

July 2, 2018

Via Electronic Filing

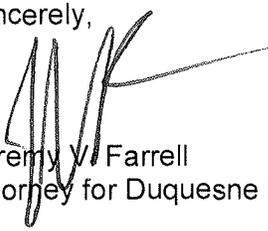
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Bldg. 2nd Floor W
400 N. Street
Harrisburg, PA 17120

RE: Kathrine E. Hubel v. Duquesne Light Company
Docket No. C-2018-3002620

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objections filed by Kathrine Hubel. A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Jeremy V. Farrell
Attorney for Duquesne Light Company

Paul Shane Miller
Attorney for Duquesne Light Company

Enclosure

cc: Kathrine Hubel (w/ enclosure)

LIT:642790-1 014657-158498

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KATHRINE E. HUBEL

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2018-3002620

PRELIMINARY OBJECTIONS

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:
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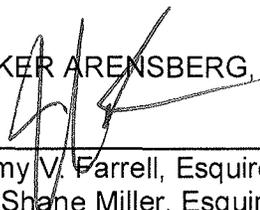
(412) 566-1212
1500 One PPG Place
Pittsburgh, PA 15222

NOTICE TO PLEAD

TO COMPLAINANT KATHRINE E. HUBEL:

YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO THESE PRELIMINARY OBJECTIONS WITHIN TEN DAYS OF SERVICE OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

TUCKER ARENSBERG, P.C.



Jeremy V. Farrell, Esquire
Paul Shane Miller, Esquire
Counsel for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KATHRINE E. HUBEL	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2018-3002620
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

PRELIMINARY OBJECTIONS

Pursuant to 52 Pa. Code. § 5.101, Duquesne Light files its Preliminary Objections to the Formal Complaint filed by Complainant Kathrine Hubel:

I. Introduction

1. Complainant filed a Formal Complaint against Duquesne Light to prevent it from installing a “smart meter” at her residence. Duquesne Light files these Preliminary Objections seeking dismissal of the portion of the Formal Complaint in which Complainant seeks to “opt out” of Duquesne Light’s smart meter program. Since Pennsylvania law requires that Duquesne Light install a smart meter at the service address, Complainant’s request to opt out is legally insufficient and should be dismissed.

II. Relevant Allegations

2. Complainant is a Duquesne Light customer at the service address located at 611 Edgewood Road, Pittsburgh, Pennsylvania 15221 (the “Property”). Complaint at ¶ 1.

3. Duquesne Light plans to install a smart meter at the Property. Complaint at ¶ 4

4. Complainant has refused Duquesne Light’s attempt to install a smart meter and asks that the Commission permit her to opt out of receiving a smart meter. Complaint at ¶ 5.

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

III. Argument

6. Complainant requests to opt out of Duquesne Light's smart meter program, which is relief that the law simply does not afford her. Therefore, Duquesne Light respectfully requests that the Commission dismiss as legally insufficient the portion of the Formal Complaint that seeks an opt out.

7. 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).

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

9. 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).

10. 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.

11. 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.

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

13. 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.

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

15. Act 129 does not permit a customer to "opt out" of receiving a smart meter. To the extent that Complainant requests Duquesne Light to provide them with an opt out of its smart meter program, Complainant thus asks Duquesne Light to break the law.

16. 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).

17. 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).

18. Simply put, "there is no provision in the statute that allows customers to 'opt out' of smart meter installation, as Complainant desires." 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.").

19. Complainant seeks to "opt out" of receiving a smart meter, Complaint at ¶ 5, but that 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).

20. Finally, 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 only of the portion of the Formal Complaint in which Complainant requests 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.

WHEREFORE, Respondent Duquesne Light Company respectfully requests that the Commission sustain its Preliminary Objections and dismiss the portion of the Formal Complaint that seeks an opt out of Duquesne Light Company's smart meter program.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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Complainant,

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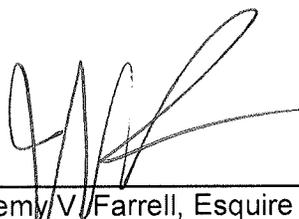
No: C-2018-3002620

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):

Kathrine Hubel
611 Edgewood Road
Pittsburgh, PA 15221

Dated this 2nd day of July, 2018



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