

June 27, 2018

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Keystone Bldg. 2nd Floor W  
400 N. Street  
Harrisburg, PA 17120

**RE: Joseph Beerens and Suzanne Meyer v. Duquesne Light Company**  
Docket No. C-2018-3002554

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objections to the Complaint filed by Joseph Beerens and Suzanne Meyer. A copy of this document has been served upon Complainants in accordance with Commission regulations.

Sincerely,



Paul Shane Miller  
Attorney for Duquesne Light Company

Jeremy V. Farrell  
Attorney for Duquesne Light Company

Enclosure

cc: Suzanne Meyer and Joseph Beerens (w/ enclosure)

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## II. Relevant Factual Background

5. Complainants are Duquesne Light's customers at the property located at 1137 Cornell Street, Pittsburgh, PA 15212 (the "Property") is active in Suzanne Meyer's name. Complaint at ¶1.

6. Duquesne Light plans to install a smart meter at the Property. Complaint at ¶5 and attached letter.

7. Complainants have refused Duquesne Light's attempt to install a smart meter and ask that the Commission permit them to opt out of receiving a smart meter. Complaint at ¶5.

8. Duquesne Light has not installed a smart meter at the Property. Complaint at ¶5.

## III. Argument

### A. **To the extent that Complainants seek to "opt out" of receiving a smart meter, that portion of their claim must be dismissed because it is legally insufficient.**

9. Preliminary objections may be filed for "legal insufficiency of a pleading." 52 Pa. Code § 5.101(a)(4). "In order to be legally sufficient, a complaint must set forth an act or thing 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. Pa. Elec. Co., Docket No. C-2014-2413771, 2014 WL 2003281, at \*1 (Pa. P.U.C. May 7, 2014) (Salapa, ALJ).

10. Section 703(b) of the Public Utility Code ("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.").

11. Act 129 of 2008 ("Act 129") requires electric distribution companies with more than 100,000 customers, including Duquesne Light, to deploy smart meters throughout their service territories. 66 Pa. C.S. § 2807.

12. Act 129 also requires electric distribution companies with more than 100,000 customers, including Duquesne Light, to file a smart meter technology procurement and installation plan with the Commission for approval. 66 Pa. C.S. § 2807(f)(1).

13. Duquesne Light filed a smart meter technology procurement and installation plan, which the Commission approved on May 6, 2013. See Docket No. M-2009-2123948.

14. The Commission approved, in relevant part, Duquesne Light's amended smart meter technology procurement and installation plan ("Smart Meter Plan") on April 7, 2017. See Docket No. P-2015-2497267, Opinion and Order at 9, 51.

15. The Smart Meter Plan requires Duquesne Light to finish installing residential smart meters, including at the Property, by the end of 2018.

16. By attempting to install a smart meter at the Property in accordance with the Smart Meter Plan, Duquesne Light is, therefore, complying with the law.

17. Duquesne Light's installation of smart meters is consistent with, and not a violation of, the Code and Commission regulations and orders.

18. Act 129 does not permit a customer to "opt out" of receiving a smart meter. To the extent that Complainants request Duquesne Light to provide them with an opt out of its smart meter program, Complainants ask Duquesne Light to break the law.

19. 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).

20. 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).

21. 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, or Commission Orders that permits a customer to opt out of having a smart meter installed on his or her premises.”).

22. Complainants seek to “opt out” of receiving a smart meter, Complaint at ¶5, but their request is legally insufficient and should be dismissed. 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); Jackson v. PECO, Docket No. C-2017-2600495 (June 26, 2017) (Salapa, ALJ) (sustaining preliminary objections and dismissing a formal complaint that opposed the installation of a smart meter).

23. Finally, it bears noting that the Commonwealth Court’s decision in Romeo v. Pa. Public Util. Comm’n, 154 A.3d 422 (Pa. Commw. Ct. 2017) does not undermine Duquesne Light’s Preliminary Objection, which seeks dismissal of the portion of the Formal Complaint in which Complainants request to opt out of Duquesne Light’s smart meter program. Romeo did not create an opt-out provision in Act 129. Installation of smart meters is still mandatory as a condition of receiving electric service from Duquesne Light, so the portion of the Formal Complaint requesting an opt-out is legally insufficient.

**B. Complainants' claim that Duquesne Light has violated the Fourth Amendment to the United States Constitution must be dismissed because the Commission lacks jurisdiction to resolve this claim.**

24. A party may file preliminary objections on the grounds that the Commission lacks jurisdiction. 52 Pa. Code §5.101(a).

25. The Commission is a creature of statute and may exercise only those powers that are expressly conferred upon it by the legislature. Feingold v. Bell of Pennsylvania, 383 A.2d 791, 794 (Pa. 1978).

26. The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. Pub. Util. Comm'n., 43 A.2d 348, 348 (Pa. Super. 1945).

27. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. Hughes v. Pennsylvania State Police, 619 A.2d 390, 393 (Pa. Cmwlth. 1992).

28. Section 701 of the Code, 66 Pa. C.S. § 701, authorizes the Commission to hear complaints regarding the Code, Commission Regulations, or a Commission order. Haleema B. Alkhatib v. PECO Energy Co., C-2011-2242125, 2012 WL 641672, at \*5 (Pa. P.U.C. Jan. 12, 2012).

29. The Commission does not have jurisdiction over claims arising under the United States Constitution. See Alice Ann Belmonte-Gates v. PECO Energy Co., F-2012-2332583, 2013 WL 596066, at \*7 (Jan. 24, 2013) (Commission does not have jurisdiction over matters involving federal civil rights) (Cheskis, ALJ); James Coppedge v. PECO Energy Co., F-2009-2135893, 2010 WL 3183815, at \*5-6 (July 29, 2010) (Commission does not have jurisdiction over issues arising under the United States Constitution).

30. Here, Complainants claim that Duquesne Light has violated their rights under the Fourth Amendment to the United States Constitution by attempting to install a smart meter at the Property.

31. The Commission does not have jurisdiction to rule on this claim.

32. Accordingly, this portion of the Formal Complaint must be dismissed.

WHEREFORE, Duquesne Light Company respectfully requests that the Commission sustain its Partial Preliminary Objections, and dismiss the portions of the Formal Complaint that:  
a) seek an opt out of Duquesne Light Company's smart meter program; and b) allege that Duquesne Light Company has violated the Fourth Amendment to the United States Constitution.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOSEPH BEERENS &  
SUZANNE MEYER,

Complainants,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

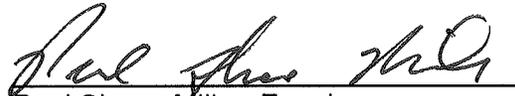
No: C-2018-3002554

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

Joseph Beerens and Suzanne Meyer  
1137 Cornell Street  
Pittsburgh, PA 15212

Dated this 27th day of June, 2018



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