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July 30, 2018

VIA E-FILING

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

Re: Wim Ney v. Metropolitan Edison Company
Docket No. C-2018-3003238

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

krak
Enclosures

c: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WIM NEY

v.

METROPOLITAN EDISON COMPANY

:
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:
:
:

Docket No. C-2018-3003238

NOTICE TO PLEAD

TO: Wim Ney

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: July 30, 2018


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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WIM NEY	:	
	:	
v.	:	Docket No. C-2018-3003238
	:	
METROPOLITAN EDISON COMPANY	:	

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF
WIM NEY**

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, Wim Ney ("Complainant") who resides at 377 Madison Avenue, York, Pennsylvania 17404 ("Service Location"), alleges that he does not want a smart meter installed at the Service Location. (Formal Complaint ¶ 5.) The Complainant states as requested relief:

Due to my health, it is best to leave the current electric meter in place. I've been in contact with First(Engero) Energy since 2016 and the PUC shortly thereafter to make known that I do not consent to the installation of a "smart" meter on my property. I had stage 4 throat cancer, survived, but have many complications from the treatment. I do not tolerate electronic equipment very well and a smart meter adds to the daily overload.

Called summer 2016 to express no consent.
Dates: Sept 17, 2016 letter to Anthony J. Alexander
Feb 2018 talk w/ home office
June 15 2018 talked w/ Frank, Sherry, Victoria, Sapora
June 26 2018 – talked to: Anthony, Allison, Wanda
June 28 2018 – talked to: Kathy, Wanda, Wanda

(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 August 16, 2016, the Complainant contacted the Company to refuse installation of a smart meter at the Service Location. On August 30, 2016, the Company sent correspondence to the Complainant regarding the installation of a smart meter at the Service Location. On September 8, 2016, the Complainant contacted the Company to refuse installation of a smart meter at the Service Location stating that there was a medical condition in the home. The Complainant was advised that he could have his doctor submit a letter to temporarily delay installation of the smart meter. On September 13, 2016, the Company received a signed letter from the Complainant’s physician stating that a smart meter should not be installed. Installation of the smart meter was temporarily delayed. On September 20, 2016, the Company received an “opt-out” letter from the Complainant.

In June of 2017, the Company reached the end of its deployment schedule in the Complainant’s area and needed to install smart meters on all customer homes and businesses in the Complainant’s area in accordance with the deployment plan that was approved by the Commission. On September 21, 2017, the Company sent correspondence to the Complainant in an attempt to schedule installation of a smart meter at the Service Location. On October 3, 2017, a pre-disconnection warning letter was issued 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 October

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 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective May 3, 2015.

13, 2017, a service termination notice was issued to the Customer 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 October 17, 2017, the Complainant contacted the Company stating that he had cancer and did not want a smart meter installed at the Service Location. The Company representative attempted to address the Complainant's concerns and advised that installation of a smart meter was required pursuant to Act 129.⁴

On October 17, 2017, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services ("BCS") at Case No. 3570760 refusing installation of a smart meter at the Service Location. On January 19, 2018, the BCS verbally closed the informal complaint advising the Complainant that pursuant to Act 129, the Company is required to procure and install smart meter technology for all customers. The Complainant was advised that there is no "opt-out" option and the Company is within its rights to install a smart meter at the Service Location. The Complainant was further advised that the smart meter records the amount of electricity consumed and it does not affect the amount of electricity used at the Service Location. The Complainant indicated that he understood but was not satisfied and wished to pursue further.

On February 16, 2018, the Company sent correspondence to the Complainant in an attempt to schedule installation of a smart meter at the Service Location. On June 7, 2018, a pre-disconnection warning letter was issued 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.⁵ On June 15, 2018, the Complainant contacted the Company inquiring about his smart meter dispute. The

³ *Id.*

⁴ 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).

⁵ 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective May 3, 2015.

Company representative stated that the Complainant was advised by BCS that his informal complaint was being closed and the Company must install a smart meter at the Service Location. That same day, the Complainant spoke with a Company supervisor who advised that the Complainant could request a meter relocation if he believed that would be of assistance. The Complainant declined. On June 19, 2018, a service termination notice was issued to the Customer pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81 and Rules 9 and 20 of the Company's Commission-approved tariff.⁶ On June 26, 2018, the Complainant contacted the Company reiterating his refusal of the smart meter installation at the Service Location. The Complainant was advised that he could contact the Commission. The Complainant stated that he already contacted his state representative. Later that day, the Company received a telephone call from James Swayer of State Representative Carol Hill's office stating that they had scheduled an appointment with the Complainant and wanted to confirm that his service wasn't terminated prior to their meeting. The Company representative placed Mr. Swayer on hold in order to obtain information from a supervisor regarding the request. Mr. Swayer terminated the telephone call while on hold. On June 28, 2018, the Company attempted to contact the Complainant regarding the pending service termination notice and a message was left seeking a return call. Later that day, the Complainant contacted the Company to report that he had filed a formal complaint with the Commission. The Company representative advised that, to date, the formal complaint has not been received by the Company. On June 28, 2018, the Complainant filed the Formal Complaint with the Commission. On July 9, 2018, the Company was electronically served with the Formal Complaint and termination efforts ceased.

⁶ *Id.*

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.⁷

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 that is certificated as a public utility in Pennsylvania.

7. On August 16, 2016, the Complainant contacted the Company to refuse installation of a smart meter at the Service Location. On August 30, 2016, the Company sent correspondence to the Complainant regarding the installation of a smart meter at the Service Location. On September 8, 2016, the Complainant contacted the Company to refuse installation of a smart meter at the Service Location stating that there was a medical condition in the home. The Complainant was advised that he could have his doctor submit a letter to temporarily delay installation of the smart meter. On September 13, 2016, the Company received a signed letter from the Complainant's physician stating that a smart meter should not be installed. Installation of the smart meter was temporarily delayed. On September 20, 2016, the Company received an "opt-out" letter from the Complainant.

⁷ See 66 Pa.C.S. § 701.

In June of 2017, the Company reached the end of its deployment schedule in the Complainant's area and needed to install smart meters on all customer homes and businesses in the Complainant's area in accordance with the deployment plan that was approved by the Commission. On September 21, 2017, the Company sent correspondence to the Complainant in an attempt to schedule installation of a smart meter at the Service Location. On October 3, 2017, a pre-disconnection warning letter was issued 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.⁸ On October 13, 2017, a service termination notice was issued to the Customer pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81 and Rules 9 and 20 of the Company's Commission-approved tariff.⁹ On October 17, 2017, the Complainant contacted the Company stating that he had cancer and did not want a smart meter installed at the Service Location. The Company representative attempted to address the Complainant's concerns and advised that installation of a smart meter was required pursuant to Act 129.¹⁰

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⁹ *Id.*

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amount of electricity used at the Service Location. The Complainant indicated that he understood but was not satisfied and wished to pursue further.

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¹¹ 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective May 3, 2015.

¹² *Id.*

while on hold. On June 28, 2018, the Company attempted to contact the Complainant regarding the pending service termination notice and a message was left seeking a return call. Later that day, the Complainant contacted the Company to report that he had filed a formal complaint with the Commission. The Company representative advised that, to date, the formal complaint has not been received by the Company.

8. On June 28, 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 July 9, 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.¹³

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.¹⁴ The Commission has adopted this standard.¹⁵

13. In accordance with Section 701 of the Code¹⁶ 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.¹⁷ In fact, the Company's actions 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.¹⁸ 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.¹⁹

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

¹³ *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 308, 1994).

¹⁴ *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).

¹⁵ *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

¹⁶ 66 Pa.C.S. § 701

¹⁷ 66 Pa.C.S. § 701.

¹⁸ *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985).

¹⁹ *Id.*

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.

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.²⁰

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.²¹

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 Formal 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.

19. Therefore, the Formal Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief.²²

²⁰ *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 27, 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.

²¹ See 66 Pa.C.S. § 701; *County of Allegheny, supra*. (Compl. ¶ 4.)

²² 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.²³

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.²⁴ 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.²⁵ In contrast, in the instant case, the Complainant has made no specific factual averments regarding any health effects experienced *after* a smart meter has been installed. Specifically, the Complainant states that he does not want a smart meter installed at the Service Location due to a health concern.²⁶ Further, the Complainant has stated that he does not consent to the installation of a smart meter at the Service Location.²⁷ The Commission has not recognized a customer's lack of consent to install a smart meter as sufficient to overcome preliminary objections.²⁸ Therefore, the Company respectfully submits that the

²³ 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21 (d).

²⁴ *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).

²⁵ *Id.*

²⁶ Formal Complaint ¶ 5.

²⁷ *Id.*

²⁸ *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).

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. In *Charles F. Jackson v. Pennsylvania Electric Company*, Docket No. C-2017-2600495 (Order Entered August 31, 2017), the Commission approved the Initial Decision of ALJ David A. Salapa, dated June 26, 2017, which granted the preliminary objections of Pennsylvania Electric Company and dismissed the formal complaint of Mr. Jackson (who was disputing the installation of a smart meter), finding that the formal complaint was legally insufficient, pursuant to 52 Pa. Code § 5.101(a)(4), in that the complaint failed to allege that the utility violated the Public Utility Code, Commission regulations or orders or the utility's tariff provisions. The respondent was found to be authorized to install smart meters and impose a charge on its customers to develop and implement a smart meter procurement and installation plan that will lead to the installation of smart meters throughout its service territory. ALJ Salapa further found that the respondent was authorized to terminate the Mr. Jackson's service if he refused to provide the respondent with access to its meter and equipment to install the smart meter.

This Commission decision was entered after *Kreider*. The Formal Complaint is similar to the alleged averments in the formal complaint at Docket No. C-2017-2600495, in that the Complainant has only alleged that he does not want a smart meter installed at the Service Location. The Complainant has not set forth in his complaint that any act done by the Company that violates a Commission regulation, statute or order.

23. Therefore, the Company respectfully submits that the matters plead in the 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.

24. Further, the Commission has upheld decisions granting preliminary objections and dismissing complaints for legal insufficiency opposing smart meter installation. In *Negley*, 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 EDCs 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.

25. Rule 9 of the Company's Commission-approved tariff²⁹ allows the Company to have access to its customers' premises for any and all purposes relating to the supply of electric energy which includes the exchange of meters. The Complainant's refusal to allow the Company access to its own meter is a violation of Rules 9 and 20 of the Company's Commission-approved tariff³⁰ and is grounds for termination of service in accordance with 66 Pa.C.S. § 1406(a)(4) and 52 Pa. Code § 56.81(3). 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.³¹

26. Because Act 129 of 2008 and the Commission's orders authorize the Company to develop and implement a smart meter procurement and installation plan, the Complainant has not set forth in his complaint any act done by the Company that violates a Commission regulation, statute or order.

²⁹ *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, issued May 1, 2015, effective July 30, 2015.

³⁰ *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective July 30, 2015.


³¹ *Art Larson v. PECO Energy Company*; Docket No. C-2014-2451754 (Opinion and Order entered June 11, 2015). *See also, Catherine J. Frompovitch v. PECO Energy Company*; Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018).

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,

Dated: July 30, 2018


Lauren M. Lepkoski
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Counsel for Metropolitan Edison Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WIM NEY :
 :
 v. : **Docket No. C-2018-3003238**
 :
METROPOLITAN EDISON COMPANY :

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 Wim Ney 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:

Wim Ney
377 Madison Avenue
York, PA 17404

Dated: July 30, 2018


Lauren M. Lepkoski
Tori L. Giesler
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P.O. Box 16001
Reading, Pennsylvania 19612-6001
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