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November 1, 2019

**VIA ELECTRONIC FILING**

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

**Re: Diana Distefano v. Metropolitan Edison Company**  
**Docket No. C-2017-2631007**

Dear Secretary Chiavetta:

Attached please find the Main Brief on behalf of Metropolitan Edison Company regarding the above-referenced matter. This document has been served on the all parties as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Tori L. Giesler

Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>DIANA DISTEFANO</b>	:	
	:	
<b>v.</b>	:	<b>DOCKET NO. C-2017-2631007</b>
	:	
<b>METROPOLITAN EDISON COMPANY</b>	:	

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**MAIN BRIEF  
ON BEHALF OF  
METROPOLITAN EDISON COMPANY**

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Dated: November 1, 2019

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## **I. PROCEDURAL HISTORY**

On or about October 27, 2017, Diana Distefano (“Complainant”) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) to dispute the installation of a smart meter by Metropolitan Edison Company (“Met-Ed” or “Company”) at 111 Brittany Court, Red Lion, Pennsylvania 17356 (“Service Location”).

On November 16, 2017, the Company filed its Answer denying the material allegations within the Formal Complaint, as well as submitting Preliminary Objections.

On December 5, 2017, the Complainant filed a Reply to Objections which also contained a Response to New Matter which was dated December 3, 2017.

On January 4, 2018, a Motion Judge Assignment Notice was issued assigning Administrative Law Judge (“ALJ”) Jeffrey A. Watson as the Presiding Officer in this proceeding.

On January 8, 2018, ALJ Watson issued a Preliminary Order denying the Company’s Preliminary Objections.

On January 19, 2018, an Interim Order Setting Resolution Conference was issued, which required the parties to hold a conference regarding possible resolution of the Formal Complaint. Mediation between the parties was not successful.

On November 7, 2018, ALJ Watson issued an Interim Order Establishing Litigation Schedule.

On April 23, 2019, an Interim Order Scheduling Prehearing Conference was issued and, on April 24, 2019, a Call-In Telephonic Prehearing Conference Notice was issued scheduling a prehearing conference for May 15, 2019.

On May 15, 2019, the Company and Complainant attended the scheduled prehearing conference.

On May 23, 2019, an Interim Order Amending Litigation Schedule and Requiring Proposed Hearing Dates was issued.

On July 10, 2019, a Hearing Notice was issued which scheduled the in-person evidentiary hearing for September 3, 2019.

On September 3, 2019, an evidentiary hearing was held in this matter. The Complainant presented her case through her own testimony only. The Complainant introduced Exhibits A through P. However, only Exhibits A, C, G, I, and J were entered into evidence. Met-Ed presented its case through the testimony of Mr. John Ahr. Additionally, the Company introduced Exhibits PD-1, PD-2, PD-3, PD-4, PD-5, JCA-1, JCA-2, and JCA-3 (identified on the record as Met-Ed Exhibits 1 through 8), which were all entered into evidence.

On September 3, 2019, an Interim Order Setting Briefing Schedule was issued requiring the parties to submit any briefs in this matter on or before November 1, 2019. Met-Ed hereby submits its Main Brief in accordance with the Interim Order Setting Briefing Schedule.

## **II. LEGAL STANDARDS**

Under Section 332(a) of the Public Utility Code, the Complainant maintain the burden of proof in this proceeding.<sup>1</sup> The first step in carrying the burden of proof is establishing a *prima facie* case that Met-Ed violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establish a *prima facie* case does it become the responsibility of the respondent to provide rebuttal evidence.<sup>2</sup> In order to establish a *prima facie* case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought

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<sup>1</sup> 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Commw. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

<sup>2</sup> *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980).

to be established.<sup>3</sup> Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.<sup>4</sup>

Although the factual burden may shift during the course of a proceeding, the Complainant always maintain the overarching burden of proof in the proceeding. It is clearly established that the Complainant's "burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence."<sup>5</sup> A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.<sup>6</sup>

In order for the Commission to sustain a formal complaint, the Complainant must demonstrate that an "act or thing done or omitted to be done by any public utility [is] in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission."<sup>7</sup> Section 1501 of the Public Utility Code states, in relevant part: "every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities...."<sup>8</sup> As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501. In complaint proceedings similar to the instant proceeding, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.<sup>9</sup>

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<sup>3</sup> *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

<sup>4</sup> *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

<sup>5</sup> *Lansberry*, 578 A.2d at 602.

<sup>6</sup> *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015), *supra*.

<sup>7</sup> 66 Pa.C.S. § 701.

<sup>8</sup> 66 Pa.C.S. § 1501.

<sup>9</sup> *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018) ("Frompovich Order"); *Susan Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016).

### **III. SUMMARY OF ARGUMENT**

The Complainant has wholly failed to meet her burden of proof to demonstrate that the installation of a smart meter at the Service Location would constitute unreasonable service in violation of Section 1501 of the Public Utility Code or would otherwise violate the Public Utility Code, a Commission regulation or order.

Met-Ed has an absolute obligation to install smart meters at all of its customers' service locations under Act 129 of 2008 ("Act 129").<sup>10</sup> Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to "opt-out" from smart meter installation.<sup>11</sup> Further, both Act 129 and the Commission's Implementation Order require that electric distribution companies ("EDCs") install wireless smart meters with specific functionality. Met-Ed's smart meters adhere to all of the requirements of Act 129 and the Commission. The smart meter components and deployment of smart meters in the Met-Ed territory were identified in the Company's Smart Meter Deployment Plan, which was ultimately approved by the Commission on June 5, 2014.<sup>12</sup> Met-Ed must install a smart meter at the Complainant's Service Location in order to remain in compliance with Act 129, related Commission orders, and its Smart Meter Deployment Plan.

The Complainant argues that Act 129 has been misinterpreted and that the law was originally intended to require that customers "opt-in" to smart meter installation.<sup>13</sup> However, this argument has been squarely rejected by the Commission. Indeed, Commission precedent is

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<sup>10</sup> 66 Pa.C.S. § 2806.1, *et seq.*

<sup>11</sup> *Id.*; see *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) ("Implementation Order").

<sup>12</sup> *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and Metropolitan Edison Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Opinion and Order dated June 5, 2014) (hereinafter, "Smart Meter Deployment Plan"); see Exhibit PD-4.

<sup>13</sup> Tr. 80-13-16.

uniform that smart meter installation is required and that customers may not opt-out of smart meter installation.<sup>14</sup>

In addition, the Complainant has failed to establish that the installation of a smart meter constitutes unreasonable service. At hearing, the Complainant failed to present any admissible evidence supporting her assertions about the safety of smart meters or the alleged impact that a smart meter will have on her service or privacy. Indeed, the evidence presented by the Company at hearing demonstrates that the smart meters being installed by Met-Ed are safe and that the Company has appropriate procedures in place, which have been approved by the Commission, to protect customers' information.

Moreover, the lay testimony offered by the Complainant should carry little weight. Although the Pennsylvania Rules of Evidence are not strictly adhered to at the Commission, the Pennsylvania Supreme Court has unequivocally stated that any relaxation of the rules of evidence in administrative settings cannot allow lay witnesses to testify to technical matters "without personal knowledge or specialized training."<sup>15</sup> Lay witness testimony only carries evidentiary weight where the witness has actually perceived the situation, and the opinion is not based on scientific, technical or specialized knowledge.<sup>16</sup> In this case, none of the testimony offered by the Complainant was based on her own experience or personal knowledge related to smart meters. In fact, because a smart meter has yet to be installed at their Service Location, the Complainant has no personal knowledge or experience of relevance here. As such, all lay testimony from the Complainant related to more specialized topics, including privacy and the health and service

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<sup>14</sup> See, e.g., *Lutherschmidt v. Metro. Edison Co.*, Docket No. C-2010 2200353 (Final Order entered March 25, 2011); *Negley v. Metro. Edison Co.*, Docket No. C-2010-2205305 (Initial Decision dated January 3, 2011 became final without Commission action on March 3, 2011); *Hoffman-Lorah v. PPL Elec. Util. Corp.*, Docket No. C-2018-2644957 (Order entered May 23, 2019).

<sup>15</sup> *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602, 701 and 702 generally applicable in agency proceedings).

<sup>16</sup> Pa.R.E. 701.

impacts of smart meters, should be disregarded and given no evidentiary weight under the Pennsylvania Rules of Evidence.

In sum, the Complainant failed to establish by a preponderance of the evidence that Met-Ed violated a Commission statute, regulation, or order. Specifically, the Complainant has not met her burden of proof to establish that the installation of a smart meter constitutes unreasonable service by the Company. Accordingly, Met-Ed urges the Commission to dismiss the Complaint with prejudice.

#### IV. **ARGUMENT**

##### **A. The Complainant failed to meet her burden of proof to establish that Met-Ed violated the Public Utility Code, a Commission Order, or a Commission regulation.**

##### **1. The Installation of Smart Meters is Required by Law.**

Under Act 129, Met-Ed has an absolute obligation to install smart meters at all of its customers' service locations. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to "opt-out" from smart meter installation. Met-Ed's Smart Meter Deployment Plan, approved by the Commission, explicitly states that no opt-out option is available.<sup>17</sup> Further, at the hearing in this proceeding, the Complainant, while indicating she does not believe Act 129 is being interpreted as originally intended, acknowledged that Act 129 does not presently allow for a customer to opt-out of smart meter installation.<sup>18</sup> The absence of an opt-out provision in Act 129 was noted by the ALJ at the evidentiary hearing as well.<sup>19</sup>

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<sup>17</sup> Met-Ed Exhibit 4 (Exhibit JCA-1, p. 9).

<sup>18</sup> Tr. 80:9-22.

<sup>19</sup> Tr. 75:5-7

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code (“Code”).<sup>20</sup> Act 129 required EDCs with at least 100,000 customers, such as Met-Ed, to file a smart meter technology procurement and installation plan (“SMIP Plan”) with the Commission for approval.<sup>21</sup> Specifically, Section 2807(f)(2) of the Code directed EDCs to furnish smart meter technology as follows: 1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; 2) in new building construction; and 3) in accordance with a depreciation schedule not to exceed fifteen years.<sup>22</sup>

On December 31, 2012, Met-Ed, along with FirstEnergy Corp.’s other EDCs in Pennsylvania (collectively, the “Companies”), filed their Joint Petition for Approval of their Smart Meter Deployment Plan, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission’s Implementation Order;<sup>23</sup> (2) approve the Companies’ proposed procurement and deployment of approximately 2.1 million smart meters, over 98% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters.<sup>24</sup> On March 19, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan and was ultimately approved by the Commission on June 5, 2014.<sup>25</sup>

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<sup>20</sup> 66 Pa.C.S. § 101, *et seq.*

<sup>21</sup> 66 Pa.C.S. § 2807(f); *see* Met-Ed Exhibit 1 (Exhibit PD-1).

<sup>22</sup> 66 Pa.C.S. § 2807(f)(2).

<sup>23</sup> *See* Met-Ed Exhibit 3 (Exhibit PD-3).

<sup>24</sup> *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and Metropolitan Edison Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994, Smart Meter Deployment Plan, filed December 31, 2012.

<sup>25</sup> *See* Met-Ed Exhibit 4 (Exhibit JCA-1) and Met-Ed Exhibit 5 (Exhibit PD-4).

In this proceeding, the Complainant argues that Act 129 has been misinterpreted to require installation of smart meters for all customers.<sup>26</sup> She argues that Act 129 was “written as an opt-in law,” requiring a customer to affirmatively choose to have a smart meter installed at his or her service location.<sup>27</sup> This argument has been squarely rejected by the Commission. Indeed, Commission precedent is uniform that the Commission cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to “opt-out.”<sup>28</sup> Neither the Company’s Commission-approved Smart Meter Deployment Plan nor Act 129 permit such opt-outs to occur.<sup>29</sup> The Commission has recently reaffirmed this conclusion, holding in a similar complaint proceeding that (1) there is no provision in the Code, Commission regulations or Orders that allows a customer to “opt-out” of a smart meter installation; (2) there is Commission precedent that no opt-out provision exists in current Pennsylvania law; and (3) the EDC is legally required to install smart meters by Act 129 and Commission Orders.<sup>30</sup>

Put simply, there is no valid dispute in this proceeding that Act 129 does not provide for customers to opt-out of smart meter installation. Further, there is no basis to conclude that Met-Ed’s refusal to allow the Complainant to opt-out of smart meter installation is in any way a violation of the Company’s Smart Meter Deployment Plan or other Commission order. As such, Complainant’s argument must fail.

**2. The Installation of a Smart Meter Does Not Constitute Unreasonable or Inadequate Service.**

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<sup>26</sup> Tr. 80:13-16.

<sup>27</sup> *Id.*

<sup>28</sup> See, e.g., *Lutherschmidt v. Metro. Edison Co.*, Docket No. C-2010 2200353 (Final Order entered March 25, 2011); *Negley v. Metro. Edison Co.*, Docket No. C-2010-2205305 (Initial Decision dated January 3, 2011 became final without Commission action on March 3, 2011).

<sup>29</sup> See Met-Ed Exhibit 4 (Exhibit JCA-1pp. 9 and 47); 66 Pa.C.S. § 2807(f); see Exhibit PD-1.

<sup>30</sup> *Hoffman-Lorah v. PPL Elec. Util. Corp.*, Docket No. C-2018-2644957 (Order entered May 23, 2019).

Although the Complainant raised a few health and privacy-related concerns related to smart meters, she failed to provide any reliable evidence in support of her allegations. By contrast, Met-Ed offered extensive testimony to rebut the Complainant's unsubstantiated allegations. The Complainant failed to establish even a bare minimum of her burden of proof to show that the deployment of smart meters is unreasonable or constitutes inadequate utility service.

Pursuant to Section 1501 of the Code, public utilities have a duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Section 1501 of the Code provides, in pertinent part:

**§ 1501. Character of service and facilities**

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.<sup>31</sup>

The Complainant failed to demonstrate that the installation of a smart meter at the Service Location would constitute unreasonable or inadequate service under Section 1501.

At hearing, the Complainant presented little to no evidence supporting her general concerns that smart meters may have harmful health impacts.<sup>32</sup> While the Complainant presented testimony about the frequency of transmissions from smart meters and alleged impacts of exposure to

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<sup>31</sup> 66 Pa.C.S. § 1501.

<sup>32</sup> See Tr. 62:25.

radiofrequencies,<sup>33</sup> there is no record evidence to support that the frequency of transmissions from Met-Ed's meters presents a health concern. There is similarly no record evidence to support the Complainant's allegations that the installation of smart meters presents a safety or service risk.<sup>34</sup> Rather, the record evidence shows that the smart meters used by Met-Ed meet the standards for radiofrequency exposure set by the Federal Communications Commission,<sup>35</sup> the American National Standards Institute standards for electric meters,<sup>36</sup> and have been certified by Underwriters Laboratories.<sup>37</sup> The Complainant has not met her burden of proof to establish that the smart meters being installed by Met-Ed pose a health risk or are unsafe.

The Complainant also raised general privacy concerns related to the installation of a smart meter.<sup>38</sup> In response, the Company presented its Commission-approved Privacy Policy.<sup>39</sup> The Company's Privacy Policy explains the type of customer information that can be transmitted through smart meters and addresses the security protocols in place to protect against unauthorized access to a customer's usage information.<sup>40</sup> The Policy states that Met-Ed will not share sensitive customer information, including the customer's name, address, usage levels, Social Security number, driver's license number, employer identification number, date of birth, credit card number, passport number, or bank account number with third parties without the customer's consent.<sup>41</sup> The Privacy Policy explains the security protections in place when a customer's usage data is transmitted across the smart meter network. The smart meter network includes several

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<sup>33</sup> See Tr. 56:9-25.

<sup>34</sup> See Tr. 59:9-61:3; 67:20-68:19.

<sup>35</sup> Tr. 97:3-12.

<sup>36</sup> Tr. 97:6-15.

<sup>37</sup> Tr. 97:16-21.

<sup>38</sup> Tr. 64:5-67:9.

<sup>39</sup> See Met-Ed Exhibit 6 (Exhibit JCA-2).

<sup>40</sup> *Id.*

<sup>41</sup> See *id.* at 2-3.

security protections to prevent against the unauthorized access of a customer's usage data including encryption, firewalls, password protection and continuous security monitoring.<sup>42</sup> In light of the extensive evidence offered about the Commission-approved privacy policies in place to protect customer information, the Complainant has not met her burden of proof to demonstrate that the installation of a smart meter constitutes unreasonable service because of alleged privacy concerns.

In sum, the Complainant has failed to meet her burden to demonstrate that the installation of a smart meter constitutes unreasonable or inadequate service. While the Complainant raised general concerns about the health and privacy impacts of smart meters, these claims were not supported by record evidence. As such, there is no record basis to conclude that Met-Ed's installation of smart meters is in violation of Section 1501 of the Code and the Complainant's claims must be dismissed accordingly.

**3. All hearsay and lay health testimony was properly objected to and excluded and may not be relied upon in this matter.**

During the hearing, the Complainant attempted to offer testimony related to alleged health, service, and privacy issues without any expert credentials on these issues.<sup>43</sup> As a lay witness, the Complainant was not qualified to testify or offer exhibits related to any issues outside of her direct personal knowledge. The Complainant's testimony on these items was objected to as appropriate and not admitted into the record.<sup>44</sup>

According to Pennsylvania Rule of Evidence 701, a lay witness is limited to giving opinion testimony that is rationally based on the witness's own perceptions. Specifically, Rule 701 provides as follows:

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<sup>42</sup> Tr. 100:7-18; Met-Ed Exhibit 6 (Exhibit JCA-2 at 3-4).

<sup>43</sup> See, Tr. 45:24-47:3; 49:23-51:2; 52:19-53:22.

<sup>44</sup> See *id.*

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.<sup>45</sup>

Although the Pennsylvania Rules of Evidence are not strictly adhered to at the Commission, the Pennsylvania Supreme Court has unequivocally stated that any relaxation of the rules of evidence in administrative settings cannot allow lay witnesses to testify to technical matters “without personal knowledge or specialized training.”<sup>46</sup> Lay witness testimony only carries evidentiary weight where the witness has actually perceived the situation, and the opinion is not based on scientific, technical or specialized knowledge.<sup>47</sup> In this case, the bulk of the Complainant’s testimony related to issues outside the scope of her personal knowledge and was based on hearsay.<sup>48</sup> All such testimony was properly excluded upon objection. To the extent such testimony was not objected to, such testimony should carry insignificant weight that cannot support the Complainant’s burden of proof in this proceeding.

Met-Ed presented extensive expert testimony in support of its position that its smart meter deployment is safe, reasonable and adequate.<sup>49</sup> The Complainant, on the other hand, failed to present any credible or relevant evidence to support her allegations that smart meter deployment is unsafe or violates Section 1501 of the Public Utility Code. In view of the Complainant’s failure to support her position with record evidence, much less fulfill her burden of proof, the Complaint should be denied and dismissed with prejudice.

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<sup>45</sup> Pa.R.E. 701.

<sup>46</sup> *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602, 701 and 702 generally applicable in agency proceedings).

<sup>47</sup> Pa.R.E. 701.

<sup>48</sup> In fact, because a smart meter has yet to be installed at their Service Location, the Complainant has no personal knowledge or experience of relevance here. *See* Tr. 102:16-19.

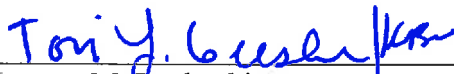
<sup>49</sup> *See* Tr. 97:3-101:20; 107:9-110:2.

V. **CONCLUSION**

WHEREFORE, Metropolitan Edison Company respectfully requests that Administrative Law Judge Steven Haas recommend that the Pennsylvania Public Utility Commission dismiss the Formal Complaint of Diana Distefano with prejudice.

Respectfully submitted,

Dated: November 1, 2019

  
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Counsel for Metropolitan Edison Company

## APPENDIX A

### PROPOSED FINDINGS OF FACT

1. Act 129 of 2008 required electric distribution companies with more than 100,000 customers to adopt smart meter-technology procurement and installation plans.<sup>50</sup>
2. Act 129 provides a list of required smart meter functionality.<sup>51</sup>
3. The Commission determined that Met-Ed's Smart Meter Deployment Plan was compliant with Act 129 and ultimately approved the smart meter deployment plan on June 5, 2014.<sup>52</sup>
4. The Smart Meter Deployment Plan identifies Itron as Met-Ed's smart meter vendor and network provider.<sup>53</sup>
5. The Smart Meter Deployment Plan explicitly states that there is "no opt-out for customers."<sup>54</sup>
6. Met-Ed's smart meter deployment plan requires Met-Ed to deploy smart meters at 100% of its customer service locations. 98.5% of smart meters must be installed by mid-2019. The remaining 1.5% of smart meters, which are located in hard-to-access locations, such as remote hunting cabins, must be installed by 2022.<sup>55</sup>
7. To date, Met-Ed has not installed a smart meter at the Complainant's Service Location.<sup>56</sup>
8. The Complainant offered only lay witness testimony at the hearings in this matter.<sup>57</sup>

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<sup>50</sup> Tr. 86:14-19

<sup>51</sup> Tr. 88:6-89:8.

<sup>52</sup> Tr. 92:22-25; Met-Ed Exhibit 5 (Exhibit PD-4).

<sup>53</sup> Tr. 94:2-5; Met-Ed Exhibit 4 (Exhibit JCA-1).

<sup>54</sup> Met-Ed Exhibit 4 (Exhibit JCA-1 at 9 and 47).

<sup>55</sup> Tr. 96:6-24.

<sup>56</sup> Tr. 102:16-19.

<sup>57</sup> Tr. 40:14-81:7.

9. Met-Ed offered testimony by Company employee, John Ahr.<sup>58</sup>
10. Met-Ed's smart meter does not collect or communicate personally identifiable customer information.<sup>59</sup>
11. Met-Ed's smart meter network utilizes a number of cybersecurity protections to guard against unauthorized access to customer's usage data.<sup>60</sup>
12. Met-Ed's Privacy Policy related to the confidentiality and cybersecurity protections applicable to smart meters was approved by the Commission on May 1, 2015.<sup>61</sup>
13. On September 13, 2016, a smart meter pre-install letter was sent to the Complainant.<sup>62</sup>
14. On October 4, 2016, the Company received a letter from the Complainant that was dated September 7, 2016. That letter indicated the Complainant's refusal to allow the installation of a smart meter at the Service Location.<sup>63</sup>
15. On October 4, 2016, in response to the Complainant's letter, the Company attempted to contact the Complainant by telephone regarding her smart meter concerns.<sup>64</sup>
16. On May 5, 2017, a pre-disconnection warning letter was sent to the Complainant.<sup>65</sup>
17. On May 15, 2017, the Company received a call from the Complainant. During this call, the Complainant was informed that she cannot opt-out of smart meter installation and that

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<sup>58</sup> Tr. 82:13-124:5.

<sup>59</sup> Tr. 98:3-8.

<sup>60</sup> Tr. 99:10-101:3

<sup>61</sup> Tr. 101:4-20; Met-Ed Exhibit 7 (Exhibit PD-5).

<sup>62</sup> Tr. 102:23-103:1.

<sup>63</sup> Tr. 103:2-6.

<sup>64</sup> Tr. 103:7-11

<sup>65</sup> Tr. 104:1-2.

Act 129 mandates the installation of the smart meter. The Complainant indicated at this time that she wanted the meter moved away from her home.<sup>66</sup>

18. On June 6, 2017, a ten-day pre-disconnection letter was sent to the Complainant.<sup>67</sup>

19. On June 22, 2017, the Company attempted to contact the Complainant by telephone regarding a three-day pre-disconnection notice for the Service Location. The Company left a voicemail regarding same.<sup>68</sup>

20. On June 23, 2017, the Complainant received a three-day pre-disconnection notice from the Company by telephone. At that time, the Complainant indicated that she had a medical condition and she was given an email address for a doctor to provide correspondence confirming the existence of her medical condition.<sup>69</sup>

21. On June 26, 2017, the Company received an email from Bruce Rind, who purported to be a doctor, requesting that the Complainant not receive a smart meter because of health issues. In response to this email, the Company informed the Complainant that it would temporarily delay the deployment of a smart meter at the Service Location.<sup>70</sup>

22. On September 25, 2017, the Company mailed another letter to Complainant regarding the installation of a smart meter at the Service Location.<sup>71</sup>

23. On October 5, 2017, the Company sent Complainant another ten-day pre-disconnection letter for the Service Location.<sup>72</sup>

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<sup>66</sup> Tr. 104:17-24.

<sup>67</sup> Tr. 104:5-6.

<sup>68</sup> Tr. 105:20-24.

<sup>69</sup> Tr. 104:10-14.

<sup>70</sup> Tr. 105:2-6.

<sup>71</sup> Tr. 106:4-15.

<sup>72</sup> Tr. 106:16-19.

24. The Company has not disconnected electric service at the Service Location because of this pending Complaint.<sup>73</sup>

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<sup>73</sup> Tr. 106:20-107:1.

## APPENDIX B

### PROPOSED CONCLUSIONS OF LAW

1. Under Section 332(a) of the Public Utility Code, the Complainant maintain the burden of proof in this proceeding.<sup>74</sup>

2. The first step in carrying the burden of proof is establishing a prima facie case that Met-Ed violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establish a prima facie case does it become the responsibility of the Company to provide rebuttal evidence.<sup>75</sup>

3. In order to establish a prima facie case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.<sup>76</sup>

4. A party's burden of proof is met by establishing a preponderance of the evidence, which requires proof by a greater weight of the evidence.<sup>77</sup>

5. A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.<sup>78</sup>

6. In order for the Commission to sustain a formal complaint, the Complainant must demonstrate that an "act or thing done or omitted to be done by any public utility [is] in violation,

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<sup>74</sup> 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Commw. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

<sup>75</sup> *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980); *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528 (Order entered Oct. 9, 1980).

<sup>76</sup> *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Mid-Atlantic Power Supply Assoc. v. Pa. Public Utility Comm'n*, 746 A.2d 1196, 1200 (Pa. Commw. Ct. 2000).

<sup>77</sup> *Lansberry*, 578 A.2d at 602.

<sup>78</sup> *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015); see also *Se-Ling Hosiery*, *supra*.

or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission.”<sup>79</sup>

7. As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501 of the Public Utility Code. Section 1501 states, in relevant part: “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities....”<sup>80</sup>

8. In similar complaint proceedings, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.<sup>81</sup>

9. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.<sup>82</sup>

10. It is beyond the jurisdiction of the Commission to determine whether Complainant have a disability or a cause of action under the Americans with Disabilities Act.”<sup>83</sup>

11. The Complainant failed to establish that the Company’s installation of a smart meter at the Complainant’s Service Location would violate Act 129 or any related Commission orders.<sup>84</sup>

12. A lay witness may only provide testimony related to his or her direct knowledge or experience.<sup>85</sup>

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<sup>79</sup> 66 Pa.C.S. § 701.

<sup>80</sup> 66 Pa.C.S. § 1501.

<sup>81</sup> Frompovich Order at 43; *Susan Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016).

<sup>82</sup> 66 Pa.C.S. § 2806.1, *et seq.*

<sup>83</sup> Frompovich Order at 43.

<sup>84</sup> 66 Pa.C.S. § 2806.1, *et seq.*; *see* Met-Ed Exhibit 2 (Exhibit PD-2) and Met-Ed Exhibit 5 (Exhibit PD-4).

<sup>85</sup> Pa.R.E. 701.

13. The Company owns, maintains, furnishes and installs its electric meters. It is within the Company's sole and exclusive discretion to install the meters and related equipment it deems reasonable and appropriate to provide service to customers.<sup>86</sup>

14. The Company has the absolute right to access a customer's premises to remove or exchange any or all Company equipment including a meter.<sup>87</sup>

15. The Company is permitted to terminate a customer's electric service for denying access to the meter.<sup>88</sup>

16. Any testimony of a lay witness related to technical or specialized knowledge should be excluded and given no evidentiary weight.<sup>89</sup>

17. The hearsay evidence presented in this case was properly objected to and excluded and may not support any findings of fact.<sup>90</sup>

18. The Complainant failed to sustain her burden of proof that the installation of a smart meter would constitute unsafe or unreasonable service by the Company.

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<sup>86</sup> Electric Pa. P.U.C. No. 40, Original Page 39, issued May 1, 2015; effective May 3, 2015.

<sup>87</sup> Electric Pa. P.U.C. No. 40, Original Page 46, issued May 1, 2015; effective May 3, 2015.

<sup>88</sup> 66 Pa. C.S. § 1406; 52 Pa. Code § 56.81; Electric Pa. P.U.C. No. 40, Original Page 61, issued May 1, 2015; effective May 3, 2015.

<sup>89</sup> See *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004).

<sup>90</sup> *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa Commw. Ct. 1976).

## APPENDIX C

### PROPOSED ORDERING PARAGRAPHS

1. The formal complaint of Diana Distefano filed against Metropolitan Edison Company at the above-referenced docket is dismissed with prejudice.
2. This matter shall be marked as closed.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**DIANA DISTEFANO**

**v.**

**METROPOLITAN EDISON COMPANY**

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**Docket No. C-2017-2631007**

**CERTIFICATE OF SERVICE**

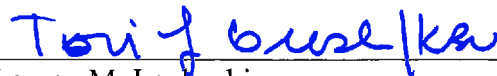
I hereby certify that I have this day served a true copy of the Main Brief of Metropolitan Edison Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, as follows:

Diane Distefano  
111 Brittany Court  
Red Lion, PA 17356

Administrative Law Judge Jeffrey A. Watson  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
Piatt Place, Suite 220  
301 5th Avenue  
Pittsburgh, PA 15222

Dated: November 1, 2019



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