

March 1, 2019

VIA E-FILING

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

In Re: V. Wes Zimmerman v. Metropolitan Edison Company  
Docket No. C-2019-3007568

Dear Secretary Chiavetta:

Attached is our timely filed Reply to Preliminary Objections in the above-referenced matter. This document has been served on the Respondent as shown in the Certificate of Service.

Please feel free to contact us with any questions.

Sincerely,

V. Wes Zimmerman

cc Reply to Preliminary Objections  
Certificate of Service

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

V. Wes Zimmerman  
(Complainant)

v.

:  
:  
:

DOCKET No. C-2019-3007568

METROPOLITAN EDISON COMPANY  
(Respondent)

Reply to Preliminary Objections of  
Metropolitan Edison Company

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I respond as follows:

I. Introduction

1. Admitted in part and denied in part. This is the text of the complainant’s formal complaint. However, the complaint does not *allege* that he does not want a smart meter, rather it plainly states that the complainant does not want a smart meter.

2. Denied. The plain language of Act 129 of 2008 does not require a smart meter. Its deployment is not in accordance with Act 129 of 2008.

3. Admitted in part and denied in part. Any information respondent has sent via mail about smart meters were not accompanied by any information or material to show that what was said about their smart meters were factual. Additionally, there was never a letter received on December 28, 2019 stating that the complainant should contact the respondent to facilitate installation of a smart meter. The letter stated that “several attempts were made to contact you” about installation of a smart meter. This is not so, and even as respondent admits, had just talked with the complainant the day prior.

Complainant does recall asking to speak with the CEO, and recalls asking if anyone at Met-Ed has read the plain language of Act 129 of 2008. Complainant clarifies that the respondent is welcome to read the current analog meter (unless they want complainant to forward the readings via uploading a picture to a computer and sending it via email), however, the respondent (or any contractor of respondent’s) is not permitted on the property to install a smart meter while the formal complaint is in process and may not. Likewise, a termination/shut-off notice cannot be issued during such proceeding. Please refer to the following:

“§ 56.151. General rule.

**Upon initiation of a dispute covered by this section, the public utility shall:**

**(1) Not issue a termination notice based on the disputed subject matter.**

4. Denied. Respondent is in violation of sections 1501 of the Pennsylvania Public Utility Code (see numbers 2 through 6 of the initial Formal Complaint), therefore, the PUC has jurisdiction to hear this case and mandates that the PUC hear this formal complaint, taking all my allegations as true. Met- Ed argues aptly in preliminary objections number 14 that the moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commw. Of Pa.*, 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the Formal Complaint are true.

Although section 1501 was not literally cited in the initial formal complaint, it was in substance. The initial complaint does cite health concerns surrounding smart meters – which even the respondent admits emit radio frequency (based on mail and email correspondence received by complainant from respondent). Respondent has not denied such, but rather has admitted in previous correspondence that RF is harmful.

Further, no factual information was provided stated the meters are absolutely safe. On the contrary, radio frequency in the microwave range is a class 2B carcinogen. Respondent has placed no controls on emissions of this carcinogen, and similar meters have been found to emit over 1200 times the allowable RF limit established the FCC. Additionally, radio frequency (especially in the microwave range – that used by smart meters and wireless communication) has been shown to have many other negative biological effects on human beings. Because people are biologically unique – it is impossible to predict how different people will react immediately or in the future to these frequencies. However, the fact that they are harmful in many ways gives complainant the right refuse installation of the smart meter without having suffered any current known adverse effect to these frequencies / prior to the installation of a smart meter.

Every public utility, under section 1501 of the public utility code, has the duty to furnish, among other things, safe service and shall make all alteration, substitution, extension, and improvement in or to such service.....as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.

Complainant contends that installing an RF emitting smart meter on a home without consideration to its proximity to inhabitants, or installation anywhere on the home, creates unsafe service because the meter is emitting a carcinogenic frequency all day and all night at frequent intervals, and at limits not

proven to always abide by limits set by the FCC. Complainant therefore requests accommodation for his and his family's safety.

## II. Background

5. Disagree. I request the Preliminary Objection be denied and the Commission grant my request for an accommodation from the installation of a smart meter and not dismiss the Formal Complaint in its entirety with prejudice, but grant me a hearing and grant me such other relief as may be just and reasonable under the circumstances.

6. Admit.

7. Denied. Admitted in part and denied in part. Any information respondent has sent via mail about smart meters were not accompanied by any information or material to show that what was said about their smart meters were factual. Additionally, there was never a letter received on December 28, 2019 stating that the complainant should contact the respondent to facilitate installation of a smart meter. The letter stated that "several attempts were made to contact you" about installation of a smart meter. This is not so, and even as respondent admits, had just talked with the complainant the day prior.

Complainant does recall asking to speak with the CEO, and recalls asking if anyone at Met-Ed has read the plain language of Act 129 of 2008. Complainant clarifies that the respondent is welcome to read the current analog meter (unless they want complainant to forward the readings via uploading a picture to a computer and sending it via email), however, the respondent (or any contractor of respondent's) is not permitted on the property to install a smart meter while the formal complaint is in process and may not. Likewise, a termination/shut-off notice cannot be issued during such proceeding. Please refer to the following:

§ 56.151. General rule.

**Upon initiation of a dispute covered by this section, the public utility shall:**

**(1) Not issue a termination notice based on the disputed subject matter.**

8. Admit.

9. Admit.

10. Requires a legal conclusion

11. Requires a legal conclusion

12. Requires a legal conclusion

13. Denied. Even if the Company may have been in compliance with Act 129 and the June 5 Order, which I disagree with, the Company is still violating Section 1501 and 1502 of the PUC Act, which I have alleged and will be amending my Formal Complaint to include 1502, and that will be sent soon. Met-Ed should not be permitted to ignore the plain language of customers' complaints to state that the customers have not alleged violations of any PUC regulation in their formal complaints.

14. Requires a legal conclusion. By way of further answer, I have alleged violations of Section 1501 in my Formal Complaint in my counts 2 through 6.

15. Complainant does not see the relevance of paragraph #15 of the Preliminary Objections. Respondent cites several cases in the paragraph. Complainant believes that the Preliminary Objections should not be granted because:

- a. Interstate Traveler Services, Inc. v. Pa. Dept. of Environmental Resources seems to claim no jurisdiction because they didn't "exhaust administrative remedies." However, respondent's own correspondence from October 10, 2017, and Paragraph #4 above states that complainant can file a complaint with the PUC if resolution is not reached with respondent.
- b. Complainant sees no relevance for citing Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc. as it seems to deal with serving an out-of-state garnishee.
- c. Montague v. Philadelphia Electric Company seems to deal with
  - i. Theft of service;
  - ii. Welfare recipients; and,
  - iii. Relitigating the same case.

Complainant's case includes none of these issues. Complainant does not see the relevance of these cases to the case at hand. If there is relevance, an explanation is requested such that complainant can comment further.

15. Admitted in part and denied in part. Respondent claims that it has not violated any law, regulation, Code, or order. However, the Formal Complaint states that the respondent (Met-Ed) is violating Section 1501. The PUC's interpretation of Act 129 as mandating no accommodations for any customers is illegal.

16. Denied. I am not asking for an opt-out, I am asking for an accommodation.

17. Denied. Respondent is in violation of sections 1501 of the Pennsylvania Public Utility Code (see numbers 2 through 6 of the initial Formal Complaint), therefore, the PUC has jurisdiction to hear this case and mandates that the PUC hear this formal complaint, taking all my allegations as true. Met-Ed argues aptly in preliminary objections number 14 that the moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. County of Allegheny v. Commw. Of Pa., 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary

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

Although section 1501 was not literally cited in the initial formal complaint, it was in substance. The initial complaint does cite health concerns surrounding smart meters – which even the respondent admits emit radio frequency (based on mail and email correspondence received by complainant from respondent). Respondent has not denied such, but rather has admitted in previous correspondence that RF is harmful.

Further, no factual information was provided stated the meters are absolutely safe. On the contrary, radio frequency in the microwave range is a class 2B carcinogen. Respondent has placed no controls on emissions of this carcinogen, and similar meters have been found to emit over 1200 times the allowable RF limit established the FCC. Additionally, radio frequency (especially in the microwave range – that used by smart meters and wireless communication) has been shown to have many many other negative biological effects on human beings. Because people are biologically unique – it is impossible to predict how different people will react immediately or in the future to these frequencies. However, the fact that they are harmful in many ways gives complainant the right refuse installation of the smart meter without having suffered any current known adverse effect to these frequencies / prior to the installation of a smart meter.

Every public utility, under section 1501 of the public utility code, has the duty to furnish, among other things, safe service and shall make all alteration, substitution, extension, and improvement in or to such service.....as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.

Complainant contends that installing an RF emitting smart meter on a home without consideration to its proximity to inhabitants, or installation anywhere on the home, creates unsafe service because the meter is emitting a carcinogenic frequency all day and all night at frequent intervals, and at limits not proven to always abide by limits set by the FCC. Complainant therefore requests accommodation for his and his family's safety.

18. Denied. As a matter of law, respondent is not required to install a smart meter at the Service Location, which will be harmful to complainant and his family. If the respondent does install a smart meter at complainant's home, the respondent would be in violation of Section 1501.

19. Denied.

In respondent's Preliminary Objections, they appear to admit that my facts are true. I agree that these Preliminary Objections should not be accepted, and I should proceed to a fair and impartial hearing. See Susan Kreider v. PECO, case number P-2015-2495064.

20. Requires a legal conclusion. However, it should be noted that claimant was told on the phone by the PUC that filling out a formal complaint would result in a hearing/conference that could be held in person in Harrisburg, PA or over the phone.

21. Denied. See Antonio Romeo v. Pennsylvania Public Utility Commission, case No. 498 C.D. 2016. Commonwealth Court, February 8, 2017). The risk of possible harm is enough to hear the formal complaint. Health related issues do not need to be experienced only AFTER installation of a smart meter for section 1501 to be violated. Likewise, after the fact health issues are not required in order to have a hearing on the issue.

Regarding termination of service:

§ 56.151. General rule.

**Upon initiation of a dispute covered by this section, the public utility shall:**

**Not issue a termination notice based on the disputed subject matter.**

22. Denied. The respondent cites cases that are not applicable to the case at hand. Complainant's Formal Complaint alleges violations by the respondent of Section 1501.

23. Denied. See Antonio Romeo v. Pennsylvania Public Utility Commission, case No. 498 C.D. 2016. Commonwealth Court, February 8, 2017

24. Denied. The Colwell case is not applicable to complainant's Formal Complaint.

25. Requires a legal conclusion, and denied.

My Formal Complaint alleges violations of Section 1501 and terminating my service while my dispute is pending violates PUC code § 56.92. Notice when dispute pending. A public utility may not mail or deliver a notice of termination if a notice of initial inquiry, dispute, informal or formal complaint has been filed and is unresolved and if the subject matter of the dispute forms the grounds for the proposed termination. A notice mailed or delivered in contravention of this section is void.

Authority

The provisions of §56.92 amended under Chapter 14 of the Public Utility Code, 66 Pa.C.S. Chapter 14.

Source

The provisions of this §56.92 adopted June 16, 1978, effective June 17, 1978, 8 Pa.B. 1655; amended October 7, 2011, effective October 8, 2011, 41 Pa.B. 5473. Immediately preceding text appears at serial page (297130).

#### Notes of Decisions

Notice; Jurisdiction of Commission

When the utility sent a termination notice more than 6 weeks before the petitioner filed his complaint with the Commission, the sending of the termination notice was not in violation of §56.92. In addition, the sending of the termination notice did not invoke Commission jurisdiction. *Gasparro v. Public Utility Commission*, 814 A.2d 1282 (Pa. Cmwlth. 2003).

#### Cross References

This section cited in 52 Pa. Code § 56.11 (relating to billing frequency); 52 Pa. Code § 56.16 (relating to transfer of accounts); 52 Pa. Code § 56.81 (relating to authorized termination of service); 52 Pa. Code § 56.100 (relating to winter termination procedures); 52 Pa. Code § 56.118 (relating to right of public utility to petition the Commission); and 52 Pa. Code § 56.164 (relating to termination pending resolution of the dispute).

The term “dispute” is defined in the Section 56.2 definitions section as:

“Dispute—A grievance of an applicant, customer or occupant about a public utility’s application of a provision covered by this chapter, including, but not limited to, subjects such as credit determinations, deposit requirements, the accuracy of meter readings or bill amounts or the proper party to be charged. If, at the conclusion of an initial contact or, when applicable, a follow-up response, the applicant, customer or occupant indicates satisfaction with the resulting resolution or explanation of the subject of the grievance, the contact will not be considered a dispute.” [emphasis added]

26. Denied. Respondent is in violation of sections 1501 of the Pennsylvania Public Utility Code (see numbers 2 through 6 of the initial Formal Complaint), therefore, the PUC has jurisdiction to hear this case and mandates that the PUC hear this formal complaint, taking all my allegations as true. Met- Ed argues aptly in preliminary objections number 14 that the moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commw. Of Pa.*, 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the Formal Complaint are true.

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### **Conclusion**

Wherefore, for the foregoing reasons, I respectfully request the Commission: (1) Deny the Preliminary Objections and grant my request for a hearing on Met-Ed's violations of Section 1501 as to me and my family. (2) uphold my Formal Complaint in its entirety, and (3) grant me such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: March 1, 2019

V. Wes Zimmerman  
[weszimm@aol.com](mailto:weszimm@aol.com)

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

V. Wes Zimmerman :  
 :  
v. : Docket No. C-2019-3007568  
 :  
Metropolitan Edison Company :

**Certificate Of Service**

I hereby certify that I have this day served a true copy of the Reply of V. Wes Zimmerman to Preliminary Objections of Metropolitan Edison Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

Service via email, as follows:

Lauren M. Lepkoski at [llepkoski@firstenergycorp.com](mailto:llepkoski@firstenergycorp.com)  
Tori L. Giesler at [tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

Dated: March 1, 2019

V. Wes Zimmerman  
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