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August 25, 2023

VIA ELECTRONIC FILING

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

Re: James R. Dummett & William A. Dummett, Sr., v. Pennsylvania Electric Company
Docket No. C-2023-3042086

Dear Secretary Chiavetta:

Enclosed please find the Preliminary Objection of Pennsylvania Electric Company to the Formal Complaint of James R. Dummett & William A. Dummett, Sr, to be filed in the above-referenced matter. A copy of the document has also been served upon the Complainants, as indicated by the Certificate of Service.

If you have any questions, please contact me.

Sincerely,



Daniel A. Garcia

DAG/mlr

Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Robert Dummett & William	:	
Arthur Dummett, Sr.,	:	
	:	
	:	
Complainants,	:	Docket No. C-2023-3042086
	:	
v.	:	
	:	
Pennsylvania Electric Company,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY ANSWER THE ENCLOSED PRELIMINARY OBJECTION WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTION MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL FOR PENNSYLVANIA ELECTRIC COMPANY.



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Date: August 25, 2023,

Attorneys for Pennsylvania Electric Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Robert Dummett & William	:	
Arthur Dummett, Sr.,	:	
	:	
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	:	Docket No. C-2023-3042086
v.	:	
	:	
Pennsylvania Electric Company,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTION OF
PENNSYLVANIA ELECTRIC COMPANY TO THE
COMPLAINT OF JAMES ROBERT DUMMETT &
WILLIAM ARTHUR DUMMETT, SR.**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes Pennsylvania Energy Company (“Penelec” or the “Company”) and hereby files this Preliminary Objection, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Commission dismiss the above-captioned Formal Complaint (“Complaint”) filed by James Robert Dummett & William Arthur Dummett, Sr. (“Complainants”) in its entirety and with prejudice.

The instant Complaint challenges Penelec’s retention of a smart meter at the Complainants’ address at 336 Cedar Avenue, Oil City, PA 16301 (“Service Address”). As relief, the Complainants request that they be permitted to “opt-out” of their smart meter and reinstall their analog meter at the Service Address.

As explained herein, the Commission should summarily dismiss the Complaint because the Complaint’s requested relief cannot be granted as customers of Penelec are not permitted to opt-out of or rescind smart meter installation.

In support thereof, Penelec states as follows:

I. BACKGROUND

1. Penelec is a “public utility” and an “electric distribution company” as those terms are defined under the Public Utility Code, 66 Pa.C.S. §§ 102 and 2803, subject to the regulatory jurisdiction of the Commission.

2. On August 7, 2023, Penelec was served with the above-captioned Complaint, which challenges the Company’s installation of a smart meter at the Service Address.

3. Penelec herein files this Preliminary Objection to the Complaint. For the reasons explained below, Penelec respectfully requests that the Commission summarily dismiss the Complaint because the Complaint’s requested relief cannot be granted by the Commission and, therefore, is legally insufficient.

II. STANDARD OF REVIEW

4. Pursuant to the Commission’s regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (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.

52 Pa. Code § 5.101(a) (emphasis added).

5. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

6. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

III. PRELIMINARY OBJECTION

A. PRELIMINARY OBJECTION NO. 1 – THE COMPLAINT’S REQUESTED RELIEF CANNOT BE GRANTED BY THE COMMISSION AND, THEREFORE, IS LEGALLY INSUFFICIENT.

7. Penelec incorporates by reference Paragraphs 1 through 6 as if fully set forth herein.

8. The Complaint’s requested relief cannot be granted by the Commission because Penelec customers are not permitted to opt-out of or rescind smart meter installation.

9. Through the Complaint, the Complainants request that Penelec permit them to “opt-out” of their currently installed smart meter and reinstall an “analog meter.”

10. Penelec is legally required to install and retain the smart meters by the Public Utility Code, the Commission’s orders, and the Company’s Commission-approved Smart Meter Deployment Plan. *See* 66 Pa.C.S. § 2807(f); *Joint Petition of Metropolitan Edison Company*,

Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123950 (Order June 9, 2010).

11. On June 24, 2009, the Commission issued its Smart Meter Implementation Order, which set forth requirements for the smart meter plans and procedures for the submission, review, and approval of the smart meter plans. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

12. On December 31, 2012, Metropolitan-Edison Company, Penelec, Pennsylvania Power Company, and West Penn Power Company (collectively, “the Companies”) filed their Joint Petition for Approval of their Smart Meter Deployment Plan in compliance with the *Smart Meter Implementation Order*, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission’s Implementation Order; (2) approve the Companies’ proposed procurement and deployment of approximately 2.1 million smart meters, over 98.5% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters.¹

13. On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which, *inter alia*, accelerated the smart meter deployment schedule laid out in their original Deployment Plan. Under the Revised Deployment Plan, the Companies proposed to deploy

¹ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Petition filed December 31, 2012).

170,000 smart meters by the end of 2015.² The Commission entered its Opinion and Order approving the Revised Deployment Plan on June 25, 2014. *See 2014 Smart Meter Order*.

14. Nothing in the Public Utility Code, the Commission’s orders and regulations, or Penelec’s Smart Meter Deployment Plan states that a customer can opt-out of, or rescind, a smart meter installation.

15. Indeed, on August 16, 2022, the Supreme Court of Pennsylvania issued its Opinion affirming in part and reversing in part the Commonwealth Court’s decision in *Povacz*.³ Specifically, the Supreme Court in *Povacz* held that: (1) Act 129 mandates the systemwide installation of smart meters; (2) the PUC applied the correct burden of proof standard in the smart meter complaint cases arising under Section 1501 of the Public Utility Code; (3) an electric distribution company (“EDC”) cannot be required to provide an accommodation to a customer absent a Section 1501 violation; and (4) even if a smart meter complainant meets their burden of proof, the complainant is only “entitled to an accommodation to the extent allowed by Act 129 and a utility’s tariff.”⁴

16. Therefore, Penelec must install the smart meter at the Complainants’ Service Address.

17. Further, even if the Complainants established that installation and retainment of a smart meter would violate Section 1501 of the Public Utility Code, the Complainants could only receive an accommodation that is permitted under Act 129 and Penelec’s Commission-approved tariff. Here, Penelec’s Commission-approved tariff allows customers, such as the Complainants,

² *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994, p. 8 (Order entered June 25, 2014) (“*2014 Smart Meter Order*”).

³ *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020).

⁴ *See Povacz v. Pa. PUC*, 280 A.3d 975, 1012-1014 (Pa. 2022).

to request that the meter be relocated to a mutually-agreeable location, subject to the customer bearing the estimated expenses of relocating the Company-owned facilities, including the meter, to that new location. *See* Penelec Tariff Rule 4, Electric Pa. P.U.C. No. 81, Original Page 37.

18. As such, the Complainants' requested relief, *i.e.*, being permitted to opt-out of the installation of a smart meter at her Service Address, is inconsistent with the Public Utility Code, the Commission's orders and regulations, Penelec's Smart Meter Deployment Plan, and Penelec's Commission-approved tariff and, therefore, cannot be granted by the Commission.

19. For these reasons, the Complaint should be dismissed because the Commission cannot grant the requested relief therein.

IV. CONCLUSION

WHEREFORE, Pennsylvania Electric Company respectfully requests that the above-captioned Formal Complaint filed by James Robert Dummett & William Arthur Dummett, Sr. at Docket No. C-2023-3042086 be dismissed in its entirety pursuant 52 Pa. Code § 5.101(a)(4).

Respectfully submitted,



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Respondent :

Docket No. C-2023-3042086

VERIFICATION

I, John C. Ahr, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect Pennsylvania Electric Company to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

8/25/23

Date



John C. Ahr

**BEFORE THE
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James Robert Dummett & William	:	
Arthur Dummett, Sr.,	:	
	:	
	:	
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	:	
v.	:	
	:	
Pennsylvania Electric Company,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Preliminary Objection of Pennsylvania Electric Company to the Formal Complaint of James Robert Dummett & William Arthur Dummett, Sr upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by US mail, First Class as follows:

James Robert Dummett & William Arthur Dummett, Sr.
336 Cedar Ave.
Oil City, PA 16301

Dated: August 25, 2023



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