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October 9, 2018

VIA E-FILING

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

Re: Cindy Kelly v. Metropolitan Edison Company
Docket No. C-2018-3004681

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**

CINDY KELLY

v.

METROPOLITAN EDISON COMPANY

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:
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Docket No. C-2018-3004681

NOTICE TO PLEAD

TO: Cindy Kelly

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.

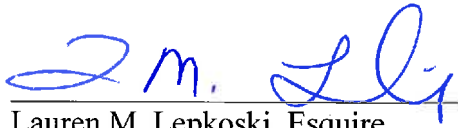
File with:

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: October 9, 2018


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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CINDY KELLY :
 :
 v. : **Docket No. C-2018-3004681**
 :
METROPOLITAN EDISON COMPANY :

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF
CINDY KELLY**

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, Cindy Kelly ("Complainant") who resides at 7252 Camp Meeting Road, New Tripoli, Pennsylvania 18066 ("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 want Met-Ed to make an EXCEPTION to installing a smart meter on my home or PROVIDE documented third party proof of studies that it is safe and will do NO HARM to humans, that the device has a safe history without causing harm to homes (fires), and is completely safe from hackers remotely changing our electric connection or using the information from our house. I also need assurance that a CERTIFIED electrician is doing any changes to my power meter.

I should not be required to have a device of this magnitude forced on my family and home of 32 years.

In 2016 I was diagnosed with cancer and am currently a survivor of that cancer. I must know that the device will not affect my body or health in ANY way. I have undergone severe mental distress since January 2018

over this issue. I am also battling a chronic illness and there is a track record of smart meters making the illness worse in others who have had them installed. Many of the resources I have for my illness reference a need to reduce the type of radiation produced by these meters, for healing.

"In May 2011 the International Agency for Research on Cancer (IARC) evaluated cancer risks from radiofrequency (RF) radiation. Human epidemiological studies gave evidence of increased risk for glioma and acoustic neuroma. RF radiation was classified as Group 2B, a possible human carcinogen. Further epidemiological, animal and mechanistic studies have strengthened the association. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5504984/>

In my home I turn off all wireless devices on the upstairs level when asleep. I also take breaks during the day from wireless devices. With the "smart" meter, I will be exposed to a high power wireless grid in my home 24/7.

Living with chronic illness I have sensitivities that do not bother other people. I need to be careful about the air I breathe, the food I eat and the water I drink. This is no different.

I have read that many of these smart meters (including the one Met Ed wants to install) have caused fires in homes where they are installed. When the fire is started outside the home, there are no smoke detectors that will let the occupants know about it before the fire is raging. When purchasing products for my home I do extensive research to make sure they are models I choose work well and are as safe as possible. I also have the CHOICE to purchase or not based on my findings.

Lastly, as an IT professional of over 35 years, I understand not only the dangers of microwave radiation, but understand how easily computers and computerized devices can be hacked. Devices that are exposed to a network are especially vulnerable. Almost every week there is a report of another "SAFE" computer system that has been hacked by an outsider or foreign country. I need proof that this cannot happen on my device. I do not want my private information and electric usage exposed or the device controlled by hackers.

In summary I ask that you exempt our house from a smart meter until 2023 or indefinitely and allow us to continue using our analog meter. If that is not possible, I ask that you provide a means to turn OFF the meter when not required for transmitting data to the power company (once per month). All nearby states (NJ, DE, MD, NY, VA, OH) offer the ability to opt out and PA has a current bill to provide that capability as well. In fact, PA is one of the only states that REQUIRE a smart meter be installed at this time. I am confident as more devices are installed the risk will be exposed or the safety

proved. Given the precedent set by the rest of the country, I ask that you rule for an exemption at this time.

(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 12, 2017, the Company sent correspondence to the Complainant regarding the installation of a smart meter at the Service Location. On January 11, 2018, the Company received notification from Wellington Energy, a contractor for the Company, that the Complainant refused installation of the smart meter. On January 15, 2018, the Company spoke with the Complainant who agreed to the installation of a smart meter. On January 16, 2018, the Company made note on the Complainant’s account that an appointment should be scheduled with the Complainant to complete the meter exchange. On June 28, 2018, a Company representative spoke with the Complainant who stated that she spoke with someone who stated that the field representative would have materials with them stating that there was no health hazards or other issues with this smart meter. On July 30, 2018, a Company representative went to the Service Location, but the Complainant was not available. On August 24, 2018, a Company representative spoke with the Complainant who stated that she had file a formal complaint with the Commission and she would find out more information for herself about the smart meter. A smart meter refusal flag was placed on the Complainant’s Account. On August 31, 2018, the Complainant filed the Formal Complaint with the Commission. On September 17, 2018, the Company was electronically served with the Formal Complaint and termination efforts ceased.

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).

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.²

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 December 12, 2017, the Company sent correspondence to the Complainant regarding the installation of a smart meter at the Service Location. On January 11, 2018, the Company received notification from Wellington Energy, a contractor for the Company, that the Complainant refused installation of the smart meter. On January 15, 2018, the Company spoke with the Complainant who agreed to the installation of a smart meter. On January 16, 2018, the Company made note on the Complainant's account that an appointment should be scheduled with the Complainant to complete the meter exchange. On June 28, 2018, a Company representative spoke with the Complainant who stated that spoke with someone who stated that the field representative would have materials with them stating that there was no health hazards or other issues with this smart meter. On July 30, 2018, a Company representative went to the Service Location, but the Complainant was not available. On August 24, 2018, a Company representative

² See 66 Pa.C.S. § 701.

spoke with the Complainant who stated that she had file a formal complaint with the Commission and she would find out more information for herself about the smart meter. A smart meter refusal flag was placed on the Complainant's Account.

8. On August 31, 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 September 17, 2018 and termination efforts ceased.

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.³

³ *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered August 158, 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.⁴ The Commission has adopted this standard.⁵

13. In accordance with Section 701 of the Code⁶ 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.⁷ 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.⁸ 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.⁹

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, as required by Act 129 and the Company’s SMP.

⁴ *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).

⁵ *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

⁶ 66 Pa.C.S. § 701.--*.-

⁷ *Id.*

⁸ *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985).

⁹ *Id.*

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.¹⁰

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.¹¹

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.¹²

20. The Commission may dismiss a complaint without hearing if a hearing is not necessary in the public interest.¹³

¹⁰ *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.

¹¹ See 66 Pa.C.S. § 701; *County of Allegheny, supra*. (Compl. ¶ 4.)

¹² See 52 Pa. Code § 5.101(a)(4).

¹³ 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.¹⁴ 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.¹⁵ 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 she does not want a smart meter installed at the Service Location as she believes the smart meter will impact her health, may cause a fire or be “hacked.”¹⁶ Further, the Complainant has stated that she knows that smart meter installation is required by law, but she is seeking an exception and does not consent to the installation of a smart meter at the Service Location.¹⁷ The Commission has not recognized a customer’s lack of consent to install a smart meter as sufficient to overcome preliminary objections.¹⁸ Therefore, the Company respectfully submits that the matters plead in the subject

¹⁴ *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).

¹⁵ *Id.*

¹⁶ Formal Complaint ¶ 4.

¹⁷ *Id.*

¹⁸ *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).

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 tariff¹⁹ 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 tariff²⁰ 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.²¹

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.

¹⁹ *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, issued May 1, 2015, effective August 15, 2015.

²⁰ *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective August 15, 2015.

²¹ *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: October 9, 2018



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**BEFORE THE
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CINDY KELLY

v.

METROPOLITAN EDISON COMPANY

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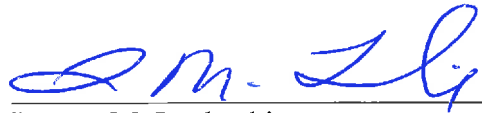
CERTIFICATE OF SERVICE

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 Cindy Kelly 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:

Cindy Kelly
7252 Camp Meeting Road
New Tripoli, PA 18066

Dated: October 9, 2018



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