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March 26, 2018

**VIA E-FILING**

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

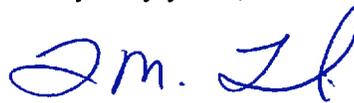
**Re: Lewis B. Smith, Jr. v. Metropolitan Edison Company**  
**Docket No. C-2018-3000235**

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**

**LEWIS B. SMITH, JR.**

v.

**METROPOLITAN EDISON COMPANY**

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**Docket No. C-2018-3000235**

**NOTICE TO PLEAD**

TO: Lewis B. Smith, Jr.

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: March 26, 2018



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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>LEWIS B. SMITH, JR.</b>	:	
	:	
v.	:	<b>Docket No. C-2018-3000235</b>
	:	
<b>METROPOLITAN EDISON COMPANY</b>	:	
	:	

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF  
LEWIS B. SMITH, JR.**

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 his recently filed Formal Complaint, Lewis B. Smith, Jr. ("Complainant"), who resides at 2782 Hunterstown Hampton Road, New Oxford, Pennsylvania 17350 ("Service Location") alleges that he does not want a smart meter installed at the Service Location. (Formal Complaint ¶¶ 4, 5.) The Complainant states as requested relief:

I am a cancer patient currently being treated by chemo and radiation therapy. According to the American Cancer Society and the International Agency for Research on cancer smart meters give off "RF" radiation. RF radiation is a possible carcinogen. That possibility can increase the cells in my body that have been damaged to become cancerous. I need to reduce my exposure to RF radiation as much as possible therefore I do not want a smart meter installed. I am also being charged for smart meter technology as described on page 2 of these forms. "Smart" meters (as all "smart" devices are subject to outside hacking. Therefore the security of the device cannot be guaranteed.

(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”).<sup>1</sup>

3. On February 14, 2017, the Company sent correspondence to the Customer regarding the installation of a smart meter at the Service Location. On February 24, 2017, the Complainant contacted the Company regarding the smart meter and stated that he was refusing installation. On February 6, 2018, the Company contacted the Complainant regarding his refusal of the smart meter and to answer questions he may have regarding the meter. On February 8, 2018, the Company sent correspondence to the Complainant regarding installation of the smart meter. On February 8, 2018, the Complainant contacted the Company to again refuse installation of the smart meter. On February 16, 2018, the Complainant filed the instant Formal Complaint with the Commission. On March 5, 2018, the Company was electronically served with the instant 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**

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<sup>1</sup> 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).

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

7. On February 14, 2017, the Company sent correspondence to the Customer regarding the installation of a smart meter at the Service Location. On February 24, 2017, the Complainant contacted the Company regarding the smart meter and stated that he was refusing installation. On February 6, 2018, the Company contacted the Complainant regarding his refusal of the smart meter and to answer questions he may have regarding the meter. On February 8, 2018, the Company sent correspondence to the Complainant regarding installation of the smart meter. On February 8, 2018, the Complainant contacted the Company to again refuse installation of the smart meter.

8. On February 16, 2018, 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 March 5, 2018.

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.<sup>2</sup> 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

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<sup>2</sup> 66 Pa.C.S. § 701.

Commission must assume, for decisional purposes only, that the factual allegations of the Formal Complaint are true. *Id.*

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 Complainant challenges no aspect of the Company's provision of electric service other than the installation of a smart meter at the Service Location and the smart meter charge, 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.<sup>3</sup>

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 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).

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.

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<sup>3</sup> *Negley v. Metropolitan Edison Company, Docket No. C 2010-2205305 (Final Order entered 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. 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 July 31, 2012); Brake v. West Penn Power Company, Docket No. C-2013-2367308 (Opinion and Order entered November 14, 2013); Drake v. Pennsylvania Electric Company, Docket No. C-2014-2413771 (Final Order entered June 12, 2014); Efav v West Penn Power 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 16, 2015.*

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.

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.<sup>4</sup> 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.<sup>5</sup> In contrast, in the instant case, the Complainant has made no specific factual averments regarding any effects experienced which began *after* a smart meter was installed. 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.

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<sup>4</sup> *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).

<sup>5</sup> *Id.*

22. Further, the Commission has upheld decisions granting preliminary objections and dismissing complaints for legal insufficiency opposing smart meter installation and the smart meter charge assessed. 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 and the smart meter charge for legal insufficiency. ALJ Colwell concluded that Act 129 of 2008 authorized the installation of smart meters by EDCs as well as the imposition of a smart meter charge. 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 or from paying the charges associated with the smart meter plans. By Commission final order entered March 3, 2011, ALJ Colwell's Initial Decision became final without further Commission action. *Dennis Lutherschmidt v. Metropolitan Edison Company*, Docket No. C-2010-2200353 (Order Issued March 25, 2011); *Gloria Corbett v Pennsylvania Power Company*, Docket No. C-2011-2219898 (Order entered May 27, 2011); *Edward Jones v. Metropolitan Edison Company*, Docket No. C-2011-2224380 (Order entered June 28, 2011); *Gerald Griffin v Metropolitan Edison Company*, Docket No. C-2012-2300172 (Order entered July 31, 2012); *Michael Balogh v. West Penn Power Company*, Docket No. C-2012-2329713 (Order entered January 4, 2013).

23. The Commission has also upheld decisions finding that a utility has the ability to terminate the service of a customer who refuses installation of a smart meter. *Art Larson v. PECO Energy Company*; Docket No. C-2014-2451754 (Opinion and Order entered June 11, 2015)

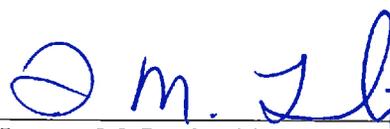
24. Because Act 129 of 2008 and the Commission's orders authorize the Company to develop and implement a smart meter procurement and installation plan, and impose a smart meter charge on its customers to pay for that development, implementation, procurement and installation,

the Complainant has not set forth in his complaint any act done by the Company that violates a Commission regulation, statute or order.

**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: March 26, 2018

Counsel for Metropolitan Edison Company

