

**NOTICE OF APPEAL FROM PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA REGARDING PLAINTIFFS' DEMAND
FOR A HEARING**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM
The Public Service Commission, State of South Carolina
Honorable Jocelyn C. Boyd,
Chief Clerk and Executive, Public Service Commission
Mr. David Stark,
Hearing Examiner, Public Service Commission

Docket No. 2020-147-E

State of South Carolina
Public Service Commission

Respondent,

v.


Randy and Cheryl Gilchrist

Appellants.

NOTICE OF APPEAL

Randy and Cheryl Gilchrist objected to the placement of a smart meter on their residence located at 3010 Lake Keowee Lane in Seneca, SC, 29672. This meter was placed by Duke Energy Carolinas, LLC, over the objections and without the consent of Randy and Cheryl Gilchrist. The appellants filed a complaint with the Public Service Commission (hereinafter PSC) on June 6, 2020, requesting a hearing. This complaint was dismissed by the PSC on August 24, 2020, Order No. 2020-562. Appellants filed a petition for rehearing on September 2, 2020. This petition was denied on October 1, 2020, Order No. 2020-644.

Dated: October 28, 2020

s/ 
Randy Gilchrist

s/ 
Cheryl Gilchrist

Mr. and Mrs. Randy Gilchrist
3010 Lake Keowee Lane
Seneca, SC 29672

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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2020-147-E - ORDER NO. 2020-562

AUGUST 24, 2020

IN RE:	Randy and Cheryl Gilchrist,)	ORDER DISMISSING
	Complainant/Petitioner)	COMPLAINT
	v.)	
)	
	Duke Energy Carolinas, LLC,)	
	Defendant/Respondent)	

This matter comes before the Public Service Commission of South Carolina ("Commission") on a *pro se* Complaint filed by Randy and Cheryl Gilchrist ("Gilchrists" or the "Complainants") against Duke Energy Carolinas, LLC ("DEC" or the "Company"). In the Complaint, filed June 6, 2020, the Gilchrists state that they have been attempting to get DEC to replace a digital meter on their home with an analog or mechanical meter for the past two years. The Complainants cite both privacy concerns and aggravation of medical concerns as cause for DEC to remove the smart meter which is currently installed and replace it with an analog or mechanical meter. Additionally, the Complainants contend that the Company trespassed on their property when installing the new smart meters.

The Complainants compare the privacy concern with the use of activity-tracking devices offered by insurance companies and activity-tracking devices used by law enforcement. The Gilchrists state that insurance companies may not use the devices without the consent of the driver and law enforcement may not use tracking devices without a court order. These uses are not analogous to the current situation which gives rise to the

Complaint. In this case, the device in question is used to meter a service that is billed for on a consumption-basis. Metering of electrical use is a fundamentally necessary part of the provision of electric service.

DEC responded to the Complaint with several points. Regarding the privacy claim been made by the Complainant, the Company cites the Commission Order No. 2019-686:

Duke is not a state actor, and Complainant therefore has no constitutional right to privacy that is enforceable against Duke. In *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974), the Supreme Court of the United States rejected the argument now advanced by Complainant. In that case, the Court held that a Pennsylvania electric utility with the exclusive right to provide power to its service territory was not a state actor.

Since privacy claims such as this can only be raised against state actors – which DEC is not – this claim must be denied.

The Gilchrists make reference to non-specific medical conditions which may be negatively impacted by the local use of smart meters. In response, the Company asserts that the meters that have been deployed to the Gilchrists' home are approved for use by the FCC. Regarding the proposition that Complainants have a choice as to which meter is installed on their home, the Company cites the Commission Order No. 2020-342, citing Regulation 103-320:

Commission Regulation 103-320 provides that meters shall be furnished by the utility. There is no provision in the applicable laws and regulations requiring utilities to use meters chosen by customers. . . . Duke's requirement that [a customer] choose between permitting the Company to install a smart meter and paying the fees to install a manually read meter does not violate any contract or other rights.

The Company asserts that it no longer supports the use of analog meters, and that such meters have not been manufactured in some time. Given the lack of support for analog meters, and the Company's right to furnish meters under Regulation 103-320, the Complainant's contention that they should be able to choose which meter they have cannot prevail.

The Complainants claim that the Company committed trespass when it entered their property to install the smart meter over the Complainants' objections. The Company correctly asserts S.C. Code Ann. Regs. 103-344 which provides that "[a]uthorized agents of the electrical utility shall the right of access to premises supplied with electric service ... and for any other purpose which is proper and necessary in the conduct of the electrical utility's business." In response, the Gilchrists assert that the installation of the smart meter was neither necessary nor proper in order to provide electric service.

However, Regulation 103-320, when read in conjunction with Regulation 103-344, which recognizes that Company's ability and duty to furnish electric meters, it is clear that the Company has not only permission for access for necessary business purposes, but also a duty to use that permission to furnish meters to its customers. Therefore, it is a proper exercise of business purpose by the Company to access the property and install the new meter. The claim that the Company exceeded its authority to enter the premises for the purpose of installing a meter is denied.

The Commission notes that the Gilchrists advise that they have always paid their bill and do not have an issue with non-payment. However, the Gilchrists assert that they

should not have to opt-out of having a smart meter, but rather, DEC should be asking them to opt-in.

DEC has not violated any statute, nor Commission rule or regulation. Therefore, there is no relief available to the Complainants in this case, and the case must be dismissed. However, the Commission notes that, pursuant to tariffs filed with the Commission, for those customers wishing to have a manually read meter, the MRM Rider is available. The MRM Rider provides for fee-free opt out for customers with medical issues, provided certain requirements are met. The Commission encourages the Complainants to investigate the use of the MRM Rider, if appropriate.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

Comer H. Randall

Comer H. "Randy" Randall, Acting Chairman



BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-147-E – ORDER NO. 2020-644
OCTOBER 1, 2020

IN RE: Randy and Cheryl Gilchrist,) ORDER DENYING
Complainant/Petitioner v. Duke Energy) PETITION FOR
Carolinas, LLC, Defendant/Respondent) REHEARING

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on a Petition for Rehearing in this Complaint in Docket No. 2020-147-E, filed by the Complainant, Randy and Cheryl Gilchrist, (“the Gilchrists” or “Complainants”). On September 2, 2020, the Complainants filed a Motion for Rehearing of Commission Order No. 2020-562, which granted Duke Energy Carolinas, LLC’s (“DEC’s”) Motion to Dismiss Randy and Cheryl Gilchrist’s Complaint in this Docket.

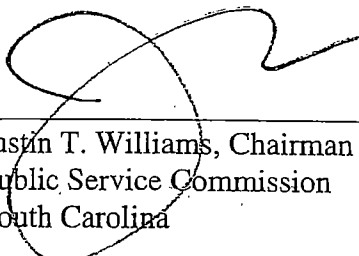
The Gilchrists’ Petition is deemed to be properly before the Commission, satisfying S.C. Code of Regs. 103-830 (3) and 103-854. However, the Petition does not state a claim upon which relief may be granted by the Commission, but rather, reiterates the same matters raised in the initial Complaint. To the extent that the Petition for Rehearing is reiterative of the initial Complaint, it fails to satisfy S.C. Code of Regs. 103-825 (A)(4). The Gilchrists’ Complaint centers around their opposition to the installation of a “smart meter” by DEC on their premises, and their disinclination to pay the fees required under Rider MRM in order to opt for a manually read meter. The Petition continues to assert their argument that the placement of such meters is a violation of privacy,

unlawful, and violates their constitutional protections. The terms and conditions under which a utility provides service are governed by its tariff and service regulations, not by contracts between the utility and individual customers. Service regulations and tariff provisions approved by the Public Service Commission have the force and effect of law and are binding on utility customers, regardless of whether an individual customer agreed to them. See, e.g., *Carroway v. Carolina Power & Light Co.*, 226 S.C. 237, 84 S.E. 2d 728 (1954).

In the Petition, the Gilchrists did not present a theory or claim upon which the Commission may grant relief. The reasoning for our conclusion dismissing the Gilchrists' Complaint in Order No. 2020-562 is unchanged and we reaffirm it here. Accordingly, the Gilchrists' Petition for Rehearing is denied.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Justin T. Williams, Chairman
Public Service Commission
South Carolina

