



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGE
301 Fifth Avenue, Suite 220, Piatt Place
PITTSBURGH, PA 15222-2440

Tel: 412-565-3550

Fax: 412-565-5692

IN REPLY PLEASE
REFER TO OUR FILE

October 9, 2019

David M. Maloney
320 MERKLE RD
BOYERTOWN PA 19512

Re: David M. Maloney v. *Metropolitan Edison Company*
Docket No. C-2019-3007460

Dear Mr. Maloney:

I am in receipt of a copy of what appears to be your discovery responses directed to counsel for Respondent.

Please refer to the interim order entered on July 26, 2019, setting forth a litigation schedule in this case. The order provides, in part, as follows:

The Parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa.Code § 5.322. If this process fails, the Parties have recourse to the Commission's procedures for formal discovery, as herein modified. 52 Pa.Code §§ 5.321, *et seq.* **The Parties must not send the undersigned Presiding Officer any discovery requests, responses or material or cover letters, unless attached to a motion to compel.** All motions to compel must contain a certification of the Party, or from counsel if represented, regarding the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel fails to contain such certification, the Presiding Officer will contact the Parties and direct them to pursue informal discovery.
(Emphasis Added)

It is not appropriate for me to receive these discovery responses under the circumstances, and accordingly these documents are being returned to you.

I understand you are not represented by an attorney in this proceeding; therefore, I would suggest that you carefully read and comply with the Public Utility Code and the Commission's regulations.

You have the right to obtain legal counsel to represent you in this proceeding if you so choose. If you wish to obtain counsel, I would suggest that you retain counsel as soon as possible and have counsel enter his or her appearance with the Commission, as required by Commission's regulations.

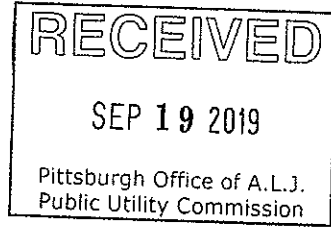
Sincerely,

/s/

Jeffrey A. Watson
Administrative Law Judge

Enclosures

cc: Lauren M. Lepkoski, Esq. (w/o Enclosures)
Tori L. Giesler, Esq. (w/o Enclosures)



To Attorneys Geisler and Leprosky *via email*:

ANSWERS TO MET-ED INTERROGATORY SET 1:

1. INTERROGATORIES OF METROPOLITAN EDISON COMPANY TO DAVID M. MALONEY SET I

1. Please list each of the specific reasons you do not want a smart meter installed at the service location.

The PUC interpretation of Act 129 is in error. Act 129 was not mandatory for residential customers (except in new construction).

Residents of Pennsylvania were protected by the legislature when we passed Act 129 in 2008. All residents of Pennsylvania (except those who purchased new construction) had a choice of whether or not to get a smart meter on their property according to Act 129.

This element of free choice to get or not get a smart meter is especially important for those residents who have medical issues which can be worsened by smart meters on their property.

2. Are you claiming that the installation of a smart meter at your property would cause or contribute to an adverse health condition for any member of your household?

Yes.

3. If the answer to question 2 is yes, please provide the following information for each household member whose health you claim will be affected:

- a. Name:

Wife of David M. Maloney, Sr.

- b. Age

The answer to this question is confidential and not designed to derive any information which is probative of the issues before the PUC in my formal complaint.

- c. The specific health condition that you believe would be caused by or

contributed to as a result of the smart meter being installed.

Met-Ed will be provided access to specific health information regarding me and my wife after I receive fully executed copies of the attached Confidential Health Information Protective Agreement.

- d. Whether the household member is already experiencing the specific health

condition and, if so, the date on which the condition was first experienced and the date on which the condition was first diagnosed by a medical doctor;

Met-Ed will be provided access to specific health information regarding me and my wife after I receive fully executed copies of the attached Confidential Health Information Protective Agreement.

e. Whether the household member has experienced the specific health condition within the last four years;

Met-Ed will be provided access to specific health information regarding me and my wife after I receive fully executed copies of the attached Confidential Health Information Protective Agreement.

f. Any medication prescribed to the household member;

Met-Ed will be provided access to specific health information regarding me and my wife after I receive fully executed copies of the attached Confidential Health Information Protective Agreement.

and

g. Whether the household member has visited a medical professional for the specific health condition, and if so, the name, address, and phone number of the medical professional and the date of the visit(s) to the medical professional.

Met-Ed will be provided access to specific health information regarding me and my wife after I receive fully executed copies of the attached Confidential Health Information Protective Agreement.

h. Whether a medical doctor has determined that the installation of a smart meter would cause or contribute to the specific health condition;

Met-Ed will be provided access to specific health information regarding me and my wife after I receive fully executed copies of the attached Confidential Health Information Protective Agreement.

i. Any other health conditions that the household member has experienced or is experiencing and when each condition was first experienced and was first diagnosed by a medical doctor.

Met-Ed will be provided access to specific health information regarding me and my wife after I receive fully executed copies of the attached Confidential Health Information Protective Agreement.

4. Please explain how the installation of a smart meter would cause or contribute to a

health condition for any person in your household. Be as specific as possible.

Met-Ed will be provided access to specific health information regarding me and my wife after I receive fully executed copies of the attached Confidential Health Information Protective Agreement.

5. Please provide the following information regarding your view that the installation of a smart meter at your home would cause or contribute to a health condition for any person in your household.

a. Please identify each document you rely on in support of your position.

Met-Ed will be provided access to specific health information regarding me and my wife after I receive fully executed copies of the attached Confidential Health Information Protective Agreement. Many of those medical records may be relied on in my hearing. Other documents which I will rely on have not been identified yet; it is premature to identify them at this time. My preparation for my hearing is ongoing.

b. Do you intend to rely on these documents at the time of the hearing in this proceeding?

Yes.

c. Please describe in detail all information you have to support this position.

This question is obtuse, but I will answer it as best as I can. Once all documents for my hearing have been assembled, I will be in a position to detail all the information. To do so at this stage would be impossible.

6. Do you believe the installation of a smart meter at your property would create safety concerns for a member of your household?

Safety concerns are equivalent to health and medical concerns in this instance.

7. If the answer to question 6 is yes, please specifically identify each of your safety concerns related to smart meters.

Please see the answers to questions about health and medical concerns above.

8. Please provide the following information regarding your position that the

installation of a smart meter would create safety concerns:

- a. Please identify each document you rely on in support of the position.

Not applicable. See answers to questions above regarding medical conditions.

- b. Do you intend to rely on these documents at the time of the hearing in this proceeding?

Not applicable. See answers to questions above regarding medical conditions.

- c. Please describe in detail all information you have to support this position.

Not applicable. See answers to questions above regarding medical conditions.

- d. Do you have any relevant educational or work background that qualifies you to assert this position?

Yes.

- e. If yes, please identify the relevant educational or work background that qualifies you to assert this position.

I am a Pennsylvania State House Representative. I have held this position since 2011. In my capacity as a representative of my District, I listen to all constituents who approach me regarding their concerns they have about their health, Pennsylvania laws, or other issues, including harm they suffer from smart meters. Additionally, as a necessary component of the position I have held for 8 years, I am intimately involved in all aspects of the legislative process.

9. In your complaint, you request that a smart meter not be installed at the service location. Please provide the following information related to this statement:

- a. Is it your position that a customer has the right to request a smart meter not be installed at his service location?

Yes.

- b. Is it your position that a customer must request smart meter installation?

Yes.

c. Is it your position that Act 129 of 2008 does not require the utility to install smart meters throughout its service territory?

Define: "install smart meters throughout its service territory".

If you mean that Met-Ed is required to *install* smart meters on every single customer's house in its service territory *without exception*, then my answer is: Act 129 does not require or permit forced installation of smart meters (except in new construction), and therefore, the answer to question c is "no".

If you mean that Met-Ed is required to *offer* smart metering throughout its territory, then my answer is that Act 129 does require Met-Ed to offer to and install smart metering on the property of any Met-Ed customer throughout its service territory who requests a smart meter and agrees to pay for it.

10. Is it your position that you would like to opt out completely from smart meter installation?

This question is not clear. I never requested a smart meter on my property. I object to a smart meter on my property. Act 129 did not require "opting out" because it is a smart meter "opt in" statute (except for new construction).

11. Do you believe the installation of a smart meter at your property would violate the privacy or security of a member of your household?

I have no opinion on that question at the moment.

12. If yes to question 11, please specifically describe each of your concerns regarding your household's privacy or security after the installation of a smart meter.

As to myself and members of my household, again, I have no opinion on that question at the moment. However, as to my constituents, many of them have beliefs on that question, which I can share at my hearing, but I believe that this inquiry is irrelevant to the overarching inquiry as to whether smart meters are mandatory on all Met-Ed assigned electric distribution households pursuant to Act 129.

13. Please provide the following information regarding your position that the installation of a smart meter would violate your household's privacy or security:

a. Please identify each document you rely on in support of the position.

Not applicable.

b. Do you intend to rely on these documents at the time of the hearing in this proceeding?

Not applicable.

c. Please describe in detail all information you have to support this position

Not applicable.

d. Do you have any relevant educational or work background that qualifies you to assert this position?

Not applicable, except, if needed at my hearing, my work background makes me uniquely qualified to testify about this position of many constituents at my hearing. See answer to number 8e above.

e. Is yes, please identify the relevant educational or work background that qualifies you to assert this position.

See answer to question d above.

14. To your knowledge, has a smart meter been installed by the Company at your property?

Not to my knowledge. Met-Ed is in possession of the answer to this question according to its records.

15. Please describe in detail how you believe a smart meter operates.

This question is not germane to my formal complaint. It is not necessary for me to describe how I believe a smart meter operates. This question can best be answered by Met-Ed experts.

16. Please list the specific issues you intend to raise at the hearing in this proceeding.

It is premature to list all the specific issues I intend to raise at the hearing in this proceeding. I will state now that, among other issues, I do intend to raise the issue of the PUC's interpretation of the legislative intent of Act 129, which I am an expert in.

17. Please identify the legal support, including specific citations, for each issue identified in question 16.

I am not sure I understand this question. However, if Met-Ed wants me to give it all legal statutory construction case precedent, then I have not developed it yet, but I am working diligently in this effort.

18. Please list the factual support for each issue identified in question 16.

The factual support and the legal support for this one issue are intertwined, I believe. Met-Ed attorneys can research these by looking at the legislative history of Act 129 and case law regarding statutory construction

and interpretation. At this stage of the proceedings, I have not formulated my supporting arguments wholly and succinctly.

19. Please provide the following information for all witnesses you intend to call to testify at the hearing in this proceeding.

a. Provide the full name of the witness.

I intend to testify as an expert in my hearing. It is premature to identify additional witnesses at this time, but I am working diligently on my list of witnesses.

b. Provide the address and telephone number of the witness.

My address and telephone number are contained in my formal complaint.

c. Provide the title or position held by the witness.

I am the Honorable Pennsylvania House of Representatives official elected to represent District 130.

d. Provide the educational background of the witness.

Not applicable or relevant to my testimony in these proceedings.

e. Provide the scope of the testimony for the witness.

See answer to number 16.

20. Would any witness identified in question 19 be offered as an expert?

a. If yes, provide the curriculum vitae of the witness and a summary of the testimony the expert witness is expected to provide.

See answers to question 19.

21. Please describe in detail your educational background.

As described above, the answers to this question are premature. I am working on obtaining additional experts for my hearing.

a. Please list any relevant certificates, trainings, or degrees that you obtained.

As described above, the answers to this question are premature. I am working on obtaining additional experts for my hearing.

b. Please provide a description of the certificate, training, or degree.

As described above, the answers to this question are premature. I am working on obtaining additional experts for my hearing.

c. Please provide the date that any certificate, training, or degree was obtained.

As described above, the answers to this question are premature. I am working on obtaining additional experts for my hearing.

d. Please provide the name and address of the institution which provided the certificate, training, or degree.

As described above, the answers to this question are premature. I am working on obtaining additional experts for my hearing.

22. Please describe in detail your employment history.

The relevant employment history for my expert witness testimony is my serving as Representative in the Pennsylvania House of Representatives since 2011 for the 130th District. I have authored and cosponsored House Bills in that capacity. I have read and debated House Bills for many years. I have voted on House Bills. This is in addition to my direct work with constituents.

a. Please provide your employer name and address.

The Commonwealth of Pennsylvania, Harrisburg, PA

b. Please provide the title of your position.

Honorable Representative in the Pennsylvania House of Representatives for the 130th District.

c. Please provide the dates of your employment.

2011 to the present.

d. Please provide the duties performed in your position.

See answer to 22 above.

REQUESTS FOR PRODUCTION OF DOCUMENTS OF METROPOLITAN EDISON SET 1

23. Please provide copies of all documentation supporting your position that the installation of a smart meter at your home would cause or contribute to an adverse health condition in any member of your household.

See answers to interrogatory questions on health conditions above.

24. Please provide copies of all documentation associated with visits by members of your household to a medical professional related to the health conditions identified in question 3, including but not limited to any and all medical records, medical visit reports, and notes and letters from medical doctors or other health care professionals.

See answers to interrogatory questions on health conditions above.

25. Please provide copies of all documentation you intend to refer to at the hearing in this proceeding related to smart meters and/or radio frequency fields and health.

It is premature to produce these documents at this time. I am working on this very issue and will develop documentation as my hearing preparation continues.

26. Please provide copies of all documentation supporting your position that smart meters would create safety issues for you or members of your household.

Please see my answers to questions above regarding health and medical issues.

27. Please provide copies of all documentation you intend to refer to at the hearing in this proceeding related to the safety concerns of smart meters.

Constituents and others will be producing documentary evidence at my hearing regarding this issue. I am not in possession of these documents at this time.

28. Please provide copies of all documentation supporting your position that smart meters would violate the privacy or security of your household.

Constituents and others will be producing documentary evidence at my hearing regarding this issue. I am not in possession of these documents at this time.

29. Please provide copies of all documentation you intend to refer to at the hearing in this proceeding supporting your position that smart meters would violate the privacy or security of your household.

This is the same question as 28 above. See answer to 28. Constituents and others will be producing documentary evidence at my hearing regarding this issue. I am not in possession of these documents at this time.

30. Please provide copies of all documentation supporting your position that your household may opt out of smart meter installation.

The documentation supporting my position that my household may "opt out" of smart meter installation is voluminous.

See my answer to question 10 regarding the wording "opt out".

Met-Ed is referred, for the moment, to the briefs of many Complainants in the PUC formal complaint process who argued in their briefs about the legislative intent as misinterpreted by the PUC and agreed to by Met-Ed, to the detriment of my and other Pennsylvania households.

These briefs detail the PUC misinterpretation of our legislature's meaning and intent when it passed the Bill that became Act 129 in 2008.

The PUC has held over and over again that there is no right of any Pennsylvania household to reject a smart meter on their property, but this is in error.

31. Please provide copies of all documentation you intend to refer to at the hearing in this proceeding supporting your position that a household may opt out of smart meter installation.

See answer to question 30.

32. Please provide a copy of all proposed exhibits you intend to submit for the hearing in this proceeding.

This is premature at this time. I have not prepared any exhibits yet.

33. Please provide copies of all documentation you are relying upon in support of your positions in this proceeding.

This is premature at this time. I have not prepared any documentation I am relying on to support my positions in this proceeding yet.

34. Please provide copies of all documentation you referenced, referred to, or otherwise relied on in preparing your responses to these requests.

If I were an attorney, this question would be illegal, because it would be attorney work product privileged, I believe. However, I am not an attorney, but I can tell you I did not refer to or rely on any documentation in preparing my responses to these requests.

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**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

David M. Maloney :

:

v.

Docket No. C-2019-3007460

Metropolitan Edison Company

Stipulated Protective Agreement

This Agreement, is between and among **David M. Maloney, Sr.** and his wife (collectively, “**Maloney**”); **Metropolitan Edison Company** (“Met Ed”) and its attorneys **Tori L. Giesler**, Esquire, and **Lauren M. Lepkoski**, Esquire, and any expert witnesses for Met-Ed, and any and all other experts whom Met-Ed attorneys may hire or whom Met-Ed’s attorneys may consult with in regards to the above-captioned proceeding (“Proceeding”). This Agreement establishes procedures for the protection of certain confidential information involved in the Proceeding.

Intending to be legally bound, the parties hereby agree as follows:

That the information subject to this Stipulated Protective Agreement is all correspondence, documents, data, personal health information, studies, and other materials to be furnished by Maloney’s medical providers pursuant to Met-Ed’s interrogatories to Maloney as to Maloney’s health conditions, and which Maloney’s medical providers may provide to Met-Ed, pursuant to a release signed by Maloney. Such materials will be referred to below as “Confidential

Information.” When a statement or exhibit is identified for the record, the portions thereof that constitute Confidential Information shall be so designated for the record.

All Confidential Information shall only be made available to Met-Ed subject to the terms of this Stipulated Protective Agreement. Met-Ed counsel shall use or disclose the Confidential Information only for purposes of preparing or presenting evidence, cross examination or argument in this Proceeding. Met-Ed may afford access to Confidential Information made available by Met-Ed’s experts and health care providers (1) only to Met-Ed Experts, and (2) only subject to the terms of this Stipulated Protective Agreement.

Before Met-Ed discloses any Confidential Information to anyone, (1) Met-Ed shall secure written assurance from each of such potential persons to whom disclosure may be made that he or she will maintain the confidentiality of the Confidential Information and not disclose the Confidential Information further except in preparation for the above mentioned Proceeding; (2) Met-Ed shall provide Maloney with a list of Met-Ed’s experts to whom Met-Ed intends to disclose the Confidential Information; and (3) signatures of such experts, that they agree to the terms of this Agreement shall be furnished to Maloney before Met-Ed discloses any Confidential Information to any Met-Ed expert.

Met-Ed shall use its best efforts to safeguard the Confidential Information and not disclose any Confidential Information except as provided herein. Met-Ed agrees to give Maloney written notice within 5 days of Met-Ed’s discovery of any unintentional disclosure of the Confidential Information and Met-Ed shall cooperate with Maloney to rectify to the extent possible, any damage to Maloney for unintentional disclosure of Confidential Information.

Maloney retains the right to challenge the adequacy of Met-Ed’s written assurances that Confidential Information will not be jeopardized. No other persons may have access to the Confidential Information except as authorized by order of the Commission or of the presiding Administrative Law Judges.

Prior to making Confidential Information available to an expert, Met-Ed shall deliver a copy of this Stipulated Protective Agreement to such expert and shall receive a written acknowledgment from the expert in the form

attached as Appendix A to this Stipulated Protective Agreement or similar acknowledgment consistent with the terms of this Stipulated Protective Agreement. Maloney shall be notified promptly of the identity of all persons provided access to Confidential Information pursuant to this paragraph and paragraph 2 above and shall be provided with a copy of each acknowledgment signed by each expert.

Met-Ed acknowledges that all health information it receives from Maloney's healthcare providers pursuant to Met-Ed's interrogatory requests is Confidential Information, and Met-Ed shall immediately stamp each page of such documents "Confidential" and shall keep all Confidential Information segregated from its general litigation files in a secure location.

Met-Ed will consider and treat the Confidential Information as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act as set forth at 65 P.S. § 67.708(b)(11). To the extent Confidential Information is provided electronically or by e-mail, or other electronic means, Met-Ed and its experts will send such information encrypted, and will use such electronic files only for this Proceeding, will not copy the files onto any hard drive and will not make any additional copies.

Any public reference to Confidential Information by Met-Ed or its experts shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Confidential Information to understand fully the reference, but not more. The Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review but shall remain in a segregated location and shall be prominently marked "CONFIDENTIAL".

That part of any record of this Proceeding containing Confidential Information, including but not limited to all exhibits, writings, direct testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in paragraph 6 above, shall be sealed for all purposes, including administrative and judicial review, unless such Confidential Information is released from the restrictions of this Stipulated Protective Agreement,

either through the agreement of the parties to this Stipulated Protective Agreement or pursuant to an order of an Administrative Law Judge or the Commission.

Maloney shall retain the right to question or challenge the admissibility of Confidential Information; to refuse to produce or object to the production of Confidential Information on any proper ground; and to seek additional measures of protection of Confidential Information beyond those provided in this Stipulated Protective Agreement.

[continued on next page]

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That within thirty (30) days after a Commission decision is entered in the Proceedings, or in the event of appeals, within thirty (30) days after appeals are finally decided, Met-Ed and Met-Ed's experts upon request, shall either destroy or return to Maloney all copies of all documents and other materials not entered into the record, including notes, electronic or e-mailed files, which contain any Confidential Information. In the event that Met-Ed elects to destroy all copies of documents and other materials containing Confidential Information instead of returning the copies of documents and other materials containing Confidential Information to Maloney, Met-Ed shall certify in writing to Maloney that all the Confidential Information has been destroyed.

Agreed:

David M. Maloney, Sr.

By: David M. Maloney Sr. Date: September 18, 2019
David M. Maloney, Sr.

Tori L. Giesler, Esquire

Lauren M. Lepkoski, Esquire

By: _____

By: _____

Date: _____

Date: _____

(Name)

(Name)

By: _____

By: _____

Date: _____

Date: _____

(Name)

(Name)

By: _____

By: _____

Date: _____

Date: _____

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APPENDIX A

BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

David M. Maloney

v.

:

Docket No. C-2019-3007460

Metropolitan Edison Company

ACKNOWLEDGMENT OF
STIPULATED PROTECTIVE AGREEMENT

TO WHOM IT MAY CONCERN:

The undersigned is _____ for Met-Ed in the Proceeding as defined in the Stipulated Protective Agreement. The undersigned has read and understands the Stipulated Protective Agreement agreed to in the Proceeding, which Stipulated Protective Agreement deals with the treatment of Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Stipulated Protective Agreement.

NAME

ADDRESS

EMPLOYER

DATE: _____

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C-2019-3007460 - DAVID MALONEY v. METROPOLITAN EDISON COMPANY

DAVID MALONEY
320 MERKLE RD
BOYERTOWN PA 19512
484.256.0794

LAUREN M LEPKOSKI ESQUIRE
TORI L GIESLER ESQUIRE
FIRSTENERGY
2800 POTTSVILLE PIKE
PO BOX 16001
READING PA 19612-6001
610.921.6203
610.921.6658
Accepts E-Service

