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November 12, 2010

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VIA E-FILING and FIRST CLASS MAIL

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17102

Re: Richard Negley v. Metropolitan Edison Company
Docket No. C-2010-2205305

Dear Secretary Chiavetta:

Enclosed for filing please find the Preliminary Objection on behalf of Metropolitan Edison Company in the above-captioned proceeding. Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,


Eranda Vero

EV/ck
Enclosures
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RICHARD NEGLEY	:	
	:	
v.	:	Docket No. C-2010-2205305
	:	
METROPOLITAN EDISON COMPANY	:	

NOTICE TO PLEAD

TO: Richard Negley
1927 Quenswood Drive
Apt. # B-103
York, PA 17403

Pursuant to 52 Pa. Code §§ 5.101(b), you are hereby notified that Metropolitan Edison Company has filed a Preliminary Objection which you may answer within ten (10) days unless otherwise provided in Chapter 5 of Title 52 of Pennsylvania Code. Your failure to answer will allow the presiding officer to rule on the Preliminary Objection without a response from you, thereby requiring no further proof.

All pleadings such as a reply to this Preliminary Objection must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Metropolitan Edison Company.

Dated: November 12, 2010



Eranda Vero
John F. Povilaitis
RYAN, RUSSELL, OGDEN & SELTZER P.C.
800 North Third Street, Suite 101
Harrisburg, Pennsylvania 17102-2025
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Attorneys for
Metropolitan Edison Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RICHARD NEGLEY	:	
	:	
v.	:	Docket No. C-2010-2205305
	:	
METROPOLITAN EDISON COMPANY	:	

**PPRELIMINARY OBJECTION OF RESPONDENT,
METROPOLITAN EDISON COMPANY**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Metropolitan Edison Company ("Met-Ed" or the "Company"), by and through its counsel, Eranda Vero, John F. Povilaitis and Ryan, Russell, Ogden & Seltzer P.C., asserts the following Preliminary Objection to Richard Negley's Complaint, pursuant to the Pennsylvania Public Utility Commission's regulations at 52 Pa. Code § 5.101(a)(4). In support thereof, Met-Ed represents as follows:

1. In his Formal Complaint filed with the Commission on October 12, 2010, Complainant objects to Met-Ed's Smart Meter Technologies Charge ("SMT Charge") and requests to be removed from the Company's "Smart Meter Program." Complaint ¶ 4(A).

2. On November 12, 2010, Met-Ed filed an Answer and New Matter to the Complaint denying the material allegations and requesting the Commission to dismiss or deny the Formal Complaint in its entirety. Met-Ed's Answer and New Matter are incorporated into this document by reference.

3. On October 15, 2008, Governor Edward G. Rendell signed Act 129 of 2008 (the Act or Act 129) into law, which became effective on November 14, 2008. Among other things, the Act specifically directed that electric distribution

companies (EDCs) with at least 100,000 customers file, with the Commission for approval, a smart meter technology procurement and installation plan. 66 Pa. C.S. § 2807(f)(1). Each plan was to describe the smart meter technologies the EDC proposes to install, upon request from a customer at the customer's expense, in new construction, and in accordance with a depreciation schedule not to exceed 15 years. 66 Pa. C.S. §§ 2807(f)(1) and (2). The Act also established acceptable cost recovery methods. 66 Pa. C.S. § 2807(f)(7).

4. On June 24, 2009, the Commission outlined the standards each smart meter plan must meet and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of each smart meter plan. *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (*Implementation Order*).

5. With regard to Act 129, the Commission interpreted the intent of the General Assembly to require all covered EDCs to deploy smart meters system-wide within 15 years, i.e. by April 2025, when it included a requirement for smart meter deployment “in accordance with a depreciation schedule not to exceed 15 years.” *Implementation Order*.

6. On August 14, 2009, Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company filed with the Commission a Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan. To recover the costs associated with the Plan, each Company filed a Smart Meter Technologies Charge Rider¹ proposing, *inter alia*, to recover their smart meter

¹ Notice of the filing was published in the Pennsylvania Bulletin on August 29, 2009. 39 Pa. B. 5218. Comments were received through September 25, 2009.

technology costs through a reconcilable adjustment clause called the Smart Meter Technologies Charge.

7. Met-Ed's Plan provided, *inter alia*, that the SMT-Charge (or SMT-C) will be expressed as a monthly customer charge, will be billed to all metered customer accounts eligible for the installation of smart meters, and will be non-bypassable.

8. By Opinion and Order entered June 9, 2010, the Commission approved the Smart Meter Technology Procurement and Installation Plan filed by Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company at Docket No. M-2009-2123950, with modifications.

9. On June 25, 2010, Metropolitan Edison Company filed Supplement No. 21 to Met-Ed's Tariff Electric Pa. P.U.C. No. 50 in compliance with the Commission's Order at Docket No. M-2009-2123950 to become effective on August 1, 2010.

10. In July of 2010, Met-Ed included the following message in its bills to residential customers:

Act-129 of 2008 – passed by the Pennsylvania General Assembly and signed into law by the Governor –requires the deployment of a smart meter technology system. As mandated by Act 129, the deployment of smart meter technology is to be funded through customer rates. This monthly charge, which will appear on the bill as the Smart Meter Charge line item, will be \$2.64 for residential customers.

11. As explained above, the implementation of Smart Meter Technologies and the approval of the costs associated with the implementation are in accordance with 66 Pa. C.S. § 2807(f). The Company's Smart Meter Plan is not a program in which a customer can participate or enroll, and the SMT-Charge does not

represent a tax or a “usage fee.” Instead, the SMT-Charge is a “customer fee” contained in Met-Ed’s duly filed and Commission-approved tariff. See Met-Ed Tariff, Electric Pa. P.U.C. No. 50 (Supp. 21), Rider P, Original Pages 182-185, Effective August 1, 2010.

12. A public utility is required to adhere to its duly filed and Commission-approved tariff. Such tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66 Pa. C.S. § 1303; *DiSanto v. Dauphin County Water Supply Company*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa. Cmwlth. 1981). The Commonwealth Court of Pennsylvania construed Section 1303 of the Code, 66 Pa. C.S. § 1303, and stated that “[t]here can be no lawful rate *except* the last tariff published as provided by law.... Further, it is well established that in the absence of an exception by the Commission, a public utility may not charge any rate for services other than that lawfully tariffed. . . .” *Bell Telephone Co. v. Pennsylvania Public Utility Commission*, 53 Pa. Commonwealth Ct. 241, 244, 417 A.2d 827, 828-29 (1980), citing *Duquesne Light Co. v. Public Service Commission*, 273 Pa. 287, 117 A. 63 (1922); *Leiper v. Baltimore and Philadelphia R.R. Co.*, 262 Pa. 328, 105 A. 551 (1918); *Byer v. Peoples Natural Gas Co.*, 251 Pa. Superior Ct. 75, 380 A.2d 383 (1977). *Blythe Township Municipal Authority v. Pennsylvania Public Utility Commission*, 199 Pa. Superior Ct. 334, 185 A.2d 628 (1962).

13. Complainant requests “to be removed from Smart Meter Program.” Complaint ¶ 5. He does not claim that Met-Ed has committed or omitted an act in violation of Commission statutes, regulations, orders, or Met-Ed’s own tariff. Complainant has failed to state a claim upon which relief can be granted, and his Formal

Complaint against Met-Ed should be dismissed in its entirety as legally insufficient, pursuant to 52 Pa. Code § 5.101(a) (4).

WHEREFORE, for the reasons set forth above, and in accordance with the Commission's regulations, Metropolitan Edison Company respectfully requests that the Commission grant its Preliminary Objection and dismiss the Formal Complaint of Richard Negley on the grounds of legal insufficiency of the pleading, pursuant to 52 Pa. Code § 5.101(a)(4).

Respectfully submitted,



Dated: November 12, 2010

Eranda Vero
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Harrisburg, Pennsylvania 17102-2025
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Attorneys for Metropolitan Edison Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RICHARD NEGLEY

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2010-2205305

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the relevant documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

Via First Class

Richard Negley
1927 Quenswood Drive
Apt. # B-103
York, PA 17403

Date: November 12, 2010



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