

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Charles F. Jackson	:	
	:	
v.	:	C-2017-2600495
	:	
Pennsylvania Electric Company	:	

**INITIAL DECISION SUSTAINING PRELIMINARY OBJECTIONS  
AND DISMISSING COMPLAINT**

Before  
David A. Salapa  
Administrative Law Judge

**INTRODUCTION**

A customer filed a complaint against his electric utility alleging that the utility is attempting to install a new smart meter at his residence that he does not want. This decision dismisses the complaint because the utility is complying with relevant Commission statutes, regulations and orders by attempting to install the smart meter at the customer’s residence.

**HISTORY OF THE PROCEEDING**

On April 18, 2017, Charles F. Jackson (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Respondent). The complaint alleges that the Respondent is threatening to shut off the Complainant’s service. The complaint further alleges that the Respondent is attempting to install a smart meter at the Complainant’s residence that the Complainant does not want. The complaint requests that the Commission prohibit the Respondent from installing a smart meter at the Complainant’s residence.

On May 15, 2017, the Respondent filed an answer with new matter. The answer admits that the Respondent provides electric service to the Complainant at the address shown on the complaint and that it has attempted to install a smart meter at the Complainant's residence. The answer alleges that the Respondent attempted to contact the Complainant by telephone but did not have a telephone number listed on his account. Subsequently, the Respondent sent letters to the Complainant advising him that his service would be terminated because he refused to permit the Respondent to install a smart meter at his residence.

As a result of the Complainant's refusal, the Respondent is attempting to terminate the Complainant's service. The answer alleges that the Respondent may terminate the Complainant's service for failure to permit access to install the smart meter.

The new matter asserts that the Respondent is required by statute and Commission order to install smart meters throughout its service territory. The new matter states that Act 129 of 2008 directed the Respondent and other electric distribution companies (EDCs) to file smart meter procurement and installation plans with the Commission. The Respondent filed a smart meter procurement and installation plan with the Commission. The new matter states that the Commission has approved the Respondent's smart meter procurement and installation plan. The answer and new matter request that the Commission dismiss the complaint.

On May 17, 2017, the Respondent filed preliminary objections. The preliminary objections contend that the complaint is legally insufficient, pursuant to 52 Pa.Code § 5.101(a)(4). The preliminary objections assert that the complaint is requesting that the Complainant be allowed to opt out of having a smart meter installed at his residence. The preliminary objections allege that the Complainant may not opt out of having a smart meter installed at his residence. The preliminary objections state that the Respondent is required by statute and Commission order to install smart meters throughout its service territory.

The preliminary objections state that Act 129 of 2008 directed the Respondent and other EDCs to file smart meter deployment plans with the Commission. The Respondent

filed a smart meter deployment plan with the Commission. The Commission approved the Respondent's smart meter procurement and installation plan.

The preliminary objections contend that the Respondent is required to install smart meters throughout its service territory, pursuant to the Commission's order. The preliminary objections contend that the complaint fails to state a claim that the Respondent has violated a provision of the Public Utility Code, Commission regulation, Commission order or any provision in its tariff. Therefore, the complaint has failed to state a claim upon which relief can be granted. The preliminary objections request that the Commission dismiss the complaint.

On June 5, 2017, the Complainant filed an untimely response to the Respondent's preliminary objections. The response does not indicate that the Complainant served a copy of the response on the Respondent.

The response lists specific reasons for not wanting a smart meter installed at his residence. The reasons listed in the response are that the smart meter is intrusive, that it gives off radiation and that it is a hackable computer.

By notice dated June 23, 2017, the Commission notified the parties that it had assigned the case to me as motion judge. The preliminary objections are ready for decision. For the reasons set forth below, I will sustain the preliminary objections and dismiss the complaint.

#### FINDINGS OF FACT

1. The Complainant in this case is Charles F. Jackson.
2. The Respondent in this case is Pennsylvania Electric Company.
3. On April 18, 2017, the Complainant filed a complaint with the Commission against the Respondent.

4. The Respondent filed an answer on May 15, 2017.
5. On May 17, 2017, the Respondent filed preliminary objections.
6. On June 5, 2017, the Complainant filed an untimely response to the Respondent's preliminary objections.

### DISCUSSION

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa.Code § 5.101(a) as follows:

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

Here, the Respondent's preliminary objections assert that the complaint is legally insufficient, pursuant to 52 Pa.Code § 5.101(a)(4), in that the complaint fails to allege that the Respondent violated the Public Utility Code, Commission regulations or orders or its tariff provisions. I agree.

Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa.Super. 1991). The Commission follows this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the preliminary objection all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A.2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa.Cmwlt. 1988). The Commission must view the complaint in this case in the light most favorable to the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

The Commission regulation at 52 Pa.Code § 5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa.Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

The regulation at 52 Pa.Code § 5.101(a)(4) permits the filing of a preliminary objection to dismiss a pleading for legal insufficiency. The provision at 52 Pa.Code § 5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n, 563 A.2d 557 (Pa.Cmwlt. 1989).

1989); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n, 563 A.2d 548 (Pa.Cmwlth. 1989); S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n, 540 A.2d 1006 (Pa.Cmwlth. 1988); White Oak Borough Authority v. Pa. Pub. Util. Comm'n, 103 A.2d 502 (Pa.Super. 1954).

Viewing the complaint in this case in the light most favorable to the Complainant, the Respondent is threatening to shut off his service. The Complainant does not want a smart meter installed at his residence but rather wants to opt out of having a smart meter installed at his residence.

Accepting the facts alleged in the complaint as true for purposes of disposing of its preliminary objection, the Respondent contends that the complaint fails to allege that the Respondent has violated the Public Utility Code, Commission regulations or orders. The Respondent concludes that the complaint is legally insufficient. I agree.

In order to be legally sufficient, a complaint must set forth “A clear and concise statement of the act or omission being complained of...” 52 Pa.Code § 5.22(a)(5). Here, the Respondent has not violated any statute, regulation or order which the Commission has jurisdiction to administer by attempting to install a smart meter at the Complainant’s residence. Rather, the Respondent is complying with relevant statutes, regulations and orders.

As set forth in the Respondent’s preliminary objections, Act 129 of 2008 directed the Respondent and other EDCs to file smart meter procurement and installation plans with the Commission. The Respondent filed a smart meter procurement and installation plan with the Commission. The Commission approved the Respondent’s smart meter procurement and installation plan. The Respondent is therefore complying with the Commission’s directives by attempting to install the smart meter at the Complainant’s residence. The Commission has previously addressed complaints opposing smart meter installation and charges.

In her Initial Decision in Negley v. Metropolitan Edison Company, Docket No. C-2010-2205305 (Initial Decision issued January 3, 2011), Administrative Law Judge (ALJ) Susan D. Colwell dismissed a complaint opposing installation of smart meters for legal

insufficiency. ALJ Colwell concluded that Act 129 of 2008 authorized the installation of smart meters by EDCs. ALJ Colwell held that the Commission's orders approving the EDC's smart meter plans did not exempt any customers from the smart meter plans or from paying the charges associated with the smart meter plans. In addition, she held that Act 129 of 2008 did not empower the Commission to allow customers to opt out of having smart meters installed at their residences. By Commission final order entered March 3, 2011, ALJ Colwell's Initial Decision became final without further Commission action.

In Lutherschmidt v. Metropolitan Edison Company, Docket No. C-2010-2200353 (Initial Decision issued January 31, 2011), ALJ Wayne L. Weismandel dismissed a complaint opposing installation of a smart meter for legal insufficiency, adopting ALJ Colwell's reasoning. By Commission final order entered March 25, 2011, ALJ Weismandel's Initial Decision became final without further Commission action. The Commission has continued to uphold installation of smart meters and imposition of smart meter charges on customers' bills by dismissing complaints opposing installation of smart meters and imposition of smart meter charges on the basis of legal insufficiency. Corbett v. Pennsylvania Power Company, Docket No. C-2011-2219898 (Final Order entered May 27, 2011); Jones v. Metropolitan Edison Company, Docket No. C-2011-2224380 (Final Order entered June 28, 2011); Griffin v. Metropolitan Edison Company, Docket No. C-2012-2300172 (Final Order entered July 31, 2012); Brake v. West Penn Power Company, Docket No. C-2013-2367308 (Opinion and Order entered November 14, 2013); Drake v. Pennsylvania Electric Company, Docket No. C-2014-2413771 (Final Order entered June 12, 2014); Efaw v West Penn Power Company, Docket No. C-2014-2413744 (Final Order entered June 12, 2014), Siemion v PECO Energy Company, Docket No. C-2015-2493952 (Final Order entered October 21, 2015), Schoefer v PECO Energy Company, Docket No. C-2015-2497438 (Final Order entered November 6, 2015), White v Pennsylvania Electric Company, Docket No. C-2016-2553449 (Final Order entered October 5, 2016). Russell v. PECO Energy Company, Docket No. C-2016-2564297 (Final Order entered December 28, 2016).

Concerning the Respondent's attempts to terminate the Complainant's service, the Commission has previously ruled that the Respondent may terminate a customer's service where

the customer has failed to provide the Respondent access to its meter and equipment. In Larson v. PECO Energy Company, Docket No. C-2014-2451754 (Opinion and Order entered June 11, 2015) (Larson) the Commission held that the customer's request to avoid termination of his service for his failure to provide the Respondent with access to its meter and equipment was legally insufficient. The Commission ruled in Larson that the Respondent could terminate the customer's service and that the ALJ properly granted the Respondent's preliminary objections and dismissed the customer's complaint as legally insufficient.

The Commission's decisions cited above are controlling on the outcome of this case. Act 129 of 2008 and the Commission's orders authorize the Respondent to develop and implement a smart meter deployment plan and impose a smart meter charge on its customers to pay for that deployment. Neither Act 129 of 2008 nor the Commission's order allow a customer to opt out of having a smart meter installed. If a customer refuses to provide the Respondent with access to its meter and equipment to install a smart meter, the Respondent may terminate the customer's service.

Therefore, the Complainant has not set forth in his complaint any act done by the Respondent that violates a Commission regulation, statute or order. The Respondent is authorized to install smart meters and impose a charge on its customers to develop and implement a smart meter procurement and installation plan that will lead to the installation of smart meters throughout its service territory. The Respondent is authorized to terminate the Complainant's service if the Complainant refuses to provide the Respondent with access to its meter and equipment to install the smart meter.

Since the Complainant's complaint does not set forth any violation of a Commission regulation, statute or order, it is legally insufficient. I will sustain the Respondent's preliminary objection and enter the following order.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. § 701.

2. The Complainant's complaint fails to state a claim upon which relief can be granted. 52 Pa.Code § 5.101(a)(4).

3. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2017-2600495 be dismissed. 52 Pa.Code § 5.21 (d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Pennsylvania Electric Company at Docket No. C-2017-2600495 are sustained.

2. That the complaint of Charles F. Jackson at Docket No. C-2017-2600495 against Pennsylvania Electric is dismissed with prejudice.

3. That the docket at Docket No. C-2017-2600495 is marked closed.

Date: June 26, 2017

\_\_\_\_\_/s/  
David A. Salapa  
Administrative Law Judge