

Tori L. Giesler, Esq.  
(610) 921-6658  
(330) 315-9263 (Fax)

April 16, 2019

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**Re: Patricia and Michael Rowley v. Pennsylvania Electric Company**  
**Docket No. C-2019-3008815**

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections of Pennsylvania Electric Company in the above-referenced matter. This document has been served on the Complainants as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Tori L. Giesler

krak  
Enclosures

c: As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PATRICIA AND MICHAEL ROWLEY**

v.

**PENNSYLVANIA ELECTRIC COMPANY**

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:  
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**Docket No. C-2019-3008815**

**NOTICE TO PLEAD**

TO: Patricia and Michael Rowley

Pursuant to 52 Pa. Code § 5.101 you are hereby notified that if you do not file a reply to the enclosed Preliminary Objections of Pennsylvania Electric Company within ten (10) days from service of this notice, the facts set forth by Pennsylvania Electric Company in the Preliminary Objections may be deemed to be admitted, thereby requiring no other proof. All pleadings, such as a Reply to Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service to counsel for Pennsylvania Electric Company, and where applicable, the Administrative Law Judge presiding over the case.


File with:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

With a copy to:

Lauren M. Lepkoski  
Tori L. Giesler  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001

Date: April 16, 2019



Lauren M. Lepkoski, Esquire  
Tori L. Giesler, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PATRICIA AND MICHAEL ROWLEY** :  
 :  
 v. : **Docket No. C-2019-3008815**  
 :  
**PENNSYLVANIA ELECTRIC COMPANY** :

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF  
PATRICIA AND MICHAEL ROWLEY**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Pennsylvania Electric Company ("Penelec" or the "Company"), by and through its counsel, Lauren M. Lepkoski and Tori L. Giesler, files this Preliminary Objection pursuant to Section 5.101(a) of Pennsylvania Public Utility Commission ("Commission") regulations, 52 Pa. Code § 5.101(a)(1), and in support thereof, avers as follows:

**I. Introduction**

1. In their recently filed Formal Complaint, Patricia and Michael Rowley ("Complainants") who reside at 1305 East 41<sup>st</sup> Street, Erie, Pennsylvania 16504 ("Service Location") alleges that they do not want a smart meter installed at the Service Location. (Formal Complaint ¶ 5.) The Complainants state, in part, as requested relief:

We want the original analog meter returned. The newly installed wifi "smart meter" comes with known and unknown health and safety issues..

(Formal Complaint ¶ 5.)

2. The Company is in the process of deploying smart meters in its service territory in accordance with Act 129 of 2008 ("Act 129").<sup>1</sup>

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<sup>1</sup> 66 Pa.C.S. § 2806.1 *et seq.* Among other things, Act 129 specifically directed that electric distribution companies with at least 100,000 customers file a smart meter technology procurement and installation plan with the Commission for approval. 66 Pa.C.S. § 2807(f)(1) and (2).

3. On July 23, 2015, the Company issued a letter to Patricia Rowley as the customer of record at the Service Location (“Customer”) regarding zero consumption being recorded on the meter installed at the Service Location. On July 28, 2015, the Customer contacted the Company regarding the zero consumption letter. On July 30, 2015, the Company removed the previously installed meter from the Service Location as it was no longer recording consumption and installed a smart meter.

4. As explained in greater detail below, even if all of the facts in the Formal Complaint are accepted as true, they do not constitute a violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission, such that relief can be granted.<sup>2</sup>

5. As a result, the Company requests that this Preliminary Objection be granted and that the Commission: (1) grant its Preliminary Objections and strike the Complainants’ request for the removal of the smart meter; (2) dismiss the Formal Complaint in its entirety with prejudice; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

**II. Background**

6. Penelec is an electric distribution company that is certificated as a public utility in Pennsylvania.

7. On July 23, 2015, the Company issued a letter to the Customer regarding zero consumption being recorded on the meter installed at the Service Location. On July 28, 2015, the Customer contacted the Company regarding the zero consumption letter. On July 30, 2015, the Company removed the previously installed meter from the Service Location as it was no longer recording consumption and installed a smart meter.

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<sup>2</sup> See 66 Pa.C.S. § 701.

8. On March 21, 2018, the Complainants filed the Formal Complaint with the Commission. On March 27, 2019, the Formal Complaint was electronically served on the Company.

9. Penelec is timely filing its Answer and New Matter contemporaneously with this Preliminary Objection, which Answer and New Matter is incorporated into this Preliminary Objection as if fully set forth herein.

### **III. Argument**

10. The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

11. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.<sup>3</sup>

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<sup>3</sup> *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

12. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt.<sup>4</sup> The Commission has adopted this standard.<sup>5</sup>

13. In accordance with Section 701 of the Code<sup>6</sup> a person may file a complaint which sets forth “any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” As explained below, the Company has not violated the Public Utility Code or the orders or regulations of the Commission.<sup>7</sup>

14. The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.<sup>8</sup> Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the Formal Complaint are true.<sup>9</sup>

19. The Complainants verified subject to the penalties of 18 Pa.C.S. § 4904 that the Complainants have “spoken to a utility or company representative about this complaint.”

28. The Company has no record that the Complainant has contacted the Company on the Account at this Service Location regarding the Formal Complaint. Further, the last time the Complainant contacted the Company for any reason was August 21, 2015 when the Complainant contacted the Company when the Complainants contacted the Company regarding the stopped meter and the rebilling of the Account.

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<sup>4</sup> *Interstate Traveler Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991).

<sup>5</sup> *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

<sup>6</sup> 66 Pa.C.S. § 701.

<sup>7</sup> *Id.*

<sup>8</sup> *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985).

<sup>9</sup> *Id.*


29. The Formal Complaint of the Complainant should be dismissed with prejudice for failure to contact the Company prior to the filing of the Formal Complaint in violation of 66 Pa.C.S. § 1410(1).

**IV. Conclusion**

WHEREFORE, for the foregoing reasons, Pennsylvania Electric Company respectfully requests that the Commission: (1) grant its Preliminary Objections and strike the Complainants' request for the removal of the smart meter; (2) dismiss the Formal Complaint in its entirety with prejudice; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: April 16, 2019

  
Lauren M. Lepkoski  
Attorney No. 94800  
Tori L. Giesler  
Attorney No. 207742  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001  
(610) 921-6203  
(610) 921-6658  
[llepkoski@firstenergycorp.com](mailto:llepkoski@firstenergycorp.com)  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

Counsel for Pennsylvania Electric Company

**BEFORE THE  
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**PATRICIA AND MICHAEL ROWLEY** :  
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 **v.** : **Docket No. C-2019-3008815**  
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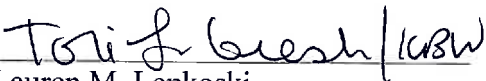
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Preliminary Objections of Pennsylvania Electric Company to the Formal Complaint of Patricia and Michael Rowley upon the individual listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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

Patricia and Michael Rowley  
1305 East 41<sup>st</sup> Street  
Erie, PA 16504

Dated: April 16, 2019

  
Lauren M. Lepkoski  
Tori L. Giesler  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001  
(610) 921-6203  
(610) 921-6658  
[llepkoski@firstenergycorp.com](mailto:llepkoski@firstenergycorp.com)  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)