

PUBLIC UTILITY COMMISSION
FOR THE COMMONWEALTH OF PENNSYLVANIA

GILBERT M. MARTINEZ

Plaintiff,

V.

Docket No. C-2019-3013798

METROPOLITAN EDISON COMPANY

Defendant,

**PRELIMINARY OBJECTION RESPONSE
AND MOTION FOR DEFAULT JUDGMENT**

Gilbert M. Martinez proceeding pro se in the matter, files this response to Met -Ed's Preliminary Objection pursuant to Section 5.61 of Pennsylvania Public Utility Commission regulations, and moves for a default judgment in accordance with Section 5.61(C), and in support thereof, avers as follows:

1. On October 25 2019 I filed a formal complaint against Met-ed responding to a 10 day notice to terminate my electricity.
2. Met -ed alleges this was a second notice from them to swap out my meter from a analog meter to a Smart meter. I only received one notice from them.
3. Upon receiving notice from Met E-d I immediately called the corporation and spoke to customer service and then their meter installation department which stated that they wanted to change the meter to a Smart meter. I advised the company that they could change the meter but under the condition they would replace my analog meter for another analog meter. I told them of the adverse health affects Smart meters have which is linked to cancer and other diseases., and

my concern that I am disabled and already suffering with Rheumatoid Arthritis. Installing a smart meter in my home is a problem for me because I have become extremely sensitive to EMF radiation which causes me severe headaches, nausea, and makes my condition worst. Additionally I advised Met -Ed of the invasion of privacy in violation of the 4th Amendment to the U.S. constitution, the danger and risk of fire that a Smart meter can cause.

4. The conversation immediately escalated into a argument and the representative said that they have the authority or the right to change the already installed analog meter to a smart meter and that my refusal to comply would result in termination of my service.

5. Met- ed had to be advised that I was not refusing them access and they could change it at any time despite my objections to a smart meter because of the intimidation which they immediately resorted to threatening me with shutting off my electricity.

5. Several months before receiving the notice for which I filed this formal complaint I received a call from Met-Ed and advised them the same. I told them they could change the meter without my consent but that I would sue them in court for putting a Smart meter in my home without my consent. Subsequently, for prior acts of the company deliberately under paying PCAP rates to me, and cutting of my power to drain my backup alarm battery to my home so that the Federal Bureau of investigations can illegally break in.

6. Met- Ed did not act to change their meter because of what I stated to them over the phone and waited until several months later until October 18 2019 to send me notice to terminate services again.
7. On or about November 19, 2019 I received a preliminary objection for Met-Ed from Attorney Lauren M. Epkoski.
8. Ms. Epkoski, certified under the falsification of perjury that service of her preliminary objection was mailed out to me on October 14 2019 which marks the Twentieth day for her to timely file a defense to my formal complaint or in its place a preliminary objection.
9. However , the mail is postmarked October 15, 2019. On October 21 ,2019 I called Ms. Epkoski's office to see if she would withdraw her preliminary objection motion and advised her that she certified her motion as being mailed to me on the 14 th of November but the mail was postmarked on the 15 th of November. See Exhibit A
10. Her response appeared to me to be disingenuous, for which I concluded that she was lying by stating that she put it in to be mailed and it probably did not get mailed out until the next day.
11. It appears to be to me that counsel pre-dated her certification for the mail in an attempt to overcome a late filing which is fraud and should result in a default. Ultimately should the PUC decline to enter a default judgment for defendant filing a untimely answer to my complaint I should at least be afforded a opportunity to prove my claims of fraud in an evidentiary hearing on the merits.

12. The ramifications for fraud of unsworn falsification to authorities under Title 18 Pa.C.S. §4904 is a misdemeanor of the second degree punishable by at least a 1,000 dollar fine.

13. Moreover, the legal basis for counsel's preliminary objection motion is that the installation of Smart meters to customers' homes is in accordance with "act 129" of 2008. However, this act only provides installation of Smart Meters to customers upon request, not by mandate. Here, counsel failed to put me on notice to adequately prepare my defense by not citing a subsection of act 129 which supports her legal theory that smart meters are a mandatory requirement and that there is no opt out. As a result, defendant's preliminary objection motion must be denied as legally insufficient.

14. In evaluating whether a pleading is sufficiently specific, the question is "whether the pleading is sufficiently clear to enable the complainant to prepare his defense." *Paz v. Commonwealth, Dept. of Corrections*, 135 Pa. Commw. 162, 170, 580 A.2d 452, 456 (1990).

15. Among other constitutional rights being violated, Met-Ed is also in violation of "act 129" § 2807 (f)(2) (i) which states Electric distribution companies shall furnish smart meter technology **upon request from a customer.**

16. To the extent which Met-Ed is knowingly, willingly, and purposely trying to force me to install a smart meter by being deceptive and fraudulently misrepresenting the law to cause me harm, they are in violation of 73 P.S. 201-1 Pennsylvania Unfair Trade Practices And Consumer Protection Law Act, 42 USC

1983 ,the 4th 8th,14th Amendment to the U.S.constitution, and the Due Process Clause.

17. To the extent that Met -ed seeks to impose a Smart Meter in my home through fraudulent misrepresentation of law in order to spy on me for a third party (namely the Federal government) is an act in itself which violates the 4th and 14th Amendment, 18 USC, 241 , 242 , Title 18 Chapter 57 Wiretapping and Electronic Surveillance Act.

18. To the extent that Met -ed seeks to impose a Smart meter in my home through fraudulent misrepresentation of law knowing that all electronic utility meters are **extreme fire hazards** due to the absences of surge protectors, the presence of delicate electronics, faulty remote shutoff devices, thin socket contacts and rushed installations is an act in itself which constitutes assault **under United States Code Title 18, Section 113**, 18 USC 241,242.

19. To the extent that Met-Ed Met -ed seeks to install a Smart Meter in my home by and through fraudulent misinterpretation of law, and to the extent their acts knowingly and purposely seek to cause me adverse consequences of my health with radiation without my consent and seek to disregard the risk and danger of causing a fire to my home is an act in itself in violation of **66 Pa.C.P.S. Section 1501 of the Code for unsafe and/or unreasonable service.**

20. Section 501(a) of the Code, 66 Pa.C.S.A. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

21. The complainant here may also seek damages for Met -Ed acting under color of law in concert with government officials, for prior acts which are not barred by the statute of limitations since the Eastern district federal court arbitrarily dismissed my claims to cover-up Met-eds roll and participation of unlawful abusive civil criminal misconduct.

23. Counsel does not quarrel my claims for the safety issues or the invasion of privacy rights to the 4th Amendment, and the wire tap act, therefore the preliminary objection motion fails here as well.

22. Even If my PUC formal complaint lacks legal sufficiency because I was required to cite a PUC code which Met -Ed has violated I should not be faulted on the matter because the complaint form furnished by the PUC does not instruct the complainant to provide that information.

23. The PUC formal complaint form is therefore legally insufficient and or misleading. It needs to be updated, as it does not even hint that this is a requirement for the filing. The PUC complaint form is formatted in such a way that it hinders a Prose litigant to adhere to the PUC regulations for filing a formal complaint. In light of the excusable neglect set forth I should be granted leave to Amend my formal complaint.

24. Lastly, the PUC codes that I have cited here correlate with the facts in my formal complaint and are relevant to my claims so they are not new matters. In as much I have stated plausible facts for the requested relief and have cited several causes for action for which the PUC still has jurisdiction to entertain.

25. Contrary to counsels implication PUC does not lack jurisdiction over Constitutional claims that a electrical company is violating a customers civil rights by forcing them to install a smart meter in their home.

Legal Standards

Section 5.101 of our Regulations, 52 Pa. Code § 5.101, sets forth the grounds for granting preliminary objections. That section provides as follows:

§ 5.101. Preliminary objections. (a) Grounds.

Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following: (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding. (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter. (3) Insufficient specificity of a pleading. (4) Legal insufficiency of a pleading. (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action. (6) Pendency of a prior proceeding or agreement for alternative dispute resolution. (7) Standing of a party to participate in the proceeding. 52 Pa. Code § 5.101(a). Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly

warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dep't of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979). The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commonwealth of Pa.*, 507 Pa. 360, 490 A.2d 402 (1985). The preliminary objection may be granted only if the moving party prevails as a matter of law. *Rok v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1987). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dep't of Auditor General, et al. v. State Employees' Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003) Counsels preliminary objections should also be denied because she fails to articulate which of the seven grounds is relied upon for which she seeks a dismissal.

ARGUMENT

Even if plaintiffs' complaint is treated as legally insufficient judgment should not be entered without leave to amend. Judgment on the pleadings should be granted only in cases that are free and clear from doubt. *Anderson v. Bushong Pontiac Co.*, 404 Pa. 382, 385, 171 A.2d 771, 772 (1961). Accordingly, the doctrine that amendments should be allowed with liberality when the adverse party would not be unduly prejudiced thereby, *Esso Standard Oil Company v. Taylor*, 399 Pa. 324, 330, 159 A.2d 692, 695-696 (1960); *Miners Savings Bank of Pittston v. Naylor*,

342 Pa. 273, 279-280, 20 A.2d 287, 291 (1941), is particularly pertinent at this stage of the proceedings.[1] See *McHenry v. Welding*, 179 Pa. Superior Ct. 358, 116 A.2d 340 (1955).

Plaintiffs' pleading should be treated like a preliminary objection, thus giving them the right to *6 plead over, or, if treated as an answer, they should have been given leave to amend. *Jefferies v. Hoffman* 417 Pa. 1 (1965)

See *Susan Kreider v. PECO Energy Company*, Docket No. P-2015-2495064 (Order on Reconsideration entered January 28, 2016) See *Stephen and Diane Van Schoyck v. PECO Energy Company* C-2015-2478239 The Complainants in this case have alleged specific factual averments regarding the health effects they have experienced after the smart meter was installed at their home.

Within their Complaint and Answer to PECO's Preliminary Objections, the Van Schoycks averred that, since the installation of the smart meter, they have been experiencing adverse health impacts from exposure to the EMF radiation due to the installation of the smart meter and have had difficulty sleeping. Within their Complaint and Answer to PECO's Preliminary Objections, the Van Schoycks averred that, since the installation of the smart meter, they have been experiencing adverse health impacts from exposure to the EMF radiation due to the installation of the smart meter and have had difficulty sleeping. In their Exceptions, the Complainants further described new health issues and concerns they were

experiencing to include “extreme chest tightness and pain,” and they indicate that various health symptoms are being documented by their doctor. The Commonwealth court stated, Complainants have alleged material facts relating to a potential violation under Section 1501 of the Code for unsafe and/or unreasonable service to which they can personally testify and provide medical documentary evidence. Holding a hearing to address the Complainants’ factual averments regarding these specific health effects will enable us to closely evaluate their claims based on a fully developed record. The court previously concluded that the express language of Section 2807(f) of the Code does not preclude the PUC from holding a hearing, consistent with the statutory authority in Section 1501 of the Code. They stated the following: ...“the law does not prohibit us from considering or holding a hearing on issues related to the safety of smart meters, consistent with our statutory authority in Section 1501 of the Code, when a legally sufficient claim is present.” A different conclusion would be contrary to 1 Pa. C.S. § 1921, which states that every statute shall be construed to give effect to all of its provisions.

See *Susan Kreider v. PECO Energy Company*, Docket No. P-2015-2495064 (Order entered September 3, 2015), at 17. See also, *Renney Thomas v. PECO Energy Company*, Docket. Section 1501 of the Code, 66 Pa. C.S. § 1501, provides the following, in pertinent part: 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

Case No. C-2012-2336225 (Final Order entered December 31, 2013) (**in which the Common Wealth Court conducted a hearing to address a complaint alleging that a smart meter was a potential fire hazard and a potential health hazard to the complainant's pregnant wife in order to provide the complainant with an opportunity to be heard on the safety allegations**). In view of our prior decisions and the fact that **the Complainants are appearing pro se, we find that providing them with the opportunity to fully present their case is consistent with due process requirements and legal precedent**. See Chester Water Authority v. Pa. PUC, 822 A.2d 146, 152 (**when issues of material fact are raised, a hearing is required to protect due process concerns**); Carlock v. The United Telephone Company of Pennsylvania, Docket No. F-00163617 (Order entered July 14, 1993) (holding that, in the normal course, we would not dismiss a pro se complaint without first providing a hearing during which the pro se complainant could further explain his or her position and the factual basis for the complaint). **Because there are disputed questions of fact in the instant case, a hearing is necessary in the public interest**. 52 Pa. Code § 5.21(d); Dee-Dee Cab v. Pa. PUC , 817 A.2d 593, 598 (Pa. Cmwlth. 2003

MEMORANDUM OF LAW IN SUPPORT

§ 4904. Unsworn falsification to authorities.

(a) In general.--A person commits a misdemeanor of the second degree if, with intent to mislead a public servant in performing his official function, he:

- (1) makes any written false statement which he does not believe to be true;
- (2) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or
- (3) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(b) Statements "under penalty".--A person commits a misdemeanor of the third degree if he makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

(c) Perjury provisions applicable.--Section 4902(c) through (f) of this title (relating to perjury) applies to this section.

(d) Penalty.--In addition to any other penalty that may be imposed, a person convicted under this section shall be sentenced to pay a fine of at least \$1,000.

§ 2807. Duties of electric distribution companies.

(f) Smart meter technology and time of use rates.--

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a smart meter technology procurement and installation plan with the commission for approval. The plan shall describe the smart meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

(2) Electric distribution companies shall furnish smart meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

See Section 1501 of the Code, 66 Pa. C.S. § 1501, which provides the following, in pertinent part: 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 .

CONCLUSION

For all the reasons stated above the complainant respectfully asks that AIJ deny Met-Ed's preliminary objection motion, entering a default judgment ordering defendant to install a analog meter. (2) Alternatively, I request that ALJ schedule a evidentiary hearing to hear the merits of the case and the merits to my grievance against the attorneys untimely filing. (3) Leave to amend the complaint.

Dated: November 23 2019

Gilbert M. Martinez

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CERTIFICATE OF SERVICE

I hereby certify that I have this 23 rd day of November 2019 served a true copy of my response to Metropolitan Edison's Preliminary Objection motion & motion for default judgment to the defendants attorney listed below, in accordance with the requirements of 52 Pa. Code § 1.54 by First Class Mail, postage prepaid,

Lauren WLepkoski
Tori L. Giesler
FirstEnergy Service Company
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EXHIBIT A

