

Christopher and Jo-Anna Tellefsen
3324 River Road
Mount Bethel, PA 18343

March 27, 2019

VIA FIRST CLASS MAIL

Administrative Law Judge Jeffrey A. Watson
Piatt Place
Suite 220
301 5th Avenue
Pittsburg, Pennsylvania 15222

RE: Christopher and Jo-Anna Tellefsen v. Metropolitan Edison Company
Docket No. C-2018-3005250

Dear Judge Watson:

This packet includes the Legal Brief of Christopher and Jo-Anna Tellefsen regarding the above referenced matter. Please contact us if you have any questions. Thank you for your time and consideration.

Sincerely,

Christopher Tellefsen
Jo-Anna Tellefsen

Enclosures

c: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**CHRISTOPHER AND JO-ANNA
TELLEFSEN**

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2018-3005250

LEGAL BRIEF OF CHRISTOPHER AND JO-ANNA TELLEFSEN

TO THE HONORABLE JUDGE JEFFREY A. WATSON:

AND NOW, Christopher and Jo-Anna Tellefsen, files this legal brief, as follows:

QUESTION PRESENTED

Are mandatory smart meters declared by federal and state laws?

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Summary of Argument

This case is about whether the current U.S federal and Pennsylvania state laws declare that smart meters are compulsory. Mr. and Mrs. Tellefsen, and their two small children, of Mount Bethel, Pennsylvania, refuse to have a smart meter installed on the grounds that none of the federal or state laws declare that smart meters are mandatory. Metropolitan Edison Company states that PA Act 129 does indeed state that smart meters **MUST** be installed. Counsel for Metropolitan Edison Company also stated that state law overrules federal law regarding smart meters. Mr. and Mrs. Tellefsen were told that if they refuse a smart meter installation, their account with Metropolitan Edison Company will be terminated, leaving them without access to electricity. The Tellefsen family sees this action by Metropolitan Edison Company as a form of coercion since there are no alternative options. Metropolitan Edison Company is the sole distributor of electricity for Mount Bethel, Pa. The Tellefsen family is asking that the court allow them to keep their analog meter on the grounds that the law does not state in any federal or state laws that smart meters must be compulsory.

ARGUMENT

I. WHAT DOES THE FEDERAL LAWS STATE REGARDING SMART METER INSTALLATION?

A. Energy Policy Act of 2005

According to the Energy Policy Act of 2005, Title XII, Subtitle E, Section 1252, (a), (14), (c), smart meters may be installed upon customer request by utility company. It does not state that the smart meter installation is/will be mandatory. Also, it does not state that states may choose to make it mandatory.

B. Energy Independence and Security Act (EISA) of 2007

The Energy Independence and Security Act (EISA) of 2007, (Title XIII – Smart Grid and Sec. 1304(a)) states that the Department of Energy gives the Federal Energy Regulatory Commission (FERC) and other agencies and utilities authority to develop and carry out smart grid programs. This legislation does not state that the deployment of smart meters is mandatory nor can states make them mandatory.

C. Executive Order 13423 (2007)

Executive Order 13423 (2007): *Strengthening Federal Environmental, Energy, and Transportation Management*, does not include a policy on the mandatory adoption of smart meters or that states can make them mandatory.

D. 128 FERC 61,060

128 FERC 61,060, 18 CFR Chapter I, [Docket No. PL 09-4-000] (July 16, 2009), page 18, (23). Energy Independence and Security Act grants the Federal Energy Regulatory Commission the authority to adopt smart grid standards that affect all facilities.

“23. EISA, however, does not make any standards mandatory and does not give the commission authority to make or enforce any such standards. Under current law, the Commission’s authority, if any, to make smart grid standards mandatory must derive from the FPA.” [FPA = Federal Power Act]

128 FERC 61,060 states that the commission DOES NOT have the authority to make smart meter installation mandatory.

E. Executive Order 13514 (2009)

Executive Order 13514 (2009): *Federal Leadership in Environmental, Energy, and Economic Performance*, does not include a policy on the mandatory adoption of smart meters nor does it state that states can make smart meters mandatory.

F. Department of Energy: Communications Requirements of Smart Grid Technologies

The Department of Energy: Communications Requirements of Smart Grid Technologies (October 5, 2010, page 12) stated that Congress gives the Department of Energy primary responsibility for coordinating and funding smart grid efforts. It does not include a policy on the mandatory adoption of smart meters nor does it grant states the right to make smart meters compulsory.

G. Executive Order 13693 (2015)

Executive Order 13693 (2015): *Planning for Federal Sustainability in the Next Decade*, still does not include a policy on the mandatory adoption of smart meters or that states can make smart meters compulsory.

H. Executive Order 13834 (2018)

Executive Order 13834 (2018): *Efficient Federal Operations*, does not include a policy on the mandatory adoption of smart meters or that states have the right to declare smart meters mandatory.

II. WHAT DOES THE PENNSYLVANIA STATE LAW STATE REGARDING SMART METER INSTALLATION?

A. PA Act 129 of 2008

1. What does PA Act 129 actually state?

PA Act 129 of 2008, (formerly HB 2200), gives details on the steps for planning, implementing and financing smart grid technology for Pennsylvania. It includes the deployment of smart meters using the guidelines listed below. However, the law NEVER states that the installation of smart meters is mandatory.

19. *THE PLAN SHALL DESCRIBE THE SMART*
20. *METER TECHNOLOGIES THE ELECTRIC DISTRIBUTION COMPANY PROPOSES*
21. *TO INSTALL IN ACCORDANCE WITH PARAGRAPH (2).*
22. *(2) ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART*
23. *METER TECHNOLOGY AS FOLLOWS:*
24. *(I) UPON REQUEST FROM A CUSTOMER THAT AGREES TO PAY*
25. *THE COST OF THE SMART METER AT THE TIME OF THE REQUEST.*
26. *(II) IN NEW BUILDING CONSTRUCTION.*
27. *(III) IN ACCORDANCE WITH A DEPRECIATION SCHEDULE NOT*
28. *TO EXCEED 15 YEARS.*

2. How do PA Act 129 guidelines for smart meter installation affect the Tellefsen home?

Mr. and Mrs. Tellefsen have not requested a smart meter, nor is their home a new construction. Guideline (III) presented on line 27, page 70 of Act 129 is vague in that it is not clear whether the depreciation is in reference to the original analog meter or future smart meters. According to a testimony at a Congressional hearing regarding “cybersecurity for power systems” on October 21, 2015, Mr. Bennett Gaines testified on behalf of FirstEnergy Service Company that smart meters have a life span of 5-7 years while electromechanical (analog) meters have a span of 30 years (Smart Grid Awareness

Blog, Oct. 29, 2015). Mr. Gaines is a Senior Vice President and the Corporate Services and Chief Information Officer for FirstEnergy Service Company.

If Mr. Gaines is taken at his word, it is assumed that guideline (III) is in reference to the depreciation of future smart meters. Why would one change a 15-year old analog meter when it is only halfway through its lifespan? The Tellefsen home was built in 2004. The meter is almost 15 years old and is working brilliantly.

Ultimately, PA Act 129 does not state that the smart meter deployment is mandatory. Act 129 does not even hint vaguely of such a mandate. The fact that PAPUC and Metropolitan Edison Company openly declare that Act 129 states installation of smart meters are mandatory is a false assumption. They are mandating an action (the installation of a smart meter), that is not found written under any policy. How can they force customers to do something when it is not written under any laws? Who decided that Pennsylvania citizens do not get a choice? Why do the other states allow refusal or opt-out options, but Pennsylvania does not? Last, but not least, why are the answers to these questions not available to the public? I should have the same rights as the people who live a few feet from me across the Delaware River in New Jersey.

III. FEDERAL LAW VERSUS STATE LAW: WHO RULES?

A. The Supremacy Clause of United States Constitution

During a telephone pre-hearing, Tori L. Giesler, Esq., counsel for Metropolitan Edison Company, stated that Federal laws pertaining to smart meter deployment hold no precedent in Pennsylvania and that PA Act 129 is the only focus with regards to this case. In other words, efforts to use federal laws as evidence against

mandatory smart meter installation in Pennsylvania is pointless. Mr. and Mrs. Tellefsen disagree with this statement. The Supremacy Clause of the United States declares,

“the constitution , laws and treaties of the federal government to be the supreme law of the land to which judges in every state are bound regardless of state law to contrary.” (Article VI, Clause 2)

Therefore, it DOES matter what the federal law states regarding Smart Grid Technology because PA Act 129 would not exist if not for a federal mandate calling for the states to plan and carry out the deployment of this technology. The foundational policies do not disappear once the states form their laws. The foundational laws are not ignored just because they do not comply with what the utility companies want to accomplish. Therefore, considering the history of the federal smart grid policies help build the picture of “why” PA Act 129 was enacted and “what” contents should be included. The federal laws never included mandatory smart meters. If they did, PA Act 129, would have clearly included it.

IV. A CATCH-22

A. A Quick Story

If I was to approach you with a glass of liquid and say, “you have to drink this! The law says so.” You might ask, “Well, what is in the glass? What law says I have to drink this? What if I don’t want to?” Then I would respond, “I can’t tell you exactly what’s in it because I don’t really know, but I promise it will not burn? The law doesn’t exactly say you have to drink it, but all of us in charge have decided to assume that that is

what the law is really saying. And you have no choice but to drink it because if you don't, we will not allow you and your family to drink anything else ever again!" Sounds absurd, does it not? Coercion is the practice of persuading someone to do something by using force or threats (New Oxford American Dictionary). How is this story any different from this case?

B. Our Story: Let Science Prevail

Mr. and Mrs. Tellefsen are science teachers. They have an 8-year old daughter and a 6-year old son. Every day, for over two decades, they go to school and teach their students the rules that govern the sciences. What is truth? How do we find it? How do we know for sure? They teach the steps of the scientific method and why it is so important that they are followed. They emphasized the importance of researching primary sources and how to discern truth from lies. Mr. and Mrs. Tellefsen love what they do and understand the importance of teaching scientific integrity to their students.

Now they are being asked to accept a strong technology onto their home. The science on this new technology is not complete. Studies have only been done on the thermal effects of these devices, not the non-thermal effects on the human body. A new, promising drug takes about a decade worth of studies before it can be released to the public. We never did this with smart meters. We started to install them in 2006 without proper non-thermal testing. That means someone(s) actually decided to let humans be the test subjects. Not only is that scientifically unethical, it is morally wrong. Mr. and Mrs.

Tellefsen want nothing more than for the smart meters to eventually be proven completely safe, not only for their family, but for the safety of all humans and animals. However, the science is not complete at this time.

It is a human need and right to want save oneself and ones family from any type of harm. It should be a choice to choose to wait on smart meter installation until all the data is made public. Without the option to opt-out or any other alternatives, this catch-22 is considered coercion.

CONCLUSION

Mr. and Mrs. Tellefsen would like to thank the Honorable Judge Jeffrey A. Watson for taking the time to consider this case. We urge Your Honor to consider our argument and to allow us to opt-out of smart meter installation without the threat of Metropolitan Edison Company terminating our account. If Your Honor rules in favor of Metropolitan Edison Company, we ask if it might be taken under consideration that the smart meter be installed away from the home where the wires come in from the street.

Respectively submitted,

Dated: March 27, 2019

Christopher and Jo-Anna Tellefsen
3324 River Road
Mount Bethel, PA 18343
(570)897-0235

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v.

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Docket No. C-2018-3005250

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Christopher and Jo-Anna Tellefsen's Legal Brief upon the individuals listed below.

Service by First Class Mail, postage prepaid, as follows:

Administrative Law Judge Jeffrey A. Watson
Piatt Place
Suite 220
301 5th Avenue
Pittsburg, Pennsylvania 15222

Dated: March 27, 2019

Christopher and Jo-Anna Tellefsen
3324 River Road
Mount Bethel, PA 18343
(570)897-0235