

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BRIAN A HOEFT

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2019-3011586

**CERTIFICATE OF SERVICE
AND
BRIEF IN SUPPORT**

I, BRIAN A HOEFT, as agreed to during Prehearing Conference, am furnishing a true copy of my Brief upon:

The Honorable ALJ Dennis J. Buckley, by electronic mail (debuckley@pa.gov)

Tori L. Giesler (tgiesler@firstenergycorp.com) &
Lauren M. Lepkoski (llepkoski@firstenergycorp.com)

by their listed e-mail addresses as well as first class post mail to:

FirstEnergy Service Company - 200 Pottsville Pike P.O. Box 16001 - Reading, Pennsylvania
19612-6001 - ATTN: Lauren Lepkoski & Tori Giesler

The Pennsylvania Public Utility Commission by "eFile" as well as first class post mail to:

Pennsylvania Public Utility Commission
Commonwealth Keystone Building

400 North Street, 2nd Floor Harrisburg, PA 17120
ATTN: Rosemary Chiavetta, Secretary

I, BRIAN A HOEFT, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

BRIAN A HOEFT

November 15th 2019

INTRODUCTION

In filing a Complaint on July 14th 2019 with the Pennsylvania Utility Commission(PUC), having it sustained by this Court and through continued proceedings, I appeared with Counsel of Met-Ed before the Honorable ALJ Dennis J. Buckley for In-Person Prehearing Conference on September 30th 2019. During this conference, the Court briefly stated that while I retain rights to argue additional concerns regarding smart meters, that it was the Court's duty to first address my Constitutional question(s). I do believe I comprehend the Courts duty to first principles and welcome correction if mistaken. I am pleased to focus the following Brief with regards to my Constitutionally protected right(s) to privacy, personal conscience, religious freedom, right of contract and trial by jury -among others. I am still reserving the right to expound on my concerns of personal and household security, safety, health and well-being as I believe prudent. Concerns regarding RF emission safety, dirty electricity and related detrimental effects to electronics and appliances, fire hazard implications, theft/breach of data(cybersecurity) -as a few examples.

I believe it is important to note that it is not my intent to challenge the constitutionality of Act 129 of 2008 and Advanced Metering Infrastructure (AMI) as a whole. It is however my intent to show that the *implementation* of Act 129 as *mandatory* through bureaucratic policy is a violation of; (1) the Spirit of the Law along with my constitutionally protected rights; (2) the Letter of the Law of this Commonwealth; and (3) the expressed intent of the legislature in ratifying Act 129.

- The so called 'smart grid' that is as vulnerable as what we've got is not smart at all. It's a

really, really stupid grid. “ - Former CIA Director, James Woolsey

ARGUMENT

I. Mandatory installation of “smart” meters and Advanced Metering Infrastructure(AMI) is in conflict with specifically enumerated Rights protected by our State and Federal Constitution(s).

- A.** The Constitution of the Commonwealth of Pennsylvania guarantees the inherent rights of mankind. Rights that would be compromised by compelling installation of any device which can regularly search private in-home activities.

Article 1§1. Inherent rights of mankind. “ All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”

I do enjoy and am defending liberty, along with the pursuit of my own happiness.

Being part of society and the existing electric grid should not require me to forfeit rights. As delineated in Title 52 Pa. Code and Public Utility Code, 66 Pa.C.S., the existing electric grid within the territory of Pennsylvania is controlled by the Commonwealth through the Pennsylvania Utility Commission(PUC). The PUC grants territory to Electronic Distribution Companies (EDC's). Currently, Met-Ed is the EDC for the area in which I live, with no alternative offered. Met-Ed claims they must enforce the policies of an administrative agency. Administrative policy is not legislation, nor is it Law. If administrative policy is enforced, rights protected by Law would be violated.

- B. Article 1§8. Security from searches and seizures.** “The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.”

To my knowledge, I am not now, nor have I ever been part of any warranted investigation which would claim to allow a search of my home and/or private in-home activity.

As can be seen with a search into how this Commonwealth regards privacy, it is found that this Commonwealth holds my right to privacy in an even higher regard than that of our Federal Fourth Amendment. In *Commonwealth v. Gordon*, 683 A.2d 253, 257 (Pa. 1996), it is stated that “this Court has held that embodied in Article I, Section 8 is a strong notion of privacy, which is greater than that of the Fourth Amendment”.

Another example is *Commonwealth v. Waltson*, 724 A.2d 289, 292 (Pa. 1998) (citing *Commonwealth v. Edmunds*, 586 A.2d 897-98 (Pa. 1991)). Wherein it is stated that “The decisions of this Court have time and again underscored the essential purpose of the Fourth Amendment to shield the citizen from unwarranted intrusions into his privacy.”

In *Carpenter v. United States*, No. 16-402, 585 U.S. (2018) The Court stated that people do not “voluntarily ‘assume the risk’ of turning over a comprehensive dossier of physical movements” just by choosing to use a cell phone.

In *Naperville Smart Meter Awareness v. City of Naperville*, No. 16-3766 (7th Cir. 2018), the Court held that the same goes for smart meter data, stating “a home occupant does not assume the risk of near constant monitoring by choosing to have electricity in her home.”

Further stated in the same case is that “a choice to share data imposed by fiat is no choice at all.”

C. Article 1§26. No discrimination by Commonwealth and its political subdivisions.
“Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.”

Our Creator endowed rights are to be protected by Common Law enshrined in the Constitution -State and Federal. However, certain rights known as Civil Rights are also

protected by statute, ordinance, code, regulation, etc.

From official government websites it can be found that “Advanced metering infrastructure

(AMI) is an integrated system of smart meters, communications networks, and data

management systems that enables two-way communication between utilities and customers.

- https://www.smartgrid.gov/recovery_act/deployment_status/sdgp_ami_systems.html.

The Commonwealth is so strict about protecting privacy in two way communications that it

considers such violations beyond civil infractions and has codified such violations to be

felonious. **18 PA Cons Stat § 5703. Interception, disclosure or use of wire, electronic or**

oral communications. 摘 xcept as otherwise provided in this chapter, a person is guilty of a felony of the third degree if he: (1) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication; (2) intentionally discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication; or (3) intentionally uses or endeavors to use the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire, electronic or oral communication. •

It is clear that electronic information exchange is guarded against violation in the most serious of terms.

D. Article 10§2. Certain charters to be subject to the Constitution.

“Private corporations which have accepted or accept the Constitution of this Commonwealth or the benefits of any law passed by the General Assembly after 1873 governing the affairs of corporations shall hold their charters subject to the provisions of the Constitution of this Commonwealth.”

While Metropolitan Edison Company(Met-Ed) appears to function as a Corporation in a

public-private partnership by grant of territory from the Commonwealth, to my knowledge,

Met-Ed is also considered a private corporation which is subject to provisions of the

Constitution of this Commonwealth.

II. The legislative intent of Act 129 (HB2200) and other Commonwealth regulations demonstrate the voluntary nature of smart meters and Advanced Metering Infrastructure(AMI).

A. As stated by our legislators during ratification, and archived in the Senate Legislative Journal; October 8th 2008:

Senator Tomlinson(Bucks), pg2626, "It also contains language in there that we will have smart meters. It is not mandated,"

Senator Boscola(Northampton), pg 2627, "We also made sure that smart meters would not be mandated"

Senator Fumo(Philadelphia), pg 2629, "In addition, we did not mandate smart meters, but we made them optional."

B. Reinforcing the voluntary nature of AMI upon individuals is 52 Pa. Code §57.251(a) specifically stating that it "**does not require** the public to participate in an advanced metering program."

As well as the subsequent provision of 52 Pa. Code §57.255. EDC responsibilities regarding advanced metering. "(a)Upon written **request** from both a customer and the EGS of that customer, the EDC shall make available and install for use a qualified advanced meter or meter-related device."

III. Article Four of the Bill of Rights (the Fourth Amendment) protects the data associated with "smart" meters and collection of such data constitutes as a search.

I agree with the late, Honorable Antonin Scalia when delivering the opinion of the court

in holding; “ We think that obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical intrusion [into this constitutionally protected area] constitutes a search [under the Fourth Amendment]. • *Kyllo v. United States*, 533 U.S. 27, 34 (2001).

Likewise, as held by the Rehnquist Court that “The Fourth Amendment protects 'the right of the people to be secure in their . . . houses,' and it is beyond dispute that the home is entitled to special protection as the center of the private lives of our people. Security of the home must be guarded by the law in a world where privacy is diminished by enhanced surveillance and sophisticated communication systems.” *Minnesota v. Carter*, 525 U.S. 99 (Kennedy, J., concurring) (1998).

Therefore, “to explore details of the home that would previously have been unknowable without physical intrusion” violates the Fourth Amendment. *Kyllo v. United States*, 533 U.S. 27, 34 (2001).

CONCLUSION

For the preceding reasons, this Court should demand that Metropolitan Edison Company cease efforts to install a smart meter on my house.

Sincerely,

BRIAN A HOEFT

November 15th 2019