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November 22, 2019

VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta:

Attached please find the Reply 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**

DIANA DISTEFANO

v.

METROPOLITAN EDISON COMPANY

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DOCKET NO. C-2017-2631007

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

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Dated: November 22, 2019

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I. PROCEDURAL HISTORY

Met-Ed incorporates by reference the procedural history outlined in Section I of their Main Brief.

II. ARGUMENT

A. Many of the Complainant's proposed findings of fact and arguments rely on information that is not in the record and should be stricken or disregarded.

At the evidentiary hearing in this proceeding, the Complainant attempted to offer testimony and exhibits related to the alleged health, service, and privacy impacts of smart meters without any expert credentials on these issues.¹ As detailed in Met-Ed's Main Brief, the Complainant's testimony on these items and her offering of exhibits pertaining to them were objected to at hearing and properly excluded from the record.² In her Main Brief, however, the Complainant attempts to rely on information from excluded materials to support her proposed findings of fact. The Commission and the presiding officer should reject these attempts and strike or disregard any proposed findings of fact that rely on such extra-record materials.³

The following proposed findings of fact in the Complainant's Main Brief specifically rely on information that was excluded from the record or never introduced into the record in the first instance:

- The Complainant was not allowed to present (Exhibit B), Martin Pall Article published in the Environmental Research Journal, which discusses established

¹ See Tr. 45:24-47:3; 49:23-51:2; 52:19-53:22.

² See *id.*

³ See 52 Pa. Code §5.431(a) (forbidding additional matter from being relied upon after the record is closed unless allowed upon motion for good cause shown); see, e.g., *Joint Application of Verizon Communications, Inc. and MCI, Inc. for Approval of Agreement and Plan of Merger*, 2006 Pa. PUC LEXIS 22, Docket Nos. A-310580F0009, A-310752F0006, A-310364F0003, A-312025F0005, A-310407F0003, A-310401F0006 (Opinion and Order entered Jan. 11, 2006) (adopting Initial Decision which included the Administrative Law Judge's ("ALJ") decision to grant a motion to strike portions of a party's brief that contained extra-record information).

effects of microwave frequencies on the basis that the author was not present as a witness.⁴

- The Complainant is acting *Pro Se* and cannot pay for expert witnesses such as Martin Pall and others to travel to Pennsylvania to attend and testify.⁵
- The expected lifespan of a Metropolitan Edison smart meter is 5-7 years according to Mr. Bennett, Congressional Testimony (Exhibit J).⁶
- William Bathgate (Exhibit I) holds an electrical engineering and mechanical engineering degree and has 40 years experience working with switched mode power supplies, RFI/EMI mitigation, UL safety certifications.

(Exhibit I) William Bathgate states that smart meter utilizes a switched mode power supply to convert 240 volts AC to required DC voltage.

(Exhibit I) William Bathgate states the interfering voltages are referred to as “dirty electricity.”

(Exhibit I) William Bathgate explains that interfering voltages can lead to appliance damage including furnaces, washers and dryers, refrigerators, etc.

(Exhibit I) William Bathgate explains that interfering voltages can be mitigated, however, it costs \$1000’s of dollars to install equipment to filter out the interfering voltages, and if that isn’t done, appliances will need to be replaced more frequently.⁷

The Complainant’s use of this non-record evidence in her proposed findings of fact is improper and any proposed findings of fact including same should be stricken or disregarded by the Commission and the presiding officer.

⁴ Complainant Main Brief, “Findings of Fact” at 1. The Complainant’s Main Brief does not include page numbers to allow for specific citation. Met-Ed also notes that the paragraphs comprising the Complainant’s proposed findings of fact are improperly numbered. As such, Met-Ed’s citations to the Complainant’s Main Brief throughout this Reply refer to the section title provided by the Complainant and the page in that section on which the referred content appears.

⁵ *Id.*

⁶ *Id.* at 2. At hearing, Exhibit J was admitted “for the sole purpose that it may be helpful to the extent there’s general explanations about cybersecurity concerns.” The Complainant’s proposed finding of fact does not relate to cybersecurity concerns and is thus relying on Exhibit J for purposes beyond the purposes for which it was admitted.

⁷ *Id.* At hearing, Exhibit I was admitted “for the sole purpose, to the extent that it offers any just general information explaining what dirty electricity is or any other terms that may be helpful to [the ALJ].” The Complainant’s use of Exhibit I in her proposed findings of fact exceeds the scope for which this document was admitted into the record. Moreover, to the extent that the Complainant relies on Exhibit I to imply that Met-Ed’s installation of smart meters constitutes unsafe or unreasonable service because of the alleged impacts of such installation, such a use was explicitly rejected by the ALJ and violates Met-Ed’s due process rights because the Company has not had an opportunity to cross-examine the author of Exhibit I regarding any such alleged impacts.

In the Argument section of the Complainant's Main Brief, the Complainant similarly relies on extra-record information in an effort to support her arguments. As with the Complainant's proposed findings of fact, any arguments relying on such information should also be stricken or disregarded by the Commission.

Because the Complainant has not provided record citations for the arguments in her Main Brief, it is difficult to discern between the arguments that rely on information from excluded documents or those that are simply unsupported by anything in the record (whether the Complainant attempted to introduce supporting evidence or not). The following excerpts, however, appear to rely on information that was excluded from, or does not otherwise appear in, the record:

- Since these pulsed type of transmissions have not been adequately studied for long term safety on humans, everyone being exposed to the smart meter pulsed radiation is in essence being subjected to an experiment without consent.⁸
- Smart meters have not been fully studied in real world conditions for their effect on humans, animals, or the environment.⁹
- The smart meter cannot be controlled by the homeowner, who is being forced without consent, to be subjected to the smart meter radiation 24/7.¹⁰
- The smart meter utilizes a switched mode power supply that creates RFI and EMI interference also referred to as "dirty electricity". Dirty electricity leads to appliance damage and reduced longevity, and can contribute to an increase in the utility usage, and William Bathgate also discusses the health implications from dirty electricity. To mitigate this EMI interference can cost thousands of dollars in filtering equipment.¹¹

The Complainant's use of extra-record evidence to support these arguments is improper and should not be used to support a finding that Met-Ed's installation of a smart meter at the Complainant's residence constitutes unsafe or unreasonable service.

⁸ Complainant Main Brief, "Argument" at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* As noted above, Exhibit I was admitted for limited purposes. The Complainant's use of information from Exhibit I here exceeds the scope of the purposes for which Exhibit I was admitted into the record.

B. The Complainant has failed to meet her burden of proof to demonstrate that Met-Ed's installation of a smart meter at her residence constitutes unsafe or unreasonable service.

The Complainant maintains the burden of proof in this proceeding under Section 332(a) of the Public Utility Code (the "Code").¹² Only if the complainant establishes a *prima facie* case does it become the responsibility of the respondent to provide rebuttal evidence.¹³ 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.¹⁴ Although the factual burden may shift during the course of a proceeding, the complainant always maintains the overarching burden of proof. 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.¹⁵ Thus, the Complainant here has the burden to demonstrate by a preponderance of the evidence that the installation of a smart meter at her residence would constitute unsafe or unreasonable service. As detailed in Met-Ed's Main Brief, that is a burden the Complainant has wholly failed to meet.

In her Main Brief, the Complainant alleges that "Metropolitan Edison/First Energy are deploying smart meter technology that they have not adequately studied before deployment for safety, health effects, or cost benefits."¹⁶ In support of this allegation, the Complainant argues that Met-Ed has not performed sufficient studies to demonstrate that its smart meters are safe and do not create a risk of any long-term health impacts.¹⁷ But the Complainant's personal dissatisfaction

¹² 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).

¹³ *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980).

¹⁴ *Norfolk and Western Ry. V. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

¹⁵ *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018); *Susan Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered Jan. 28, 2016).

¹⁶ Complainant Main Brief, "Argument" at 1.

¹⁷ *Id.*

with the information provided by Met-Ed does not mean that she has demonstrated the installation of a smart meter at her residence constitutes unsafe or unreasonable service. The fact remains that the Complainant has not presented any record evidence demonstrating that the smart meter to be installed by Met-Ed is actually unsafe. The Complainant's personal opinions, speculations, and insinuations about the information provided by Met-Ed are insufficient for her to carry her burden of proof.¹⁸

By contrast, Met-Ed presented extensive testimony at the hearing in this matter to rebut the Complainant's unsubstantiated allegations regarding the Company's smart meters. From that testimony, the record evidence shows that the smart meters used by Met-Ed meet the standards for radiofrequency exposure set by the Federal Communications Commission,¹⁹ the American National Standards Institute standards for electric meters,²⁰ and have been certified by Underwriters Laboratories.²¹ This evidence demonstrates the safety of the smart meters being installed by Met-Ed and supports the conclusion that the installation of a smart meter at the Complainant's residence does not constitute unsafe or unreasonable service.

The Complainant also alleges in her Main Brief that Met-Ed has "misled" customers regarding the number of transmissions from its smart meters.²² As explained by Company Witness John Ahr, this allegation is simply incorrect.²³ More fundamentally, however, the Complainant has failed to demonstrate that the number of transmissions made by Met-Ed's smart meters creates a safety or health concern such that the installation of one at her residence would constitute unsafe

¹⁸ See *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

¹⁹ Tr. 97:3-12.

²⁰ Tr. 97:6-15.

²¹ Tr. 97:16-21.

²² Complainant Main Brief, "Argument" at 1, 2.

²³ Tr. 108:3-110:2.

or unreasonable service. There is simply no record evidence that has been presented supporting such a determination.

The Complainant further argues that smart meters cause “dirty electricity” to enter into a customer’s home and negatively impact the performance of the customer’s electrical system, the customer’s electrical usage, and the customer’s health.²⁴ In support of these allegations, the Complainant points to a document authored by William Bathgate which she presented at the hearing in this proceeding.²⁵ But, as discussed above, this document was admitted into evidence “for the sole purpose, to the extent that it offers any just general information explaining what dirty electricity is or any other terms that may be helpful to [the ALJ].”²⁶ Indeed, the use of this document to “draw[] any conclusions as to the impact of these radiofrequencies on any appliances or the wiring inside of the house” was expressly rejected by the ALJ at hearing.²⁷

Here, the Complainant’s arguments in her Main Brief rely on this evidence to support her allegation that the installation of a smart meter at her residence will have negative impacts such that it would constitute unsafe or unreasonable service. This evidence was not admitted for this purpose however and, indeed, the use of the evidence for this purpose was expressly rejected at the hearing in this matter. Accordingly, the Commission and presiding officer should afford it and the Complainant’s arguments no weight when making its determination.

Finally, the Complainant alleges that Met-Ed’s installation of smart meters pursuant to Act 129 and the Commission’s orders constitutes a violation of the Nuremburg Code.²⁸ Again, the Complainant bases this allegation on her belief that Met-Ed has not presented sufficient

²⁴ Complainant Main Brief, “Argument” at 2.

²⁵ See Complainant Brief, “Findings of Fact” at 2 and “Argument” at 2; Tr. 58:23-63:10.

²⁶ Tr. 60:10-14.

²⁷ Tr. 60:15-18.

²⁸ Complainant Main Brief, “Argument” at 2.

information regarding the long-term impacts of smart meters. But, as explained above and in the Company's Main Brief, the Complainant has failed to carry her burden of proof to show that there are any such health effects. Moreover, the Commission is not charged with administering the Nuremberg Code and, as it has done in the past with other laws it is not responsible for administering, it and the presiding officer should refuse to consider or rule on arguments regarding same.²⁹

C. The Complainant is not entitled to her requested relief.

In her Main Brief, the Complainant requests that the Commission “compel Metropolitan Edison to abide by the requirements of Section 1501 and 1502 of the Public Utility Code and Section 57.194 of the Commission’s regulations to provide and furnish adequate, efficient, safe, and reasonable service to Complainant by providing a utility meter that does not emit non-ionizing radiation and one that has been proven to provide safe and reliable service without catastrophic failure that could cause bodily harm, injury or death to the occupants of my home.”³⁰ Similarly, the Complainant requests that the Commission “grant Complainant’s requested relief from a device the Complainant never requested or agreed to pay for, per §2807(f)(2)(i) of Act 129; that is in violation of §1501 of the Public Utility Code; and that violates a number of rights, privileges, and protections and human rights from harm that are afforded to Complainant as a resident of Pennsylvania; and a citizen of the United States, and grant a summary judgement in Complainant’s favor, and against the Defendant.”³¹

²⁹ See, e.g., *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018) (refusing to consider or rule on the complainant’s arguments regarding the Americans’ with Disabilities Act).

³⁰ Complainant Main Brief at “Conclusion”.

³¹ *Id.*

As detailed above and in Met-Ed's Main Brief, the Complainant has failed to meet her burden to demonstrate that the Company's installation of a smart meter at her residence (as required by Act 129) violates the Code, the Commission's regulations, any Commission order, or any other provision of law. As such, the Commission and the presiding officer should not entertain the Complainant's requested relief.

In addition to the above, the Complainant requests in the alternative that "[i]f the Commission should find that Met-Ed has not violated the Public Utility Code, the Complainant requests relief in the form of Metropolitan-Edison paying their costs for moving the meter to a new location on Complainant's property."³² This requested relief must also be denied.

First and foremost, absent a finding that a complainant has carried his or her burden to demonstrate that a utility has violated the Code, the Commission's regulations, or a Commission order, it is improper to grant the complainant relief.³³ But, even ignoring the Complainant's failure here to sustain her burden of proof, such relief would also be inappropriate under the terms of Met-Ed's Tariff. Rule 4 of the Company's Tariff provides that: "If as a result of a Line Extension or any other request that results in an expansion of the Company's facilities, an increase in the Company's facilities, construction of a system upgrade or any other change to or the modification of the Company's electric system, the Applicant/Customer shall pay all costs for such work as specified in this Rule 4."³⁴ It further provides that "[t]he Company shall provide the Residential Customer with an estimate of the costs of removing, relocating, changing or interrupting the

³² *Id.*

³³ *See Penn. Elec. Co. v. Valley Rural Elec. Cooperative*, 79 Pa. PUC 154 (Opinion and Order entered July 16, 1990) (determining that the party had not "sustained its requisite burden of proof mandated by 66 Pa. C.S. §332(a) and therefore [was] not entitled to the relief requested").

³⁴ *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, p. 32, issued May 1, 2015, effective May 3, 2015 (emphasis added).

Customer's service, and the Residential Customer shall pay that amount to the Company prior to performing the work."³⁵ Thus, the relief requested by the Complainant – namely that the Commission require the Company to relocate the Complainant's meter at the Company's cost – plainly violates the terms of Met-Ed's Tariff. Accordingly, this requested relief should also be denied.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, and those set forth in Met-Ed's Main Brief, the Company respectfully requests that ALJ Haas enter an Initial Decision finding that the Complainant has failed to meet her burden of proof in this proceeding and recommending dismissal of the Formal Complaint.

Respectfully submitted,



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Dated: November 22, 2019

³⁵ *Id.* (emphasis added).

**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 Reply 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
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Red Lion, PA 17356

Administrative Law Judge Jeffrey A. Watson
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Piatt Place, Suite 220
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Dated: November 22, 2019



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