

August 7, 2018

Via Electronic Filing

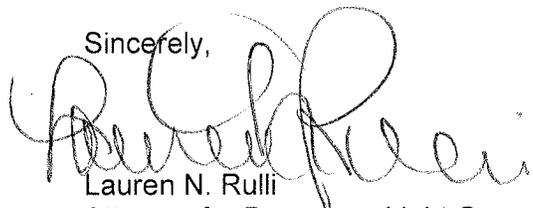
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Bldg. 2nd Floor W
400 N. Street
Harrisburg, PA 17120

RE: Jeffrey W. Arndt v. Duquesne Light Company
Docket No. C-2018-3003482

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objections filed in response to the Formal Complaint filed by Jeffrey Arndt. A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Lauren N. Rulli
Attorney for Duquesne Light Company

Paul Shane Miller
Attorney for Duquesne Light Company

Enclosure

cc: Jeffrey W. Arndt (w/ enclosure)

TADMS:1004066-1 014657-158498

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-------------------------|---|--------------------|
| JEFFREY W. ARNDT, | : | |
| | : | |
| Complainant, | : | |
| | : | |
| vs. | : | No: C-2018-3003482 |
| | : | |
| 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 Jeffrey Arndt:

I. Introduction

1. Complainant filed a Formal Complaint against Duquesne Light to prevent it from installing a “smart meter” at his 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 4141 Fundistown Road, Trafford, Pennsylvania 15085 (the “Property”). Complaint at ¶ 1.

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

4. Complainant refused Duquesne Light’s attempt to install a smart meter and asks that the Commission permit him 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

A. To the extent that Complainant seeks to “opt out” of receiving a smart meter, that portion of her claim must be dismissed because it is legally insufficient.

6. 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).

7. 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.”).

8. 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.

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 is requesting Duquesne Light to provide him with an opt out of its smart meter program, Complainant 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 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.”).

19. Complainant seeks to “opt out” of receiving a smart meter, Complaint at ¶ 5, but his 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, 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 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.

B. Complainant’s 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.

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

22. 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).

23. 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).

24. 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).

25. 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).

26. The Commission does not have jurisdiction over claims arising under the United States Constitution or other federal or state laws outside of the Code, Commission Regulations, or a Commission Order. 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).

27. Here, Complainant claims that Duquesne Light has violated his rights under the Fourth Amendment to the United States Constitution, the federal "Wiretapping" law, and "other [unidentified] State and Federal Laws" by attempting to install a smart meter at the Property. Complaint at ¶ 4.

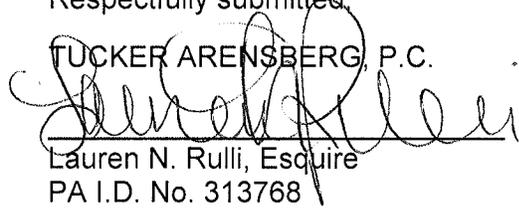
28. The Commission does not have jurisdiction to rule on these claims.

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

WHEREFORE, Duquesne Light Company respectfully requests that the Commission sustain its Preliminary Objections, and dismiss the portions of the Formal Complaint that: a) seeks to 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, the federal "Wiretapping" law, and any other federal or state laws.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

A handwritten signature in black ink, appearing to read 'Lauren N. Rulli', written over a horizontal line.

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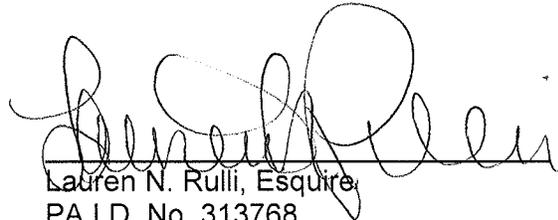
No: C-2018-3003482

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):

Jeffrey W. Arndt
4141 Fundistown Road
Trafford, PA 15085

Dated this 7th day of August, 2018



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