

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

THE DETROIT EDISON COMPANY,

Plaintiff/Counter-Defendant,

-vs-

Case No.: 12-128816-CZ
Hon. Rudy J. Nichols

RALPH STENMAN and DONNA STENMAN,

Defendants/Counter-Plaintiffs.

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Livonia, MI 48150
(734) 261-2400

RALPH & DONNA STENMAN
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OPINION AND ORDER
GRANTING PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY DISPOSITION

This matter is before the Court on Plaintiff's motion for partial summary disposition under MCR 2.116(C)(10). Plaintiff Detroit Edison Company provides electrical service to Defendants' property in Farmington Hills. On September 1, 2011 Plaintiff installed a Smart Meter, a/k/a an Advanced Metering Infrastructure (AMI) device, to improve the quality and reliability of delivering energy services to its customers. Plaintiff's complaint alleges that on March 27, 2012 Defendants threatened to remove the Smart Meter and, in fact, did so on or about May 21, 2012, replacing it with their own meter. Plaintiff argues that Defendants removal of the Smart Meter constitutes a felony under MCL §750.383a. Plaintiff filed this suit seeking, in part, a determination of the rights and obligations of the parties to guide their future conduct and to preserve any legal rights established by statute, administrative rule, and tariff as set forth in Plaintiff's complaint.

Plaintiff requests an order allowing access to Defendants' property as provided in C5.4 of the tariff; allowing Plaintiff to install, inspect, read, repair, and maintain its company-owned equipment on the subject premises and owned by Defendants as

provided in sections C5.3(A) of the tariff; order that the Defendants be responsible for the safe-keeping of P's property on Ds' premises and to not permit any person, including Defendants, to tamper with, obstruct, interfere, remove, or the like, of any meter or apparatus owned by Plaintiff and located on Defendants' property. Finally, Plaintiff seeks an order of the Court determining that the tariff and Michigan Public Service Commission ("MPSC") Administrative Rules control the rights and obligations of the parties.

Defendants admit they removed the smart meter. Defendants argue that Plaintiff failed to give Defendants notice of the installation, that there is a genuine issue of fact as to whether the device installed is a "meter" within the definition of meter provided in the tariff, and also whether the smart meter presents a danger to Defendants' health and affects their privacy rights under the 4th Amendment to the U.S. Constitution. Defendants present an Affidavit of Dr. Donald Hillman¹ in support of their response.

A motion under MCR 2.116(C)(10) tests the factual support for a claim. If no evidence creating an issue of material fact is presented, the moving party is entitled to a judgment as a matter of law. MCR 2.605(A)(1) allows a Court to declare the rights and other legal relations of an interested party seeking a declaratory judgment.

The MPSC is given power to regulate services and operations of public utilities pursuant to MCL §460.6(1). The relation between Plaintiff and its customers is governed by Detroit Edison's Rate Book for Electric Service, known as a tariff, adopted by the MPSC and issued on July 14, 2008. (Plaintiff's Exhibit 4) Under the tariff, Plaintiff is allowed access to the premises at all reasonable hours in order to install, turn on, disconnect, inspect, read, repair or remove its meters and other company property. Plaintiff is obligated to repair and maintain its own property installed on the premises of the customer. Furthermore, all equipment supplied by Plaintiff shall remain its exclusive property and Plaintiff shall have the right to remove its equipment from the customer's premises. **The tariff also provides that the customer shall not permit any person except an authorized company representative to break any seals upon, or do any work on, any meter or other apparatus of the company located on the customer's**

¹ An East Lansing resident who holds a PhD in Animal Science (Dairy) - - whatever that may be - - who is now retired from MSU and responds to citizens who seek information and assistance concerning electrical effects on animal and human health.

premises. (Plaintiff's Exhibit 4, tariff at paragraphs C5.4 and C5.3) Tampering with such electrical equipment also constitutes a felony under MCL §750.383a.

The Department of Labor and Economic Growth, Public Service Commission in the Technical Standards for Electric Service Administrative Rules defines "meter" as a device that measures and registers the integral of an electrical quantity with respect to time. (Plaintiff's Reply Exhibit 1)

Defendants fail to present any evidence creating a question of fact regarding either health or privacy issues sufficient to preclude enforcement of the law governing Plaintiff's use of the smart meter and Defendants responsibilities under the tariff and administrative rules. Defendants' reliance on Dr. Hillman's Affidavit is not responsive to Plaintiff's argument and refers to individuals that are not parties to this case. The Court observes that the Michigan Public Service Commission issued an Order that addressed the concerns similar to Defendants, specifically adverse health effects, customer privacy concerns, data protection and cyber security issues as well as costs raised by individuals and local governments regarding implementing the AMI by electric utilities operating in Michigan. The Commission accepted a Staff report that health risks from the installation and operation of metering systems using radio transmitters is insignificant and that the appropriate federal health and safety regulations provide assurance that smart meters represent a safe technology. Additionally, the Commission held that investor-owned utilities, such as Detroit Edison, must make available an opt-out option, based on cost-of-service principles for their customers. (Plaintiff's Exhibit 1)

For these reasons and those further stated by Plaintiff, the Court grants Plaintiff's motion for partial summary disposition and orders that Plaintiff shall be entitled to have access to Defendants' property, to install, inspect, read, repair and/or maintain its company-owned equipment on their premises. Furthermore, the Court orders that Defendants shall be responsible for the safe-keeping of Plaintiff's property on Defendants' premises. Finally, the Court finds that the MPSC rules govern the rights and responsibilities of the parties.

IT IS SO ORDERED.

Dated: November 29, 2012

/s/ Judge Rudy J. Nichols

Hon. Rudy J. Nichols
Circuit Court Judge

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