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November 13, 2017

VIA E-FILING

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

Re: Larry R. Kramer and Ellen M. Kramer v. Metropolitan Edison Company
Docket No. C-2017-2630621

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 Complainants 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**

**LARRY R. KRAMER AND
ELLEN M. KRAMER**

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2017-2630621

NOTICE TO PLEAD

TO: Larry R. Kramer and Ellen M. Kramer

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
Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Date: November 13, 2017



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LARRY R. KRAMER AND ELLEN M. KRAMER	:	
	:	
v.	:	Docket No. C-2017-2630621
	:	
METROPOLITAN EDISON COMPANY	:	

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF
LARRY R. KRAMER AND ELLEN M. KRAMER**

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 their recently filed Formal Complaint, Larry R. Kramer and Ellen M. Kramer ("Complainants"), who reside at 101 South College Street, Myerstown, Pennsylvania 17067 ("Service Location") allege that they do not want a smart meter installed at the Service Location. (Formal Complaint ¶¶ 4, 5.) The Complainants state as requested relief:

We are requesting a fair and impartial hearing to review our complaint and any and all evidence relating to what is presented here and any other documentation or evidence that we may find and for these and any other arguments that we may have.

One of our requests is that the PUC allow those of us who want to refuse smart meter technology be permitted to pursue a legislative remedy over the next few years. This can be a time-consuming matter as so much legislation goes through the General Assembly in a given session. Since there apparently have been Bills in the House and Senate for the last few legislative sessions, there is greater likelihood that they will "earn their right to passage." As more and more homes are now receiving smart meters, there is growing awareness of Act 129 and greater numbers of people who would

get behind this legislation. We would request that the PUC support us and those customers by not denying us an opportunity of a legislative remedy. We also request that those who respond to their electric utility refusing the smart meter technology not be harassed and intimidated by their utility just because technicians are in the area to replace meters.

A citizen's private property rights should not be overruled by a utility, the General Assembly or anyone else. Choosing between having electricity or not having electricity is no real choice at all. Just because many people don't have an issue with the new meters is no reason to allow for state-sanctioned tyranny. October is National Cybersecurity Awareness Month. Cybersecurity should extend to any device that transmits data which can be vulnerable to hacking. We would not feel secure with a smart meter as it would be the equivalent of doing business over an unsecure website.

We feel as though the smart meter would be an electronic and radiation assault against our property, our persons, and our pets. The anxiety that Met-Ed has put on us is not reasonable or deserving of a paying customer. We believe that Met-Ed should have had some other less harassing and less stressful means of resolution than to force us to file a formal complaint with the PUC. This feels like bureaucratic terrorism when all we are trying to do is protect our persons, property, pets, and constitutional rights. The PUC is supposed to protect consumers from over-reach and harm of the utilities. We believe that the PUC has the authority to demand that the General Assembly revisit the smart meter provisions of Act 129 to clarify the language to match their legislative intent and demand that all utilities cease and desist installation for the time being for all of the reasons above.”

(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 May 26, 2017, the Company sent correspondence to the Complainant for the Service Location regarding the installation of a smart meter at the Service Location. On August 24, 2017, the Company received notification from Wellington Energy, a contractor for the Company, that the Complainant was refusing installation of the smart meter. On August 25, 2017,

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).

a Company representative contacted the Complainants to discuss the smart meter installation and spoke with Mr. Kramer who stated that he was disputing the installation of a smart meter at the Service Location. On August 29, 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 September 13, 2017, a service termination notice was issued to the Complainants due to their refusal to allow access to install the Company's smart meter. On September 25, 2017, Mrs. Kramer contacted the Company seeking a mailing address for the Company and the corporate address was provided. On October 10, 2017, a second service termination notice was issued due to lack of access to install the Company's smart meter. On October 13, 2017, the Company received correspondence from the Complainants opposing installation of the smart meter at the Service Location. On October 19, 2017, Mrs. Kramer contacted the Company regarding installation of the smart meter. The Company representative explained that installation could not be delayed and the electric service would be terminated. Dispute rights were provided to Mrs. Kramer as she indicated that she was not satisfied with the results of her telephone call. On October 24, 2017, the instant Formal Complaint was served on the Company and termination efforts ceased.

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.

² *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective May 3, 2015.

5. As a result, the Company requests that this Preliminary Objection be granted and that the Commission: (1) strike the Complainants' 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 that is certificated as a public utility in Pennsylvania.

7. On May 26, 2017, the Company sent correspondence to the Complainant for the Service Location regarding the installation of a smart meter at the Service Location. On August 24, 2017, the Company received notification from Wellington Energy, a contractor for the Company, that the Complainant was refusing installation of the smart meter. On August 25, 2017, a Company representative contacted the Complainants to discuss the smart meter installation and spoke with Mr. Kramer who stated that he was disputing the installation of a smart meter at the Service Location. On August 29, 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.³ On September 13, 2017, a service termination notice was issued to the Complainants due to their refusal to allow access to install the Company's smart meter. On September 25, 2017, Mrs. Kramer contacted the Company seeking a mailing address for the Company and the corporate address was provided. On October 10, 2017, a second service termination notice was issued due to lack of access to install the Company's smart meter. On October 13, 2017, the Company received correspondence from the Complainants opposing installation of the smart meter at the Service Location. On October 19, 2017, Mrs. Kramer

³ *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective May 3, 2015.

contacted the Company regarding installation of the smart meter. The Company representative explained that installation could not be delayed and the electric service would be terminated. Dispute rights were provided to Mrs. Kramer as she indicated that she was not satisfied with the results of her telephone call. On October 24, 2017, the instant Formal Complaint was served on the Company and termination efforts ceased.

8. The Complainants 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 October 24, 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.

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 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.*

⁴ 66 Pa.C.S. § 701.

15. 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 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 Complainants challenge 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.

16. 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

17. Assuming the facts pleaded in the Formal Complaint are true, as the Commission must for the purposes of ruling on a preliminary objection, the Complainants have 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).

18. 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

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 by dismissing complaints opposing installation of smart meters on the basis of legal insufficiency. *Corbett v. Pennsylvania Power 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 November 13, 2012); *Brake v. 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. 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. Pennsylvania Power Company*, Docket No. C-2014-2451478 issued December 3, 2015.

such, the Commission cannot find the Company to be in violation for having attempted to follow the law as it has done here.

19. 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).

20. The Commission may dismiss a complaint without hearing if a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21 (d).

21. Recently, the Commission set for hearing two cases in which the complainant was opposed to the installation of a smart meter at their premises.⁶ These cases represent a departure from past Commission practice of dismissing such complaints on Preliminary Objections. The Commission stated that where a complainant has presented specific factual averments regarding the health or other effects that they have experienced after a smart meter was installed at their home, the Commission has overruled Preliminary Objections and allowed a case to proceed. Specifically, in *Kreider*, the complainant alleged specific deleterious health effects after installation of a smart meter affecting her specific medical condition. Further, in *Van Schoyck*, the complainants alleged potential health risks due to constant ringing noise in their home and their inability to sleep since the time the smart meter was installed.⁷ In contrast, in the instant case, the Complainants have made no specific factual averments regarding health or other effects experienced which began *after* a smart meter was installed. In fact, the Complainants only alleges generic concerns, and as relief they want the Commission to bar the Company from installing a smart meter. The Commission has not recognized a general assertion of health, safety or security

⁶ *Susan Kreider v. PECO Energy Company*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016); *Stephen and Diane Van Schoyck v. PECO Energy Company*, Docket No. C-2015-2478239 (Opinion and Order entered February 25, 2016).

⁷ *Id.*

concerns as sufficient to overcome Preliminary Objections.⁸ Therefore, the Company respectfully submits that the matters plead in the subject Formal Complaint do not meet the standards set in the *Kreider* and *Van Schoyck* cases such that this matter can survive dismissal on preliminary objections.

22. Further, the Commission has upheld decisions granting preliminary objections and dismissing complaints for legal insufficiency opposing smart meter installation. In *Richard Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Initial Decision issued January 3, 2011), ALJ Susan D. Colwell dismissed a complaint opposing installation of smart meters for legal insufficiency. ALJ Colwell concluded that Act 129 of 2008 authorized the installation of smart meters by EDCs. ALJ Colwell held that the Commission's orders approving the EDC's smart meter plans did not exempt any customers from the smart meter plans. By Commission final order entered March 3, 2011, ALJ Colwell's Initial Decision became final without further Commission action.

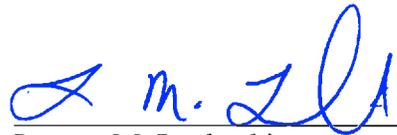
IV. Conclusion

WHEREFORE, for the foregoing reasons, Metropolitan Edison Company respectfully requests that the Commission: (1) grant its Preliminary Objections and strike the Complainants'

⁸ *Richard and Marie Fugo in care of Fugo Eye Institute v. PECO Energy Company*, Docket Nos. C-2015-2519763 and C-2015-2519770 (Order entered April 6, 2016).

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,



Dated: November 13, 2017

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**LARRY R. KRAMER AND
ELLEN M. KRAMER**

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2017-2630621

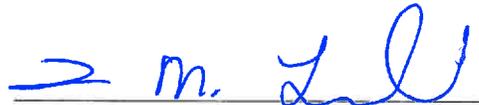
CERTIFICATE OF SERVICE

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 Larry R. Kramer and Ellen M. Kramer 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:

Larry R. Kramer and Ellen M. Kramer
101 South College Street
Myerstown, PA 17067

Dated: November 13, 2017



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