STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

THE DETROIT EDISON COMPANY	)	
Plaintiff & Counter-Defendant,	)	
v.	)	FILE NO. 2012-128816 -CZ
RALPH & DONNA STENMAN,	)	
Defendants & Counter-Plaintiffs	)	HON. JUDGE RUDY NICHOLS
----------	)	
CUMMINGS, MCCLOREY, DAVIS & ACHO, P.L.C. By: Timothy Young (P22657) Attorneys for Plaintiff 33900 Schoolcraft Livonia, MI 48150 Phone: (734) 261-2400	)	
RALPH & DONNA STENMAN Defendants, In Pro Per 21355 Parklane Street Farmington Hills, MI 48355 Phone: (248) 987-6367	)	

This case involves the same factual circumstances as another case brought by the same plaintiff, that case now being before Judge Kumar, File No: 12-126503CZ, now in discovery phase. Plaintiff's counsel falsely certified this case in his complaint as unrelated to any other existing case

DEFENDANTS' RESPONSE TO
MOTION FOR PARTIAL SUMMARY JUDGMENT

NOW COME Defendants, RALPH & DONNA STENMAN, in pro per, and in response to Plaintiff's Motion for Partial Summary Disposition on its declaratory judgment claim, state as follows:

1. Denied as stated.

2. Denied as stated. There is no evidence before this Court that supports that 'smart meters' are being installed to improve service quality or reliability. There is quite a bit of potential evidence they are being installed for other reasons – to save meter reader salaries, to gather customer's private data for possible resale to third parties, and to impose a scheme of electricity rationing on utility customers, while its revenues are protected by a "rate decoupling" scheme.

3. Admitted but irrelevant to this case. The conclusion in this staff report flies in the face of the overwhelming majority of medical and scientific experts who are not part of the utility industry or part of the Federal Department of Energy which is funding and cheerleading the entire smart grid development. The staff report reflects the opinion and policy preferences of MPSC staff. As such it has no force of law.

4. Admit.

5. Deny. Defendants received no advance notice of Plaintiff's intent to install a smart meter on Defendants' property. When Defendants did receive notice, after the fact of installation, they found the notice of installation to be entirely defective to create any kind of informed or implied consent.

6. Admit that a smart meter was installed. Defendants lack sufficient knowledge to either admit or deny Plaintiff's stated date of installation.

7. Denied as stated. On March 27, 2012, Defendants sent to Plaintiff by United States mail, a document labeled "Affidavit, Notice and Demand For Removal of All "Smart Meters", Radiation Emitting and Surveillance Devices". This document has been reproduced as Plaintiff's Exhibit 2 and was attached to their Complaint. The affidavit

contained a demand that Plaintiff remove its illegally installed device within 21 days or Defendants would do so.

8. Denied as stated. On May 21st 2012 Defendants did remove the "smart meter" as they had earlier notified Plaintiff they would do. They replaced that meter with a properly calibrated analog meter which they had purchased, and safely mailed the "smart meter" to Plaintiff that same day, with a report of the time replaced and the final reading on the smart meter and the initial reading on the replacement analog meter.

9. Denied. Removal of a device that was illegally installed and also a clear and present danger to the occupants of the house does not constitute a felony.

10. Denied as stated. Defendants did not "tamper", but instead performed a necessary act of self defense, following more than sufficient notice to utility.

11. Defendants lack sufficient knowledge to either admit or deny.

12. Admitted.

13. Defendants lack sufficient knowledge to admit or deny this since the document Plaintiff has labeled Exhibit 4 appears to contain pages of multiple type fonts, suggesting not all the pages are from the same document.

14. Defendants lack sufficient knowledge to either admit or deny. Whether or not utility customers must provide access on the terms stated might require a more complete determination than can be made by a mere reading of the tariff in isolation from other relevant regulations, statutory law and prior court decisions.

15. Admitted but irrelevant. Plaintiffs have never disputed that equipment installed by Plaintiff would remain the property of utility, or that the utility might repair its own equipment. These are not the issues in this case.

16. Denied as stated. Assumes that the device in controversy, which Plaintiff here calls a "smart meter", is a "meter" as that term is defined in the tariff, the regulations or the statutes. Also assumes that Plaintiff may install *any* device it pleases on customer's property without customer consent.

17. Compound. Admitted that Defendants had an obligation to use reasonable diligence to protect Detroit Edison's equipment. The rest of this sentence might require a more complex analysis than a mere reading of the tariff in isolation from other documents.

18. Compound. Denied that Defendants failed to protect the "smart meter". In fact it was carefully un-installed and safely packed for shipment back to Plaintiff and there has been no allegation by Plaintiff that it was not received or received in damaged condition. Denied that the replacement meter was an untested meter not meeting utility standards. Denied that any safety hazard was created for occupants or for Detroit Edison employees or contractors.

19. Compound. All parts denied as stated.

20. Admitted. A necessary precaution in view of Plaintiff's illegal act of trespass.

21. Admitted.

22. Denied as stated. Plaintiff has demonstrated no need for immediate adjudication.

23. Denied. There is a genuine issue of fact here as to whether Plaintiff's device, which it calls a "smart meter" is a device of a type that was ever authorized to be installed upon

unwilling customers by the agency charged with regulating utilities, the Michigan Public Services Commission (MPSC). The tariff Plaintiff cites only provides authority to install, read, repair or upgrade a "meter" as that term is defined in the tariff. Plaintiff does not demonstrate or even allege that his "smart meter" is a "meter" as that term is defined in the tariff, or in any duly promulgated rule of the Commission.

STANDARD OF REVIEW

Defendants agree with the standard of review stated by Plaintiff: that a summary judgment may be had "where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law". There are some problems with applying that standard here:

(1) There is a genuine issue of material fact as to whether the device Plaintiff installed on Defendants' property was a "meter" within the definition of meter provided in his own tariff, or by any definition of "meter" provided by any lawfully promulgated regulation. Plaintiff has the burden to not only allege, but prove that his device is of the kind authorized by law. He has done neither and would need an evidentiary hearing or trial in order to meet his burden.

(2) There is a genuine issue of material fact as to whether the device Plaintiff installed on Defendants property represents a danger to Defendants' health and to their privacy rights under the Fourth Amendment to the United States Constitution. Defendants have presented an affirmative defense in their answer to the Complaint. This defense will require that they be given the opportunity to prove, through an evidentiary process, that their concerns about the health and safety of the device Plaintiff installed and now seeks to reinstall, are valid.

(3) Defendants are now offering preliminary evidence to show the Court that it is at least plausible that they might meet their burden with respect to the danger posed by this "smart meter" device. That offer of proof is the *"Affidavit of Donald Hillman*", which is attached to this motion response as Exhibit One.

(4) If Plaintiff's motion were to be construed as a demand for a preliminary injunction, Counsel has not met the standard for that. He has not shown that failure to grant a preliminary injunction would expose him to any imminent or substantial harm, and Defendants have made a preliminary showing that the granting of either a declaratory judgment or a preliminary injunction would expose them to substantial and imminent harm that could not be remediated in the event they ultimately prevail on the factual issues in dispute.

WHEREFORE, Defendants ask this Court to deny Plaintiff's "Motion for Partial Summary Judgment" on Count One of Plaintiff's Complaint.

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Defendant Ralph Stenman

Exhibit One:

"Affidavit of Donald Hillman"

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Defendant Donna Stenman

Dated:

EXHIBIT ONE

(Affidavit of Dr. Donald Hillman)