

September 4, 2018

Via Electronic Filing

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

RE: Geoff Day v. Duquesne Light Company
Docket No. C-2018-3003960

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objections to the Formal Complaint filed by Geoff Day.

A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Paul Shane Miller
Attorney for Duquesne Light Company

Jeremy V Farrell
Attorney for Duquesne Light Company

Enclosure

c: Geoff Day (with enclosure)

TADMS:1004439-1 014657-158498

3. Duquesne Light has installed a smart meter on one unit ("Unit 1"), and has attempted to install one on the other unit, but has been prevented from doing so by Complainant ("Unit 2"). Complaint at ¶ 4.

4. Complainant filed a Formal Complaint against Duquesne Light to prevent it from installing a smart meter at Unit 2 and to have the already installed smart meter at Unit 1 removed. Complaint at ¶ 5.

III. Argument

A. Complainant's request to "opt out" of receiving a smart meter must be dismissed because it is legally insufficient.

5. 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).

6. 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.").

7. 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.

8. 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).

9. 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.

10. 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.

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

12. 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.

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

14. 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, or to replace an already-installed smart meter with a non-smart meter, Complainant asks Duquesne Light to break the law.

15. 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).

16. 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).

17. 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.”).

18. Complainant seeks to “opt out” of receiving a smart meter, Complaint at ¶ 5, but this 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).

19. Despite the authority cited above, the Commission and Commonwealth Court have allowed some challenges to smart meter installation to proceed. However, in the complaints filed in those actions, there were allegations of health and safety concerns of a household member. See Kreider v. PECO Energy Company, Docket No. P-2015-2495064 (Order on Material Question entered September 3, 2015; Order on Reconsideration entered January 28, 2016) (Kreider); Paul v. PECO Energy Company, Docket No. C-2015-2475355 (Order entered March 17, 2016); Frompovich v PECO Energy Company, Docket No. C-2015-2474602 (Order entered April 21, 2016); Romeo v. Pa. Pub. Util. Comm'n, 154 A.3d 422 (Pa. Commw. Ct. 2017).

20. This Formal Complaint is distinguishable from those cases, because here **Complainant does not claim that smart meters are unhealthy or unsafe** for him or those in his household. In fact, the words “health” or “safety” are not mentioned at all. He simply wants to

refuse the smart meter installation at Unit 2, and he would like the Commission or order Duquesne Light to remove the one at Unit 1 – i.e. he wants to opt out of Duquesne Light's smart meter installation plan.

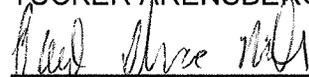
21. Given the Commission's interpretation of Act 129 as not providing an opt out and its authority to construe legislation pertaining to its area of expertise, there is no relief available for the Complainant that could result from holding an administrative hearing in this matter. Carl Evans, C-2017-2628542, 2017 WL 6766256, at *5 (Dec. 12, 2017) (post-Romeo decision granting preliminary objections because there were no allegations of a health or safety concern); Starr v. PECO Energy Company, C-2017-2615628, 2017 WL 4864901, at *6 (October 4, 2017) (same).

22. There are no other allegations that Duquesne Light has violated any provision of the Code, associated regulations, or a standing Commission order.

23. Therefore, these Preliminary Objections should be granted, and this Formal Complaint should be dismissed as legally insufficient.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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