
Lauren M. Lepkoski, Esq.
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May 17, 2018

VIA UNITED PARCEL SERVICE

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

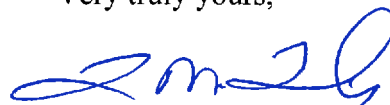
Re: Dorene Dougherty v. Pennsylvania Electric Company
Docket No. C-2018-3001474

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections 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 date stamp the extra copy and return it in the postage-prepaid envelope provided.

Please contact me if you have any questions.

Very truly yours,



Lauren M. Lepkoski

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Enclosures

c: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DORENE DOUGHERTY

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2018-3001474

NOTICE TO PLEAD

TO: Dorene Dougherty

Pursuant to 52 Pa. Code § 5.101 you are hereby notified that if you do not file a reply to the enclosed Preliminary Objections of Pennsylvania Electric Company within **ten (10) days** from service of this notice, the facts set forth by Pennsylvania Electric Company in the Preliminary Objections 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:

Lauren M. Lepkoski
Tori L. Giesler
Teresa Harrold
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Date: May 17, 2018



Lauren M. Lepkoski, Esquire
Tori L. Giesler, Esquire
Teresa Harrold, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DORENE DOUGHERTY

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2018-3001474

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF
DORENE DOUGHERTY**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Pennsylvania Electric Company ("Penelec" or the "Company"), by and through its counsel, Lauren M. Lepkoski, Tori L. Giesler and Teresa Harrold, 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, Dorene Dougherty ("Complainant"), who resides at 15 Margrow Road, Tunkhannock, Pennsylvania 18657 ("Service Location") alleges that she does not want a smart meter installed at the Service Location. (Formal Complaint ¶¶ 4, 5.)

The Complainant states:

1. To not shut off my electric service
2. Realize that I am severely disabled by smart technology as expressed by my physicians, and deliver safe electric service to me by allowing me to keep the functioning analog meter.
3. In order to keep me alive, and minimize exposure, modify plans for meters, antennas Bluetooth, etc be replaced by manual and non-emitting devices including those adjacent to my home.
4. Give me a written guarantee that what they do or do not do in regard to my electric meter will not harm me or cause my death, and will not compromise the integrity of my home.

(Formal Complaint ¶ 5.)

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

3. On February 15, 2015, the Complainant contacted the Company to advise that she did not want a smart meter installed due to health concerns. The smart meter refusal was noted on the Account. On February 10, 2016, the Complainant contacted the Company to change her meter base and panel and stating that she only wants an analog meter installed due to her disability. A work order was initiated for new service at the Service Location which the Complainant stated would serve an outdoor heating system. On February 15, 2016, the Complainant contacted the Company stating that she was refusing installation of a smart meter at the Service Location. The Company representative explained to the Complainant that there is no opt-out option and the Company is required by Act 129² to install a smart meter at the Service Location. On February 17, 2016, the Complainant contacted the Company requesting a letter stating that the Company would not install a smart meter at the Service Location upon completion of the inspection for her new service. The Complainant was advised that the Company was required to install a smart meter pursuant to Act 129. On February 18, 2016, the Company contacted the Complainant and advised that the work was completed and inspected and the Company would only install a smart meter as required by Act 129. The Complainant reiterated her refusal of the smart meter and had her physician send a letter to the Company. The Complainant was provided her dispute rights which include the right to file a complaint with the Commission should she not agree to the smart meter installation. On February 19, 2016, the Company spoke with the Complainant who advised that she would purchase an analog meter if the Company would install it as her physician said the smart

¹ Act 129 of 2008, 66 Pa.C.S. § 2807 *et. seq.* (“Act 129”). 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 Act 129.

meter would kill her. The Complainant was advised that all new service was required to have a smart meter installed per Act 129. The Company representative provided information to the Complainant regarding the smart meter. The Complainant continued to refuse installation requesting the Company provide a letter to her stating that a smart meter would not be installed. The Complainant was advised that the Company would not send a letter stating that a smart meter would not be installed and the Company would not install an analog meter purchased by the Complainant. On February 24, 2016, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services ("BCS") regarding the smart meter installation. On February 29, 2016, the informal complaint was dismissed stating that the BCS does not have the authority to prevent installation of a smart meter at the Service Location. On April 29, 2016, the Complainant contacted the Company inquiring about the smart meter installation. The Complainant was informed that she was placed at the end of the line. The Complainant was not satisfied with the results of her telephone call and dispute rights were provided. On November 3, 2016, the Company noted on the Account that a letter was received from the Complainant's physician regarding the smart meter installation. On February 8, 2017, the Company received a fax from Dr. Gunnar Heuser, who is licensed to practice medicine in California and is not licensed to practice medical in the Commonwealth of Pennsylvania. The Company temporarily delayed installation of the smart meter. In April of 2017, the Company reached the end of its deployment schedule in the Complainant's area and needed to install smart meters on all customer homes and businesses in the Complainant's area in accordance with the deployment plan that was approved by the Commission. On January 31, 2018, the Company sent correspondence to the Customer regarding the installation of a smart meter at the Service Location. On March 2, 2018, the Company sent correspondence to the Complainant in an attempt to schedule installation of a smart

meter at the Service Location. On March 19, 2018, a pre-disconnection warning letter was sent to the Complainant pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81 and Rules 9 and 20 of the Company's Commission-approved Tariff.³ On March 22, 2018, the Company contacted the Complainant stating that the Company is no longer temporarily delaying installation of smart meters. The Complainant was further advised that she has the option of filing a complaint with the Commission if she still intends to refuse installation of the smart meter. No response was received from the Complainant. On April 2, 2018, a service termination notice was issued to the Complainant pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81 and Rules 9 and 20 of the Company's Commission-approved Tariff.⁴ On April 13, 2018, the Complainant contacted the Company stating that she was in the process of filing a Formal Complaint with the Commission. On April 24, 2018, the Complainant filed a Formal Complaint with the Commission. On April 27, 2018, the Company was electronically served with the Formal Complaint and termination efforts ceased.

4. As explained in greater detail below, even if all of the facts in the Formal Complaint are accepted as true, they do not constitute a violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission, such that relief can be granted. *See* 66 Pa.C.S. § 701.

5. As a result, the Company requests that this Preliminary Objection be granted and that the Commission: (1) 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.

³ 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); *Pennsylvania Electric Company Retail Electric Service Tariff*, Electric Pa. PUC No. 81, pp. 45, 60, issued May 1, 2015, effective May 17, 2015.

⁴ *Id.*

II. Background

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

7. On February 15, 2015, the Complainant contacted the Company to advise that she did not want a smart meter installed due to health concerns. The smart meter refusal was noted on the Account. On February 10, 2016, the Complainant contacted the Company to change her meter base and panel and stating that she only wants an analog meter installed due to her disability. A work order was initiated for new service at the Service Location which the Complainant stated would serve an outdoor heating system. On February 15, 2016, the Complainant contacted the Company stating that she was refusing installation of a smart meter at the Service Location. The Company representative explained to the Complainant that there is no opt-out option and the Company is required by Act 129⁵ to install a smart meter at the Service Location. On February 17, 2016, the Complainant contacted the Company requesting a letter stating that the Company would not install a smart meter at the Service Location upon completion of the inspection for her new service. The Complainant was advised that the Company was required to install a smart meter pursuant to Act 129. On February 18, 2016, the Company contacted the Complainant and advised that the work was completed and inspected and the Company would only install a smart meter as required by Act 129. The Complainant reiterated her refusal of the smart meter and had her physician send a letter to the Company. The Complainant was provided her dispute rights which include the right to file a complaint with the Commission should she not agree to the smart meter installation. On February 19, 2016, the Company spoke with the Complainant who advised that she would purchase an analog meter if the Company would install it as her physician said the smart

⁵ Act 129.

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warning letter was sent to the Complainant pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81 and Rules 9 and 20 of the Company's Commission-approved Tariff.⁶ On March 22, 2018, the Company contacted the Complainant stating that the Company is no longer delaying installation of smart meters. The Complainant was further advised that she has the option of filing a complaint with the Commission if she still intends to refuse installation of the smart meter. No response was received from the Complainant. On April 2, 2018, a service termination notice was issued to the Complainant pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81 and Rules 9 and 20 of the Company's Commission-approved Tariff.⁷ On April 13, 2018, the Complainant contacted the Company stating that she was in the process of filing a Formal Complaint with the Commission.

8. On April 24, 2018, the Complainant filed a Formal Complaint with the Commission against Penelec at the above-captioned docket and, on April 27, 2018, the Company was electronically served with the Formal Complaint.

9. 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. Argument

10. 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.

⁶ 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); *Pennsylvania Electric Company Retail Electric Service Tariff*, Electric Pa. PUC No. 81, pp. 45, 60, issued May 1, 2015, effective May 17, 2015.

⁷ *Id.*

- (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.

11. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

12. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveler Services, Inc. v. Pa. Dept. of Environmental 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 has adopted this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

13. In accordance with Section 701 of the Code, 66 Pa.C.S. § 701, a person may file a complaint which sets forth "any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." As explained below, the Company has not violated the Public Utility Code or the orders or regulations of the Commission.⁸ In fact, the Company's action have been in compliance with Act 129 and the June 5 Order.

14. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the

⁸ 66 Pa.C.S. § 701.

Commission must assume, for decisional purposes only, that the factual allegations of the Formal Complaint are true. *Id.*

15. Penelec's Smart Meter Deployment Plan ("SMP") was approved by the Commission at Docket No. M-2013-2341994 by Order entered June 5, 2014. In accordance with the June 5 Order, the Company filed its final SMP on June 16, 2014. The SMP was approved by the Commission on June 20, 2014. The Complainant challenges no aspect of the Company's provision of electric service other than the installation of a smart meter at the Service Location, as required by Act 129 and the Company's SMP.

16. Commission precedent is uniform that it cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to opt out.⁹

17. Assuming the facts pleaded in the Formal Complaint are true, as the Commission must for the purposes of ruling on 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, a finding of which must be made in order to sustain a formal complaint. *See* 66 Pa.C.S. § 701; *County of Allegheny*, *supra*. (Compl. ¶ 4).

18. Because Act 129 and the Commission's orders not only authorize but require the Company to develop and implement a smart meter procurement and installation plan, and do not allow a customer to opt out of having a smart meter installed, this Complaint must be dismissed.

⁹ *Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Final Order entered March 3, 2011); *Lutherschmidt v. Metropolitan Edison Company*, Docket No. C-2010-2200353 (Final Order entered March 25, 2011). 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). *See also*, the Initial Decision of ALJ Susan D. Colwell in *Dennis McElwain v. Pennsylvania Power Company*, Docket No. C-2014-2451478 issued December 16, 2015.

As a matter of law, the Company is required to install a smart meter at the Service Location. As such, the Commission cannot find the Company to be in violation for having attempted to follow the law as it has done here.

19. 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).

20. The Commission may dismiss a complaint without hearing if a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21 (d).

21. Recently, the Commission set for hearing two cases in which the complainant was opposed to the installation of a smart meter at their premises.¹⁰ These cases represent a departure from past Commission practice of dismissing such complaints on Preliminary Objections. The Commission stated that where a complainant has presented specific factual averments regarding the health or other effects that they have experienced after a smart meter was installed at their home, the Commission has overruled Preliminary Objections and allowed a case to proceed. Specifically, in *Kreider*, the complainant alleged specific deleterious health effects after installation of a smart meter affecting her specific medical condition. Further, in *Van Schoyck*, the complainants alleged potential health risks due to constant ringing noise in their home and their inability to sleep since the time the smart meter was installed.¹¹ In contrast, in the instant case, the Complainant has made no specific factual averments regarding any effects experienced which began *after* a smart meter was installed. Furthermore, the Complainant states that she does not want a smart meter installed at the Service Location due to health concerns. The Commission has

¹⁰ *Susan Kreider v. PECO Energy Company*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016); *Stephen and Diane Van Schoyck v. PECO Energy Company*, Docket No. C-2015-2478239 (Opinion and Order entered February 25, 2016).

¹¹ *Id.*

not recognized a customer's lack of consent to install a smart meter as sufficient to overcome Preliminary Objections.¹²

22. In *Charles F. Jackson v. Pennsylvania Electric Company*, Docket No. C-2017-2600495 (Order Entered August 31, 2017), the Commission approved the Initial Decision of ALJ David A. Salapa, dated June 26, 2017, which granted the Preliminary Objections of Pennsylvania Electric Company and dismissed the formal complaint of Mr. Jackson (who was disputing the installation of a smart meter) finding that formal complaint was legally insufficient, pursuant to 52 Pa. Code § 5.101(a)(4), in that the complaint fails to allege that the utility violated the Public Utility Code, Commission regulations or orders or its tariff provisions. The respondent was found to be 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. ALJ Salapa further found that the respondent was authorized to terminate the Mr. Jackson's service if he refused to provide the respondent with access to its meter and equipment to install the smart meter.

This Commission decision was entered after *Kreider*. The instant formal complaint is similar to the alleged averments in the formal complaint at Docket No. C-2017-2600495, in that the Complainant has only alleged that she does not want a smart meter at the Service Location. The Complainant has not set forth in her complaint that any act done by the respondent violates a Commission regulation, statute or order.

23. Therefore, the Company respectfully submits that the matters plead in the subject Formal Complaint do not meet the standards set in the *Kreider* and *Van Schoyck* cases such that this matter can survive dismissal on preliminary objections.

¹² *Richard and Marie Fugo in care of Fugo Eye Institute v. PECO Energy Company*, Docket Nos. C-2015-2519763 and C-2015-2519770 (Order entered April 6, 2016).

24. Further, the Commission has upheld decisions granting preliminary objections and dismissing complaints for legal insufficiency opposing smart meter installation. In *Richard Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Initial Decision issued January 3, 2011), 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. By Commission final order entered March 3, 2011, ALJ Colwell's Initial Decision became final without further Commission action.

25. Rule 9 of the Company's Commission- approved Tariff¹³, allows the Company to have access to its customers' premises for any and all purposes relating to the supply of electric energy which includes the exchange of meters. The Complainants refusal to allow the Company access to its own meter is a violation of Rules 9 and 20 of the Company's Commission-approved Tariff¹⁴ and is grounds for termination of service. The Commission has also upheld decisions finding that a utility has the ability to terminate the service of a customer who refuses installation of a smart meter.¹⁵

26. Because Act 129 of 2008 and the Commission's orders authorize the Company to develop and implement a smart meter procurement and installation plan, the Complainant has not set forth in her complaint any act done by the Company that violates a Commission regulation, statute or order.

¹³ *Pennsylvania Electric Company Retail Electric Service Tariff*, Electric Pa. PUC No. 81, p. 45 issued May 1, 2015, effective May 17, 2015.

¹⁴ *Id.*

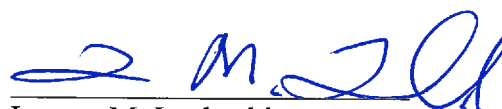
¹⁵ *Art Larson v. PECO Energy Company*; Docket No. C-2014-2451754 (Opinion and Order entered June 11, 2015). See also, *Catherine J. Frompovitch v. PECO Energy Company*; Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018).

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,

Dated: May 17, 2018



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Counsel for Pennsylvania Electric Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DORENE DOUGHERTY

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2018-3001474

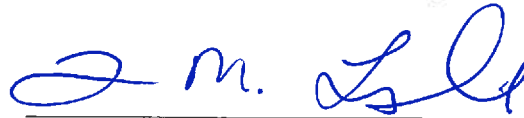
CERTIFICATE OF SERVICE

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 Dorene Dougherty upon the individuals 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:

Dorene Dougherty
15 Margrow Road
Tunkhannock, PA 18657

Dated: May 17, 2018



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