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October 18, 2017

VIA E-FILING

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

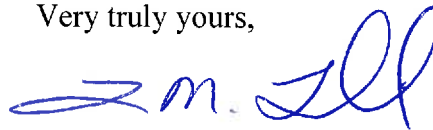
Re: Ann H. Swartz v. Metropolitan Edison Company
Docket No. C-2017-2626756

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections of Metropolitan Edison Company in the above-referenced matter. This document has been served on the Complainant as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Lauren M. Lepkoski

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Enclosures

c: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANN H. SWARTZ

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2017-2626756

NOTICE TO PLEAD

TO: Ann H. Swartz

Pursuant to 52 Pa. Code § 5.101 you are hereby notified that if you do not file a reply to the enclosed Preliminary Objections of Metropolitan Edison Company within ten (10) days from service of this notice, the facts set forth by Metropolitan Edison Company in the Preliminary Objections may be deemed to be admitted, thereby requiring no other proof. All pleadings, such as a Reply to Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service to counsel for Metropolitan Edison Company, and where applicable, the Administrative Law Judge presiding over the case.

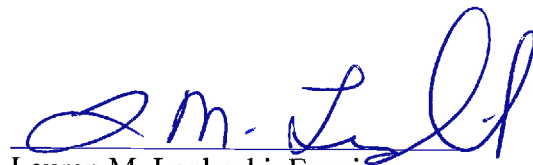
File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Lauren M. Lepkoski
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FirstEnergy Service Company
2800 Pottsville Pike
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Date: October 18, 2017



Lauren M. Lepkoski, Esquire
Tori L. Giesler, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANN H. SWARTZ	:	
	:	
v.	:	Docket No. C-2017-2626756
	:	
METROPOLITAN EDISON COMPANY	:	

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF
ANN H. SWARTZ**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Metropolitan Edison Company ("Met-Ed" or the "Company"), by and through its counsel, Lauren M. Lepkoski and Tori L. Giesler, files this Preliminary Objection pursuant to Section 5.101(a) of Pennsylvania Public Utility Commission ("Commission") regulations, 52 Pa. Code § 5.101(a)(1), and in support thereof, avers as follows:

I. Introduction

1. In her recently filed Formal Complaint, Ann H. Swartz ("Complainant"), who resides at 532 Fauth Lane, York, Pennsylvania 17406 ("Service Location") alleges that she does not want a smart meter installed at the Service Location. (Formal Complaint ¶¶ 4, 5.) The Complainant states as requested relief: "I wish Met-Ed to cease harassing me concerning Smart Meter installation – stop threatening me with possible shut off of electric service if I do not comply. I've told Met-Ed why I do NOT want Smart Meter installed on my house and too, I've told them of the legislation introduced to Pennsylvania Lawmakers to protect citizens and allow the public to "opt out" of Smart Meter Program." (Formal Complaint ¶ 5.)

2. The Company is in the process of deploying smart meters in its service territory in accordance with Act 129 of 2008 (“Act 129”).¹

3. On December 6, 2016, the Company sent correspondence to Wayne Fink (“Customer of Record”) for the Service Location regarding the installation of a smart meter at the Service Location. No response was received and a contractor for the Company attempted to install a smart meter at the Service Location. The Customer of Record requested an appointment be scheduled to install the smart meter. The smart meter was not installed and, on January 27, 2017, the Company noted the Customer of Record’s account. On January 30, 2017, a letter was sent to the Customer of Record requesting that an appointment be scheduled to install the smart meter. On February 8, 2017, the Company discussed the installation of the smart meter with the Complainant who stated there was a medical condition in the home and refused the installation of the smart meter. On June 1, 2017, a pre-disconnection warning letter was sent to the Complainant pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81 and Rules 9 and 20 of the Company’s Commission-approved Tariff.² On June 7, 2017, the Complainant contacted the Company to again refuse the smart meter installation and dispute rights were provided. That same day, the Complainant filed an informal complaint with the Commission’s Bureau of Consumer Services (“BCS”) disputing the installation of a smart meter at the Service Location. Termination efforts ceased upon receipt of the informal complaint. On August 16, 2017, the BCS dismissed the informal complaint stating that pursuant to Act 129, the smart meter must be installed and BCS cannot stop the installation. On September 22, 2017, a service termination notice was issued. On

¹ 66 Pa.C.S. § 2806.1 *et seq.* Among other things, Act 129 specifically directed that electric distribution companies with at least 100,000 customers file a smart meter technology procurement and installation plan with the Commission for approval. 66 Pa.C.S. § 2807(f)(1) and (2).

² *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 81, pp. 45, 60, issued May 1, 2015, effective May 3, 2015.

September 26, 2017, the Complainant contacted the Company regarding the termination notice. The Company representative discussed Act 129, the BCS decision and offered additional information on smart meters. On September 28, 2017, the Complainant filed the instant Formal Complaint and termination efforts ceased upon receipt of the Formal Complaint.

4. As explained in greater detail below, even if all of the facts in the Formal Complaint are accepted as true, they do not constitute a violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission, such that relief can be granted. *See* 66 Pa.C.S. § 701.

5. As a result, the Company requests that this Preliminary Objection be granted and that the Commission: (1) strike the Complainant's request for an exemption from the installation of a smart meter; (2) dismiss the Formal Complaint in its entirety with prejudice; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

II. Background

6. Met-Ed is an electric distribution company ("EDC") that is certificated as a public utility in Pennsylvania.

7. On December 6, 2016, the Company sent correspondence to Wayne Fink ("Customer of Record") for the Service Location regarding the installation of a smart meter at the Service Location. No response was received and a contractor for the Company attempted to install a smart meter at the Service Location. The Customer of Record requested an appointment be scheduled to install the smart meter. The smart meter was not installed and, on January 27, 2017, the Company noted the Customer of Record's account. On January 30, 2017, a letter was sent to the Customer of Record requesting that an appointment be scheduled to install the smart meter. On February 8, 2017, the Company discussed the installation of the smart meter with the

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8. On or about September 28, 2017, the Complainant filed a Formal Complaint with the Commission against Met-Ed at the above-captioned docket. The Company was electronically served with the Formal Complaint on September 28, 2017.

9. Met-Ed is timely filing its Answer and New Matter contemporaneously with this Preliminary Objection, which Answer and New Matter is incorporated into this Preliminary Objection as if fully set forth herein.

³ *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 81, pp. 45, 60, issued May 1, 2015, effective May 3, 2015.

III. Argument

10. The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code § 5.101(a) as follows:

- (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.

11. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

12. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveler Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

13. In accordance with Section 701 of the Code, 66 Pa.C.S. § 701, a person may file a complaint which sets forth "any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." As explained below, the Company has not violated

the Public Utility Code or the orders or regulations of the Commission.⁴ In fact, the Company's action have been in compliance with Act 129 and the June 5 Order.

14. The regulation at 52 Pa. Code § 5.101(a)(4) permits the filing of a preliminary objection to dismiss a pleading for legal insufficiency. The provision at 52 Pa. Code § 5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 557 (Pa.Cmwlth. 1989); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa.Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*, 540 A.2d 1006 (Pa.Cmwlth. 1988); *White Oak Borough Authority v. Pa. Pub. Util. Comm'n*, 103 A.2d 502 (Pa.Super. 1954).

15. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the Formal Complaint are true. *Id.*

16. Viewing the complaint in this case in the light most favorable to the Complainant, the Company is threatening to shut off her service. The Complainant does not want a smart meter installed at her residence seeking to opt out of having a smart meter installed at her residence and for the Company to cease termination efforts due to the refusal of the smart meter.

17. Met-Ed's smart meter deployment plan was approved by the Commission at Docket No. M-2013-2341990 by Order entered June 5, 2014. In accordance with the June 5 Order, the

⁴ 66 Pa.C.S. § 701.

Company filed its final Smart Meter Deployment Plan (“SMP”) on June 16, 2014. The SMP was approved by the Commission on June 20, 2014. The Complainant challenges no aspect of the Company’s provision of electric service other than the installation of a smart meter at the Service Location, as required by Act 129 and the Company’s SMP.

18. Commission precedent is uniform that it cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to opt out.⁵ Recently, the Commission granted preliminary objections and dismissed a formal complaint which raised similar allegations. *See Charles F. Jackson v. Pennsylvania Electric Company*, Docket No. C-2017-2600495 (Final Order August 31, 2017).

19. The Commission has previously ruled that an electric utility may terminate a customer’s service where the customer has failed to provide the electric utility access to its meter and equipment. In *Larson v. PECO Energy Company*, Docket No. C-2014-2451754 (Opinion and Order entered June 11, 2015) (“*Larson*”), the Commission held that the customer’s request to avoid termination of his service for his failure to provide the respondent with access to its meter and equipment was legally insufficient. The Commission ruled in *Larson* that the respondent could terminate the customer’s service and that the Administrative Law Judge properly granted the

⁵ *Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Initial Decision dated January 3, 2011 became final without Commission action closed March 3, 2011); *Lutherschmidt v. Metropolitan Edison Company*, Docket No. C-2010-2200353 (Final Order entered March 25, 2011). The Commission has continued to uphold installation of smart meters and imposition of smart meter charges on customers’ bills by dismissing complaints opposing installation of smart meters and imposition of smart meter charges on the basis of legal insufficiency. *Corbett v. Metropolitan Edison Company*, Docket No. C-2011-2219898 (Final Order entered May 27, 2011); *Jones v. Metropolitan Edison Company*, Docket No. C-2011-2224380 (Final Order entered June 28, 2011); *Griffin v. Metropolitan Edison Company*, Docket No. C-2012-2300172 (Final Order entered October 18, 2012); *Brake v. West Met-Ed Company*, Docket No. C-2013-2367308 (Final Order entered November 14, 2013); *Drake v. Metropolitan Edison Company*, Docket No. C-2014-2413771 (Final Order entered June 12, 2014); *Efaw v West Met-Ed Company*, Docket No. C-2014-2413744 (Final Order entered June 12, 2014). *See also*, the Initial Decision of ALJ Susan D. Colwell in *Dennis McElwain v. Metropolitan Edison Company*, Docket No. C-2014-2451478 issued December 3, 2015.

respondent's preliminary objections and dismissed the customer's complaint as legally insufficient.

20. Neither Act 129 nor the Commission's orders allow a customer to opt out of having a smart meter installed. If a customer refuses to provide the electric utility with access to its meter and equipment to install a smart meter, the electric utility may terminate the customer's service.

21. Assuming the facts pleaded in the Formal Complaint are true, as the Commission must for the purposes of ruling on a preliminary objection, the Complainant has failed to allege that Met-Ed has committed or omitted an act in violation of a Commission statute, regulation, order, or Met-Ed's tariff, a finding of which must be made in order to sustain a formal complaint. *See* 66 Pa.C.S. § 701; *County of Allegheny*, *supra*. (Compl. ¶ 4).

22. Because Act 129 and the Commission's orders not only authorize but require the Company to develop and implement a smart meter procurement and installation plan, and do not allow a customer to opt out of having a smart meter installed, this Complaint must be dismissed. As a matter of law, the Company is required to install a smart meter at the Service Location. As such, the Commission cannot find the Company to be in violation for having attempted to follow the law as it has done here.

23. In fact, if the Commission did rule in the Complainant's favor and barred the Company from installing a smart meter at the Service Location, the Commission would be forcing the Company to be in violation of Act 129.

24. Therefore, the Formal Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief. *See* 52 Pa. Code § 5.101(a)(4).

25. It is understood that the Commission is generally more accommodating to legal insufficiencies in *pro se* complaints and would not dismiss a *pro se* complainant without first

providing a hearing during which the *pro se* complainant could further explain his or her position and the factual basis for the complaint. See, e.g., *Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (Order entered July 14, 1993) (“*Carlock*”).

26. Such accommodation, however, must be within the bounds of due process. See *MacLuckie v. Palmco Energy, LLC*, Docket No. C-2014-2402558 (Order entered December 4, 2014). Further, there are some cases where a hearing would not alter the inevitable conclusion that this Commission cannot provide the Complainant the relief requested. See *Floyd v. Verizon Pennsylvania LLC*, Docket No. C-2012-2333157 (Order entered April 4, 2013). For this reason, the Company alleges that *Carlock* distinguishable from the instant Formal Complaint. The Complainant has presented no claim that would allow her to opt out of installation of a smart meter as Act 129 does not allow any option to opt out.

27. The Commission has approved sustaining EDCs preliminary objections when complainants allege that the EDC is attempting to install a smart meter at the complainant’s residence, that the complainant does not want a smart meter, and that the EDC is threatening to shut off the complainant’s service. See *Larson v. PECO Energy Company*, Docket No. C-2014-2451754 (Opinion and Order entered June 11, 2015); *Charles F. Jackson v. Pennsylvania Electric Company*, Docket No. C-2017-2600495 (Final Order August 31, 2017); *Maria Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 (Order entered January 24, 2013); *Theresa Gavin v. PECO Energy Company*, Docket No. C-2012-2325258 (Order entered January 24, 2013); *Jeff Morgan v. PECO Energy Company*, Docket No. C-2013-2356606 (Final Order entered July 23, 2013); *Thomas McCarey v. PECO Energy Company*, Docket No. C-2013-2354862 (Final Order entered September 26, 2013); and *Renney Thomas v. PECO Energy Company*, Docket No. C-2012-2336225 (Final Order entered December 31, 2013).

28. Therefore, the Company respectfully requests that the Commission grant its preliminary objection consistent with Commission precedent.

IV. Conclusion

WHEREFORE, for the foregoing reasons, Metropolitan Edison Company respectfully requests that the Commission: (1) grant its Preliminary Objections and strike the Complainant's request for an exemption from the installation of a smart meter; (2) dismiss the Formal Complaint in its entirety with prejudice; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,



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Dated: October 18, 2017

Counsel for Metropolitan Edison Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANN H. SWARTZ

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2017-2626756

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Preliminary Objections of Metropolitan Edison Company to the Formal Complaint of Ann H. Swartz upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, as follows:

Ann H. Swartz
532 Fauth Lane
York, PA 17406

Dated: October 18, 2017



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