construction,

and safety features already found in analog meters; and (3) their employees, representatives, and experts certify – under sanction of criminal & personal civil liability – their product is (A) not a threat to my health, or the health of anyone accessing my property; (B) my safety or the safety of my property.” (Complaint ¶ 5.)

10. The Penelec Smart Meter Deployment Plan (“SMP”) provides for the deployment of approximately 584,000 smart meters beginning in January 2016 through 2019 and applies to all Penelec customers.³ Neither the law⁴ 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.

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

12. Assuming the facts pleaded in the Complaint are true, the Commission may not grant the relief requested by the Complainant. Pursuant to Act 129, the Company is required to deploy smart meters throughout its service territory. The Company has a Commission-approved SMP, which also legally requires the Company to rollout smart meters to all customers. The features of smart meters were reviewed and approved by the Commission. The Complainant has

³ *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.

⁴ 66 Pa.C.S. §§ 2806.1, *et seq.*

⁵ *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).

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).

13. 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 of the Public Utility Code 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 or 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.⁶ These cases represent a departure from past Commission practice of dismissing such complaints at the preliminary objections stage. In both cases, the Commission determined a hearing was appropriate due to specific factual allegations applicable to the complainant and identified in each smart meter complaint.⁷

17. The Company respectfully submits that the matters pled in the subject Formal Complaint do not meet the standards established in the *Kreider* and *Van Schoyck* cases such that this matter can survive dismissal on preliminary objections. The Complainant's alleged reasons

⁶ *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).

⁷ *See, Kreider* at 21; *Van Schoyck* at 8.

for refusing smart meter installation are generalized health and safety concerns due to the presence of a smart meter and are in no way specific to the complainant. The Complainant only generally references a concern related to health effects, and does not identify any specific health issues of hers or any connection between the smart meter and a specific health issue. Similarly, the Complainant references general safety concerns, but does not explain how these concerns relate to her specific property. The Complainant has not established why her specific circumstances warrant extra safety considerations above and beyond those approved within the Company's SMP. The allegations of the Complainant closely model those found in *White* wherein the preliminary objections were granted and the complaint was dismissed.⁸

19. Assuming all the allegations in the Formal Complaint as true, the Commission may not grant the relief sought by the Complainant of avoiding smart meter installation.

20. Accordingly, the Commission should grant the Company's Preliminary Objections and this Formal Complaint should be dismissed.


⁸ *Michael A. White v. Pennsylvania Electric Company*, Docket No. C-2016-2553449 (Final Order entered October 5, 2016)

III. 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,

Dated: June 26, 2017



Teresa Schmittberger
Attorney No. 311082
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6783
tschmittberger@firstenergycorp.com

Counsel for Pennsylvania Electric Company

**BEFORE THE
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CATHERINE LAMAGNA

v.

PENNSYLVANIA ELECTRIC COMPANY

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DOCKET NO. C-2017-2608014

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 Catherine LaMagna 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:

Catherine LaMagna
616 Main Street
Thompson, PA 18465

Dated: June 26, 2017



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