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January 22, 2020

VIA ELECTRONIC FILING

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

Re: Thomas and Nora Mosley v. Metropolitan Edison Company
Docket No. C-2018-3001526

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

kbw
Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THOMAS AND NORA MOSLEY	:	
	:	
v.	:	DOCKET NO. C-2018-3001526
	:	
METROPOLITAN EDISON COMPANY	:	

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

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Dated: January 22, 2020

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I. PROCEDURAL HISTORY

On or about April 25, 2018, Thomas Mosley and Norma Mosley (“Complainants”) 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 197 Foreghill Road, Hamburg, Pennsylvania 19526 (“Service Location”).

On May 21, 2018, the Company filed its Answer denying the material allegations within the Formal Complaint, as well as submitting Preliminary Objections.

On June 26, 2018, a Motion Judge Assignment Notice was issued assigning Administrative Law Judge (“ALJ”) Jeffrey A. Watson as the Presiding Officer in this proceeding.

On July 24, 2018, ALJ Watson issued a Preliminary Order denying the Company’s Preliminary Objections.

On October 18, 2018, ALJ Watson also issued an Interim Order Establishing Initial Litigation Schedule.

On November 20, 2018, Met-Ed filed a Motion to Compel seeking an Order requiring the Complainant to respond to discovery requests issued by the Company.

On February 14, 2019, ALJ Watson issued an Interim Order Granting Motion of Metropolitan Edison Company to Compel Responses to Interrogatories and Document Requests, which required the Complainants to provide responses to the Company’s discovery requests not later than March 8, 2019.

On March 13, 2019, ALJ Watson issued an Interim Order Revising Initial Litigation Schedule. On this same day, ALJ Watson also issued an Interim Order Permitting Either Party to Request a Prehearing Conference.

On March 25, 2019, ALJ Watson issued an Interim Order Requiring Parties to Confer to Schedule Hearing Date.

On July 26, 2019, ALJ Watson issued an Interim Order Providing for Revised Litigation Schedule and Setting Deadline for Filing of Motions *In Limine* or Dispositive Motions.

On September 3, 2019, a Call-In Telephone Hearing Notice was issued, scheduling a telephonic evidentiary hearing in this matter for November 6, 2019.

On October 1, 2019, ALJ Watson issued an Interim Order Confirming Requirements for Evidentiary Hearing.

On November 1, 2019, ALJ Watson issued an Interim Order Addressing Complainant's Request for Clarification, in response to a filing made by the Complainants.

On November 6, 2019, a telephonic evidentiary hearing was held in this matter. Norma Mosley attended for the Complainants. Thomas Mosley was not in attendance at the telephonic hearing. The Complainants presented their case through the testimony of Norma Mosley only. The Complainants offered several exhibits at hearing, of which only Complainants' Exhibits 4a, 4b, 4c, and 7 were entered into the record. Met-Ed presented its case through the testimony of Mr. John Ahr. Additionally, the Company introduced Respondent Exhibit 1, and the exhibits attached thereto (JCA-1, JCA-2, and JCA-3) – all of which were admitted into the record.

On December 20, 2019, an Interim Order Setting Briefing Schedule was issued requiring the parties to submit any briefs in this matter on or before January 22, 2020. Metropolitan Edison Company 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 Complainants maintain the burden of proof in this proceeding.¹ 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 Complainants establish a *prima facie* case does it become the responsibility of the respondent to provide rebuttal evidence.² 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.³ Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.⁴

Although the factual burden may shift during the course of a proceeding, the Complainants always maintain the overarching burden of proof in the proceeding. It is clearly established that the Complainants' "burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence."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.⁶

In order for the Commission to sustain a formal complaint, the Complainants 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."⁷ Section 1501 of the Public Utility Code states, in relevant

¹ 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).

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

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

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

⁵ *Lansberry*, 578 A.2d at 602.

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

⁷ 66 Pa.C.S. § 701.

part: “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities....”⁸ 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.⁹

Section 1502 of the Public Utility Code prohibits preferential and discriminatory activities in the service offered to customers.¹⁰ This provision requires equal treatment of similarly situated parties dealing with a utility.¹¹

III. SUMMARY OF ARGUMENT

The Complainants have wholly failed to meet their burden of proof to demonstrate that the installation of a smart meter at their service location would constitute unreasonable service in violation of Section 1501 of the Public Utility Code, would constitute unreasonable discrimination in service in violation of Section 1502 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”).¹² Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.¹³ Further, both Act 129 and the Commission’s Implementation Order require

⁸ 66 Pa.C.S. § 1501.

⁹ *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 January 28, 2016).

¹⁰ *PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386, 408 (Pa. Commw. 2006).

¹¹ *In re Electricity Generation Customer Choice and Competition Act – Retail Access Pilot Programs*, 1997 Pa. PUC LEXIS 9 at *61, Docket No. M-00960890 (Jan. 16, 1997).

¹² 66 Pa.C.S. § 2806.1, *et seq.*

¹³ *Id.*; see *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) (“Implementation Order”).

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’s territory were identified in the Company’s Smart Meter Deployment Plan, which was ultimately approved by the Commission on June 5, 2014.¹⁴ Met-Ed must install a smart meter at the Complainants’ Service Location in order to remain in compliance with Act 129, related Commission orders, and its Smart Meter Deployment Plan.

In addition, the Complainants have failed to establish that the installation of a smart meter constitutes unreasonable service. At hearing, the Complainants failed to present any evidence supporting their assertions about the safety of smart meters or the impact that a smart meter will have on their health, 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 Complainants 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.”¹⁵ Lay witness testimony only carries evidentiary

¹⁴ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power 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 Respondent Ex. JCA-1.

¹⁵ *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).

weight where the witness has actually perceived the situation, and the opinion is not based on scientific, technical or specialized knowledge.¹⁶ In this case, almost none of the testimony offered by the Complainants were based on their 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 Complainants have no direct, personal knowledge or experience of relevance here. As such, all lay testimony from the Complainants related to more specialized topics, including privacy and the health impact of smart meters, should be disregarded and given no evidentiary weight under the Pennsylvania Rules of Evidence.

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

IV. ARGUMENT

A. The Complainants failed to meet their burden of proof to demonstrate 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.

¹⁶ Pa.R.E. 701.

Met-Ed's Smart Meter Deployment Plan, approved by the Commission, explicitly states that no opt-out option is available.¹⁷

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code ("Code").¹⁸ Act 129 required EDCs with at least 100,000 customers, such as Met-Ed, to file a smart meter technology procurement and installation plan ("SMP Plan") with the Commission for approval.¹⁹ 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.²⁰

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; (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.²¹ On March 19, 2014, the Companies submitted their revised Smart Meter Deployment Plan,²² which

¹⁷ *Smart Meter Deployment Plan*, p. 9; Respondent Ex. JCA-1.

¹⁸ 66 Pa.C.S. § 101, *et seq.*

¹⁹ 66 Pa.C.S. § 2807(f).

²⁰ 66 Pa.C.S. § 2807(f)(2) (emphasis added); *see also* Respondent Ex. 1 at 5:1-6:4 (Ahr Rebuttal Testimony).

²¹ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power 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; *see* Respondent Ex. JCA-1.

²² *See* Respondent Ex. JCA-1.

intra alia accelerated the smart meter deployment schedule laid out in their original Deployment Plan.

In this proceeding, the Complainants' primary legal argument is that Act 129 does not require the mandatory installation of smart meters for all customers. In support of this argument, the Complainants point to portions of a federal law (the Energy Policy Acts of 2005 and 2007) and of Act 129, which they believe support their position that the installation of smart meters is voluntary and required upon customer request only.²³ But this argument has been squarely rejected by the Commission. In fact, 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." Neither the Company's Commission-approved Smart Meter Deployment Plan nor Act 129 permit such opt-outs to occur.²⁴ 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.²⁵

Put simply, there is no legitimate dispute in this proceeding that Act 129 does not provide for customers to opt-out of smart meter installation. And there is no basis to conclude that Met-Ed's refusal to allow the Complainants 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, the Complainants' argument must fail.

²³ Hearing Tr. 37:23-38:9, 44:16-25.

²⁴ *Smart Meter Deployment Plan*, pp. 9 and 48; *see, e.g., Lutherschmidt v. Metropolitan Edison Company*, Docket No. C-2010 2200353 (Final Order entered March 25, 2011); *Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Initial Decision dated January 3, 2011 became final without Commission action on March 3, 2011).

²⁵ *Evangeline Hoffman-Lorah v. PPL Electric Utilities Corporation*, Docket No. C-2018-2644957 (Order entered May 23, 2019).

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

Although the Complainants briefly raised a few different health, safety, service, and privacy concerns related to smart meters, they failed to provide any reliable evidence in support of their allegations. By contrast, Met-Ed offered extensive testimony to rebut the Complainants' allegations. The Complainants failed to establish even a bare minimum of their 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.²⁶

The Complainants failed to demonstrate that the installation of a smart meter at their residence would constitute unreasonable or inadequate service under Section 1501.

At hearing, the Complainants presented little to no evidence supporting their general concerns that smart meters may have harmful health impacts. The Complainants did offer

²⁶ 66 Pa.C.S. § 1501.

evidence of Norma Mosley’s medical history and a letter from a physician indicating that she was suffering negative health effects from stress related to this proceeding.²⁷ The letter does not opine on whether smart meters may be causing negative health effects for Ms. Mosley or even that smart meters have the ability to cause negative health impacts generally; in fact, it explicitly states that the physician has “no competence to evaluate the effect of such ‘smart meter’ on people’s health in general.”²⁸ Ms. Mosley suffering health effects because of the stress of this proceeding – a proceeding which she and Mr. Mosley initiated by their Complaint – is not evidence that Met-Ed’s smart meters are causing the Complainants any health problems. Nor is the Complainants’ unsupported assertion that alleged health difficulties she has in public spaces are related to the use of smart meters.²⁹ While the Company is sympathetic to Ms. Mosley’s concerns regarding her and her husband’s health, the Complainants have failed to present any evidence demonstrating that the deployment of a smart meter at their Service Location will actually cause the negative health impacts about which she is concerned.

The Complainants also expressed their belief at hearing that the information gathered by Met-Ed through the use of smart meters was a violation of their privacy and that such information was subject to be sold or otherwise obtained by third parties.³⁰ The Complainants’ concerns are completely unsupported by the record.

Through his pre-filed rebuttal testimony, Company Witness Ahr presented and explained the Company’s Commission-approved Privacy Policy related to smart meters.³¹ The Company’s Privacy Policy explains the type of customer information that can be transmitted through smart

²⁷ See Complainants Ex. 7.

²⁸ *Id.*

²⁹ See *e.g.*, Hearing Tr. 163:13-21.

³⁰ See Hearing Tr. 51:13-18, 53:7-8, 57:9-12, 58:11-13.

³¹ See Respondent Ex. 1 at 12:3-14:8 (Ahr Rebuttal Testimony); *see also* Respondent Ex. JCA-2.

meters and addresses the security protocols in place to protect against unauthorized access to a customer's usage information. 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 informed consent.³² The Privacy Policy also 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 security protections to prevent against the unauthorized access of a customer's usage data including encryption, firewalls, password protection and continuous security monitoring.³³ Additionally, Mr. Ahr explained that Met-Ed's smart meter network complies with the advanced meter infrastructure guidelines published by the North American Energy Standards Board and the National Institute of Standards and Technology.³⁴ In light of this extensive evidence regarding the Company's Commission-approved Privacy Policy, the systems and processes in place to protect customer information, and the policy's compliance with national standards, the record is insufficient to support a finding that the Complainants' completely unsupported privacy concerns are warranted.

Finally, the Complainants expressed concerns about the safety of smart meters and the potential impact the installation of a smart meter may have on the service at their property.³⁵ Similarly, these concerns were based wholly on speculation and hearsay and are not supported by any record evidence about the meters actually being deployed by the Company. Rather, the record

³² Respondent Ex. 1 at 11-16 (Ahr Rebuttal Testimony).

³³ Respondent Ex. 1 at 14:1-8 (Ahr Rebuttal Testimony).

³⁴ Respondent Ex. 1 at 14:5-8 (Ahr Rebuttal Testimony).

³⁵ *See, e.g.*, Hearing Tr. 106:4-7.

evidence demonstrates that the smart meters being used by Met-Ed: (1) comply with the safety standards and requirements established by agencies such as the Federal Communications Commission;³⁶ (2) are developed and tested to meet the requirements of the American National Standards Institute;³⁷ and (3) certified by Underwriters Laboratory.³⁸ In stark contrast to the Complainants' speculative allegations that are unsupported by record evidence, the Company has presented extensive expert testimony demonstrating that the smart meters being deployed by Met-Ed are safe and comply with applicable standards for electric service.

In sum, the Complainants have failed to meet their burden to demonstrate that the installation of a smart meter constitutes unreasonable or inadequate service. While the Complainants raised general concerns about the health, safety, service 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 Complainants' claims must be dismissed accordingly.

3. The installation of a smart meter at the Complainants' Service Location does not constitute unreasonable discrimination in service in violation of Section 1502 of the Public Utility Code.

The Complainants also argue that Met-Ed's refusal to allow them to opt-out of smart meter installation constitutes discrimination in the Company's offering of service.³⁹ This position is also without merit. Contrary to the Complainants' assertion, Met-Ed is treating them the same as all the Company's other customers (as Act 129 requires) and, therefore, is not unreasonably discriminating against them in violation of Section 1502 of the Public Utility Code. Moreover, as the Complainants have failed to demonstrate that the installation of a smart meter at their Service

³⁶ Respondent Ex. 1 at 12:1-6 (Ahr Rebuttal Testimony).

³⁷ Respondent Ex. 1 at 12:6-13 (Ahr Rebuttal Testimony).

³⁸ Respondent Ex. 1 at 12:13-15 (Ahr Rebuttal Testimony).

³⁹ See, e.g., Hearing Tr. 146:14-15.

Location would cause them any “unreasonable prejudice or disadvantage,” the Complainants’ argument must fail.

Section 1502 of the Public Utility Code provides that:

No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.⁴⁰

As the Commission has explained, this provision prohibits a utility from unreasonably discriminating against a customer or class of customers in favor of another customer or class of customers.⁴¹ Put another way, this provision requires equal treatment of similarly situated parties dealing with a utility.⁴²

The Complainants’ assertion that Met-Ed is discriminating against them is wholly unsupported and without merit. The Complainants have failed to present any evidence that Met-Ed is unreasonably treating them differently than any other customer. Indeed, the entire basis for the Complaint is that *the Complainants want* to be treated differently than the Company’s other customers and, in accordance with Act 129, Met-Ed will not permit it. Moreover, as detailed above, the Complainants have failed to meet their burden of proof to establish that the installation of a smart meter at their Service Location will cause any of the alleged negative impacts they say it will. As such, there is no basis to conclude that the installation of a smart meter at the

⁴⁰ 66 Pa. C.S. §1502.

⁴¹ *In re Electricity Generation Customer Choice and Competition Act – Retail Access Pilot Programs*, 1997 Pa. PUC LEXIS 9 at *61, Docket No. M-00960890 (Jan. 16, 1997).

⁴² *Id.*

Complainants' Service Location by Met-Ed constitutes an "unreasonable prejudice or disadvantage either." The Complainants' argument must fail.

4. All hearsay and lay health, safety, service and privacy testimony was properly objected to and excluded and may not be relied upon in this matter.

During the hearing, the Complainants offered testimony related to alleged health, safety, service, and privacy issues related to smart meters without any expert credentials on these issues. As a lay witness, Ms. Mosley was not qualified to testify or offer exhibits related to any issues outside of her direct personal knowledge. Ms. Mosley's testimony on these items was objected to as appropriate and not admitted into the record.

According to Pennsylvania Rule of Evidence 701,⁴³ 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:

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.

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."⁴⁴ Lay witness testimony only carries evidentiary weight where the witness has actually perceived the situation, and the opinion is not based on

⁴³ Pa.R.E. 701.

⁴⁴ *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).

scientific, technical or specialized knowledge.⁴⁵ In this case, the bulk of Ms. Mosley's testimony related to issues outside the scope of her personal knowledge and were based on hearsay.⁴⁶ 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 Complainants' 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. The Complainants, on the other hand, failed to present any credible or relevant evidence to support their allegations that smart meter deployment is unsafe or violates Section 1501 of the Public Utility Code. In view of the Complainants' failure to support their position with record evidence actually related to the safety of smart meters, much less fulfill their burden of proof, the Complaint should be denied and dismissed with prejudice.

⁴⁵ Pa.R.E. 701.

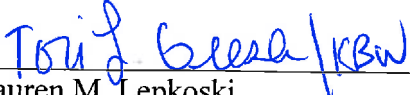
⁴⁶ In fact, because a smart meter has yet to be installed at her Service Location, Ms. Mosley has no personal knowledge or experience of relevance here.

V. **CONCLUSION**

WHEREFORE, Metropolitan Edison Company respectfully requests that Administrative Law Judge Jeffrey Watson recommend that the Pennsylvania Public Utility Commission dismiss the Formal Complaint of Thomas Mosley and Norma Mosley with prejudice.

Respectfully submitted,

Dated: January 22, 2020



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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 deployment plans.⁴⁷
2. Act 129 provides a list of required smart meter functionality.⁴⁸
3. Met-Ed's Smart Meter Technology Procurement and Installation Plan was approved by the Commission on June 9, 2010.⁴⁹
4. 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, 2014.⁵⁰
5. The Smart Meter Deployment Plan identifies Itron as Met-Ed's smart meter vendor and network provider.⁵¹
6. The Smart Meter Deployment Plan explicitly states that there is "no opt-out for customers."⁵²
7. Met-Ed's smart meter deployment plan requires the Company 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 2022.⁵³

⁴⁷ Respondent Ex. 1 at 4:8-10 (Ahr Rebuttal Testimony).

⁴⁸ Respondent Ex 1 at 6:1-28 (Ahr Rebuttal Testimony).

⁴⁹ Respondent Ex. 1 at 8:1-4 (Ahr Rebuttal Testimony).

⁵⁰ Respondent Ex. 1 at 9:6-8 (Ahr Rebuttal Testimony); *see also* Respondent Ex. JCA-1.

⁵¹ Respondent Ex. JCA-1.

⁵² Respondent Ex. JCA-1.

⁵³ Respondent Ex. 1 at 11:3-24 (Ahr Rebuttal Testimony); *see also* Respondent Ex. JCA-1.

8. To date, Met-Ed has not installed a smart meter at the Complainants' service location.⁵⁴

9. The Complainants offered only lay witness testimony at the hearings in this matter.

10. Met-Ed offered testimony by Company employee, John Ahr.

11. Met-Ed's smart meter network does not transmit names, addresses, social security numbers, or other similar sensitive account numbers.⁵⁵

12. Met-Ed's smart meters have no access to information regarding what devices are using electricity behind the meter. The smart meters communicate the total usage not what is causing the usage.⁵⁶

13. Met-Ed's smart meter network utilizes a number of cybersecurity protections to guard against unauthorized access to customer's usage data.⁵⁷

14. Met-Ed's Privacy Policy related to the confidentiality and cybersecurity protections applicable to smart meters was approved by the Commission on May 1, 2015.⁵⁸

15. While Met-Ed issued a disconnection notice to the Complainants due to their refusal to accept the installation of a smart meter at their service location, the Company did not terminate electric service at the Complainants' service location because of their filing of an informal complaint.⁵⁹

⁵⁴ Respondent Ex. 1 at 17:7-9 (Ahr Rebuttal Testimony).

⁵⁵ Respondent Ex. 1 at 13:11-16 (Ahr Rebuttal Testimony).

⁵⁶ Respondent Ex. 1 at 12:21-13:2 (Ahr Rebuttal Testimony).

⁵⁷ Respondent Ex. 1 at 14:1-8 (Ahr Rebuttal Testimony).

⁵⁸ Respondent Ex. 1 at 13, fn. 10 (Ahr Rebuttal Testimony); Respondent Ex. JCA-2.

⁵⁹ Respondent Ex. 1 at 16:8-20 (Ahr Rebuttal Testimony)

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. Under Section 332(a) of the Public Utility Code, the Complainants maintain the burden of proof in this proceeding.⁶⁰

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 Complainants establish a prima facie case does it become the responsibility of the Company to provide rebuttal evidence.⁶¹

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.⁶²

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.⁶³

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.⁶⁴

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

⁶⁰ 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).

⁶¹ *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).

⁶² *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).

⁶³ *Lansberry*, 578 A.2d at 602.

⁶⁴ *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.”⁶⁵

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....”⁶⁶

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.⁶⁷

9. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.⁶⁸

10. The Complainants failed to establish that the Company’s installation of a smart meter at the Complainants’ service location would violate Act 129 or any related Commission orders.⁶⁹

11. A lay witness may only provide testimony related to his or her direct knowledge or experience.⁷⁰

⁶⁵ 66 Pa.C.S. § 701.

⁶⁶ 66 Pa.C.S. § 1501.

⁶⁷ *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 January 28, 2016).

⁶⁸ 66 Pa.C.S. § 2806.1, *et seq.*; *see Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

⁶⁹ *See id.*; *see also Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penelec Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Sec. Letter dated June 20, 2014).

⁷⁰ Pa.R.E. 701.

12. 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.⁷¹

13. The Company has the absolute right to access a customer's premises to remove or exchange any or all Company equipment including a meter.⁷²

14. The Company is permitted to terminate a customer's electric service for denying access to the meter.⁷³

15. Any testimony of a lay witness related to technical or specialized knowledge should be excluded and given no evidentiary weight.⁷⁴

16. The hearsay evidence presented in this case was properly objected to and excluded and may not support any findings of fact.⁷⁵

17. The Complainants failed to sustain their burden of proof to demonstrate that the installation of a smart meter would constitute unsafe or unreasonable service by the Company.

18. The Complainants have failed to sustain their burden of proof to demonstrate that Met-Ed unreasonably discriminated against them by refusing them to opt-out of smart meter installation.

⁷¹ Electric Pa. P.U.C. No. 81, Original Page 45, issued May 1, 2015; effective May 3, 2015.

⁷² *Id.*

⁷³ 66 Pa. C.S. § 1406; 52 Pa. Code § 56.81; Electric Pa. P.U.C. No. 81, Original Page 60, issued May 1, 2015; effective May 3, 2015.

⁷⁴ See *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004).

⁷⁵ *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 Thomas Mosley and Normal Mosley 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**

**THOMAS MOSLEY AND NORMA
MOSLEY**

:
:
:
:
:

Docket No. C-2018-3001526

v.

METROPOLITAN EDISON COMPANY

CERTIFICATE OF SERVICE

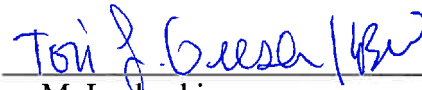
I hereby certify that I have this day served a true copy of the Main Brief of Pennsylvania Electric Company upon the individual listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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

Thomas Mosley and Norma Mosley
197 Foreghill Road
Hamburg, PA 19526

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: January 22, 2020



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