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November 27, 2018

VIA E-FILING

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

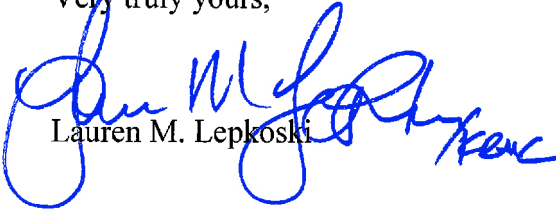
Re: Donna DeSanto Ott v. Metropolitan Edison Company
Docket No. C-2018-3005829

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**

DONNA DESANTO OTT	:	
	:	
v.	:	Docket No. C-2018-3005829
	:	
METROPOLITAN EDISON COMPANY	:	

NOTICE TO PLEAD

TO: Donna DeSanto Ott

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.

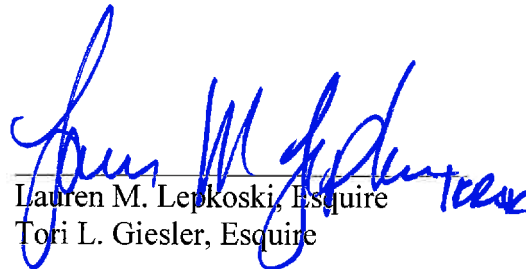
File with:

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 27, 2018



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DONNA DESANTO OTT	:	
	:	
v.	:	Docket No. C-2018-3005829
	:	
METROPOLITAN EDISON COMPANY	:	

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF
DONNA DESANTO OTT**

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, Donna DeSanto Ott ("Complainant") who resides at 111 Meadowlark Road, Reading, Pennsylvania 19606 ("Service Location"), alleges that she does not want a smart meter installed at the Service Location and wants the currently installed meter removed. (Formal Complaint ¶¶ 4, 5.) The Complainant states as requested relief:

Relief Sought:

1. I respectfully request the Commission compel Met Ed to abide by the requirements of Sections 1501 and 1502 of the Public Utility Code and Section 57.194 of the Commission's regulations to provide safe and reasonable electric service to me and my family.
2. I respectfully request that the Commission compel Met Ed to make an accommodation for me based on my disabilities and desist from deploying or attempting to deploy any wireless equipment which would exacerbate my medical conditions.
3. I respectfully request that the Commission:
 - a. Allow me to have an analog meter, which is safe for my health, or in the alternative,

- b. Allow Met Ed to install an alternate wired or fiber optic connected meter which emits no EMF and which is safe for me, taking into account my unique medical vulnerabilities as explained by my physicians.
- c. Med Ed remove the current electric meter on my house which is harmful to me and my family, and replace it with either an analog meter or a bridge and bill me estimated payments while this this formal complaint and all appeals are pending. Met Ed has sufficient data to bill my family on estimated bills because we have lived in this home for over 25 years.
- d. Taking off the meter which is harmful to me and my family will enable me to return to my home and live with all of my family, including my husband and the rest of my children.
4. The Commission should compel Met Ed to provide metering that is safe for me, considering my unique medical conditions which the meter has worsened, and prevented me from living in my house, or even being in it for short periods of time without medical symptoms worsening.
5. The Commission should cease and desist from any attempts to install a wireless smart meter or other harmful equipment at my premises, such as is a violation of Section 1501 and 1502 of the Public Utility Code and Section 57.194 of the Commission's regulations as they pertain to my unique medical conditions.
6. I ask the Commission to order a permanent stay of any termination on the part of Met Ed against me for any alleged denial of access to the meter at my premises.
7. In the alternative, and pursuant to 52 Pa Code Section 1.91, I respectfully request the Commission order the waiver of any rule, regulation or Commission Order that the Commission believes requires Met Ed to deploy a wireless EMF-emitting meter on my premises.
8. I respectfully request the Commission to compel Met Ed to provide credit on our family's bill for: my days of homelessness and physical suffering, for \$849 spent on EMF remediations following the October 8 installation of smart meters in the neighborhood.
9. I respectfully ask the Commission to ensure that Met Ed is enjoined from contacting the police ever again about my mental health status.

(Formal Complaint ¶ 4.)

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

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).

3. On January 22, 2018, the Complainant contacted the Company requesting to opt out of smart meter installation at the Service Location. On February 14, 2018, the Complainant again contacted the Company stating that she did not want a smart meter installed at the Service Location and their doctor advised them that she should not have one. The Company representative attempted to address the Complainant's concerns and advised that there is no opt out available under Act 129. Further, the Company was not deploying smart meters in that area currently.

On September 25, 2018, the Company sent correspondence to the Customer regarding the installation of a smart meter at the Service Location. On October 5, 2018, the Complainant emailed the Company reiterating her refusal of the smart meter installation at the Service Location and alleged that a smart meter was already installed at the Service Location. The Company representative responded to the Complainant requesting account information in order to respond to her request. No response was received from the Complainant. On October 8, 2018, the Complainant contacted the Company stating that she wanted the smart meter removed from the Service Location as it was making her sick and that she intended to file a complaint with the Commission. On October 9, 2018, the Company sent correspondence to the Customer in an attempt to schedule installation of a smart meter at the Service Location. On October 11, 2018, the Complainant contacted the Company requesting that the "old meter" be reinstalled at the Service Location. The Complainant was advised that the Company is unable to do so and referred the Complainant to the Commission. That same day, a meter exchange order was initiated as the currently installed meter was reported as painted over or foggy by the meter reader.

On October 19, 2018, a pre-disconnection warning letter 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.² On October 22, 2018, the Complainant contacted the Company to reiterate her health concerns regarding the smart meter and stating that she has started the process to file a complaint with the Commission. The Complainant was advised that replacement was necessary due to the defective glass and that the Company is unable to guarantee accuracy or bi-monthly meter readings as the meter readers are unable to clearly see the meter reading on the meter and she is refusing to allow the Company to replace the meter. Due to the Complainant's refusal, the meter replacement order was cancelled. On October 23, 2018, the Company attempted to contact the Customer and Complainant regarding installation of a smart meter at the Service Location but was unable to leave a message seeking a return telephone call as no voicemail was available. On October 26, 2018, the Complainant contacted the Company stating that she is now homeless due to the smart meter. She further stated that the RF is high since the smart meter was installed and that the wrong meter was installed. The Company representative advised that no smart meter has been installed at the Service Location yet. The Complainant stated that she is having a voltage issue at the Service Location and was advised that a Company representative would be dispatched to check the pole to meter base but is unable to address any internal issues.

On October 29, 2018, the Complainant contacted the Company alleging that the Company installed a smart meter and she is now getting an excess of wireless radiation according to her gauge. She alleges that she and her children are now homeless due to the smart meter installation. The Complainant is again advised that a smart meter has not yet been installed at the Service Location. The meter currently installed at the Service Location was installed in 2006 and is a time-of-day meter. The Complainant stating that the Company is killing her and her children.

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.

The Company representative advised that a crew had been to the Service Location and found no voltage issues regarding the Company's equipment. The Complainant stated that she wanted reimbursed for a hotel stay. The Company representative initiated a claim for damages which was assigned Claim No. ME119506. Later that same day, the Complainant spoke with another Company employee stating that the meter needed to be removed today as she is homeless. The Company representative explained that a meter technician went out to the Service Location and verified that the currently installed meter is the same time-of-day meter that has been installed since 2006. The Complainant requested to speak to a supervisor and was transferred to the customer service supervisor. The Complainant advised the Company supervisor that she is requesting a medical exception and stating that she has been living in her car for two weeks since the smart meter was installed. The customer service supervisor advised that no smart meter has been installed at the Service Location due to her refusal and the same meter has been installed since 2006. The Complainant stated that her voltage is spiking. The customer service supervisor reiterated that the Company verified that there are no voltage issues with the Company's equipment. The Complainant stated that the Company was lying, and she didn't see anyone come to the Service Location and she has been in her car for two weeks. The Complainant was again advised that no voltage issues were found at the Service Location during a field visit. The Complainant was further advised that Act 129 does not permit any medical opt out. The Complainant contacted the Company several more times on October 29, 2018 to refuse installation due to her health concerns and requesting the removal of the smart meter.

On October 30, 2018, the Company contacted the Complainant to discuss her claim meter. That same day, the Complainant contacted the Company to initiated against the Company regarding the smart again state that the Company is killing her due to the smart meter installation.

The Complainant is again advised that no smart meter has been installed at the Service Location. The Complainant stated that she understood but the legacy meter is what is throwing out the RF waves that are making her ill. She also reported that she was living in her car with her three children. The Company representative stated that she could speak with someone from meter services and the smart meter team in order to discuss her concerns further. The Complainant was advised that she would receive a call back within seven to ten days. Out of concern for the Complainant and her children, a Company employee contacted the Central Berks Police Department to perform a welfare check advising that the Complainant stated that she and her three children were living in her car because of the smart meter, but the Company's records do not indicate that a smart meter has been installed at the Service Location.

On October 31, 2018, the Complainant was advised by the claims representative that the Company was unable to assist her with her claim and provided information via email pursuant to the Complainant's request. That same day, 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 November 7, 2018, the Company was electronically served with the Formal Complaint 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.⁴

³ 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.

⁴ 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 that is certificated as a public utility in Pennsylvania.

7. On January 22, 2018, the Complainant contacted the Company requesting to opt out of smart meter installation at the Service Location. On February 14, 2018, the Complainant again contacted the Company stating that she did not want a smart meter installed at the Service Location and their doctor advised them that she should not have one. The Company representative attempted to address the Complainant's concerns and advised that there is no opt out available under Act 129. Further, the Company was not deploying smart meters in that area currently.

On September 25, 2018, the Company sent correspondence to the Customer regarding the installation of a smart meter at the Service Location. On October 5, 2018, the Complainant emailed the Company reiterating her refusal of the smart meter installation at the Service Location and alleged that a smart meter was already installed at the Service Location. The Company representative responded to the Complainant requesting account information in order to respond to her request. No response was received from the Complainant. On October 8, 2018, the Complainant contacted the Company stating that she wanted the smart meter removed from the Service Location as it was making her sick and that she intended to file a complaint with the Commission. On October 9, 2018, the Company sent correspondence to the Customer in an

attempt to schedule installation of a smart meter at the Service Location. On October 11, 2018, the Complainant contacted the Company requesting that the “old meter” be reinstalled at the Service Location. The Complainant was advised that the Company is unable to do so and referred the Complainant to the Commission. That same day, a meter exchange order was initiated as the currently installed meter was reported as painted over or foggy by the meter reader.

On October 19, 2018, a pre-disconnection warning letter 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.⁵ On October 22, 2018, the Complainant contacted the Company to reiterate her health concerns regarding the smart meter and stating that she has started the process to file a complaint with the Commission. The Complainant was advised that replacement was necessary due to the defective glass and that the Company is unable to guarantee accuracy or bi-monthly meter readings as the meter readers are unable to clearly see the meter reading on the meter and she is refusing to allow the Company to replace the meter. Due to the Complainant’s refusal, the meter replacement order was cancelled. On October 23, 2018, the of a smart meter at the Service Location but was unable to leave a message seeking a Company attempted to contact the Customer and Complainant regarding installation return telephone call as no voicemail was available. On October 26, 2018, the Complainant contacted the Company stating that she is now homeless due to the smart meter. She further stated that the RF is high since the smart meter was installed and that the wrong meter was installed. The Company representative advised that no smart meter has been installed at the Service Location yet. The Complainant stated that she is having a voltage issue at the Service Location and was advised that a Company

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.

representative would be dispatched to check the pole to meter base but is unable to address any internal issues.

On October 29, 2018, the Complainant contacted the Company alleging that the Company installed a smart meter and she is now getting an excess of wireless radiation according to her gauge. She alleges that she and her children are now homeless due to the smart meter installation. The Complainant is again advised that a smart meter has not yet been installed at the Service Location. The meter currently installed at the Service Location was installed in 2006 and is a time-of-day meter. The Complainant stating that the Company is killing her and her children. The Company representative advised that a crew had been to the Service Location and found no voltage issues regarding the Company's equipment. The Complainant stated that she wanted reimbursed for a hotel stay. The Company representative initiated a claim for damages which was assigned Claim No. ME119506. Later that same day, the Complainant spoke with another Company employee stating that the meter needed to be removed today as she is homeless. The Company representative explained that a meter technician went out to the Service Location and verified that the currently installed meter is the same time-of-day meter that has been installed since 2006. The Complainant requested to speak to a supervisor and was transferred to the customer service supervisor. The Complainant advised the Company supervisor that she is requesting a medical exception and stating that she has been living in her car for two weeks since the smart meter was installed. The customer service supervisor advised that no smart meter has been installed at the Service Location due to her refusal and the same meter has been installed since 2006. The Complainant stated that her voltage is spiking. The customer service supervisor reiterated that the Company verified that there are no voltage issues with the Company's equipment. The Complainant stated that the Company was lying, and she didn't see anyone come

to the Service Location and she has been in her car for two weeks. The Complainant was again advised that no voltage issues were found at the Service Location during a field visit. The Complainant was further advised that Act 129 does not permit any medical opt out. The Complainant contacted the Company several more times on October 29, 2018 to refuse installation due to her health concerns and requesting the removal of the smart meter.

On October 30, 2018, the Company contacted the Complainant to discuss her claim initiated against the Company regarding the smart meter. That same day, the Complainant contacted the Company to again state that the Company is killing her due to the smart meter installation. The Complainant is again advised that no smart meter has been installed at the Service Location. The Complainant stated that she understood but the legacy meter is what is throwing out the RF waves that are making her ill. She also reported that she was living in her car with her three children. The Company representative stated that she could speak with someone from meter services and the smart meter team in order to discuss her concerns further. The Complainant was advised that she would receive a call back within seven to ten days. Out of concern for the Complainant and her children, a Company employee contacted the Central Berks Police Department to perform a welfare check advising that the Complainant stated that she and her three children were living in her car because of the smart meter, but the Company's records do not indicate that a smart meter has been installed at the Service Location.

On October 31, 2018, the Complainant was advised by the claims representative that the Company was unable to assist her with her claim and provided information via email pursuant to the Complainant's request. That same day, 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

8. 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 November 7, 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.⁷

⁶ 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.

⁷ *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.⁸ The Commission has adopted this standard.⁹

13. In accordance with Section 701 of the Code¹⁰ 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.¹¹ 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.¹² 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.¹³

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.

⁸ *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).

⁹ *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

¹⁰ 66 Pa.C.S. § 701.

¹¹ *Id.*

¹² *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985).

¹³ *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.¹⁴

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.¹⁵

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.¹⁶

20. The Commission may dismiss a complaint without hearing if a hearing is not necessary in the public interest.¹⁷

¹⁴ *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.

¹⁵ See 66 Pa.C.S. § 701; *County of Allegheny, supra*.

¹⁶ See 52 Pa. Code § 5.101(a)(4).

¹⁷ 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.¹⁸ 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.¹⁹ 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 the currently installed meter is causing health issues and she should be provided with a medical exemption.²⁰ The Commission has not recognized a customer's lack of consent to install a smart meter as sufficient to overcome preliminary objections.²¹ 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.

¹⁸ *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).

¹⁹ *Id.*

²⁰ Formal Complaint ¶ 4.

²¹ *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).

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 tariff²² 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 tariff²³ 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.²⁴

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.

²² *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, issued May 1, 2015, effective August 15, 2015.

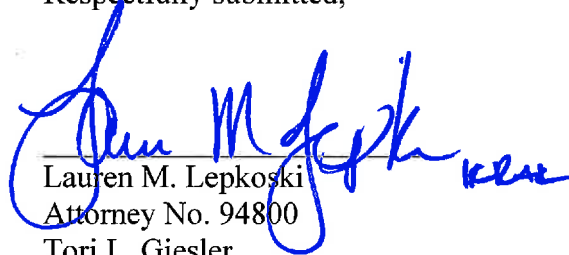
²³ *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective August 15, 2015.

²⁴ *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,



Lauren M. Lepkoski
Attorney No. 94800
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Dated: November 27, 2018

Counsel for Metropolitan Edison Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DONNA DESANTO OTT

:

:

v.

:

Docket No. C-2018-3005829

:

METROPOLITAN EDISON COMPANY

:

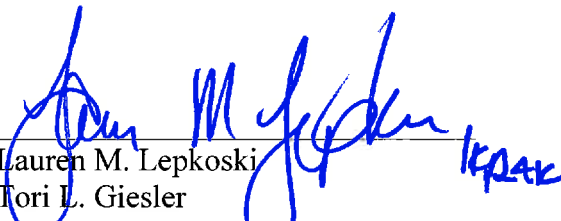
CERTIFICATE OF SERVICE

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 Donna DeSanto Ott 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:

Donna DeSanto Ott
111 Meadowlark Road
Reading, PA 19606

Dated: November 27, 2018


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