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January 30, 2020

**VIA ELECTRONIC FILING**

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

**Re: Cindy Kelly v. Metropolitan Edison Company**  
**Docket No. C-2018-3004681**

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*

Tori L. Giesler

kbw  
Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**CINDY KELLY**

**v.**

**METROPOLITAN EDISON COMPANY**

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**Docket No. C-2018-3004681**

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

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Dated: January 30, 2020

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## **I. PROCEDURAL HISTORY**

On or about September 17, 2018, Cindy Kelly (“Complainant”) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) to dispute the installation of a smart meter by Metropolitan Edison Company (“Met-Ed” or “Company”) at 7252 Camp Meeting Road, New Tripoli, Pennsylvania 18066 (“Service Location”).

On October 9, 2018, the Company filed its Answer and New Matter denying the material allegations within the Formal Complaint, as well as submitting Preliminary Objections.

On or about October 19, 2018, the Complainant filed a Reply to the Company’s Answer and Preliminary Objections.

On November 2, 2018, a Motion Judge Assignment Notice was issued assigning Administrative Law Judge (“ALJ”) Jeffrey A. Watson as the Presiding Officer in this proceeding.

On November 21, 2018, ALJ Watson issued a Preliminary Order denying the Company’s Preliminary Objections.

On December 6, 2018, ALJ Watson also issued an Interim Order Establishing Initial Litigation Schedule.

On January 24, 2019, Met-Ed filed notice of its anticipated expert witnesses for a future evidentiary hearing in this proceeding, in accordance with the December 6, 2018 Interim Order Establishing Initial Litigation Schedule.

On May 10, 2019, the Company timely submitted a Status Report and, by letter dated May 17, 2019, the Complainant filed a response to the Company’s Status Report wherein she stated, *inter alia*, that she did not wish to proceed with a prehearing conference and wanted to move forward with an evidentiary hearing.

On May 30, 2019, ALJ Watson issued an Interim Order Scheduling Prehearing Conference and Requiring Attendance of Complainant and Counsel for Respondent, scheduling a pre-hearing conference for June 27, 2019.

On June 3, 2019, a Call-In-Telephone Hearing Notice was issued, scheduling an Initial Call in Telephonic Hearing for June 27, 2019.

On June 18, 2019, a Hearing Cancellation/Rescheduling Notice was issued, cancelling the June 27, 2019 Initial Call In Telephonic Hearing and rescheduling it to July 31, 2019.

On June 28, 2019, a Hearing Cancellation Notice was issued, cancelling the July 31, 2019 Initial Call In Telephonic Hearing.

On July 18, 2019, a Hearing Cancellation/Rescheduling Notice was issued, cancelling the July 31, 2019 Initial Call In Telephonic Hearing and rescheduling it to September 10, 2019.

On August 30, 2019, ALJ Watson issued an Interim Order Confirming Requirements for Evidentiary Hearing, confirming the requirements for the evidentiary hearing scheduled for September 10, 2019.

On or about September 4, 2019, the Complainant filed a letter requesting that the September 10, 2019 evidentiary hearing be postponed due to “conflicting information” and requesting that ALJ Watson require the filing of written expert testimony prior to the evidentiary hearing.

On September 5, 2019, ALJ Watson issued an Interim Order Granting Complainant’s Request for Continuance and Denying Request for Written Testimony.

On October 17, 2019, a Hearing Cancellation/Rescheduling Notice was issued, rescheduling the September 10, 2019 hearing for November 7, 2019.

On October 18, 2019, ALJ Watson issued an Interim Order Confirming Requirements for Rescheduled Evidentiary Hearing.

On November 7, 2019, a telephonic evidentiary hearing was held in this matter. The Complainant presented her case through her own testimony only. The Complainant offered numerous exhibits, of which only a few were entered into the record. Met-Ed presented its case through the testimony of Mr. John Ahr. Additionally, the Company introduced Respondent Exhibits JCA-1, JCA-2, JCA-3 – all of which were admitted into the record. Met-Ed further introduced Exhibits PD-1, PD-2, PD-3, PD-4, and PD-5, and ALJ Watson took official notice of each.

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 30, 2020. Met-Ed hereby submits its Main Brief in accordance with the Interim Order Setting Briefing Schedule.

## II. LEGAL STANDARDS

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

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

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

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

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

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

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

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

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

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

<sup>7</sup> 66 Pa.C.S. § 701.

<sup>8</sup> 66 Pa.C.S. § 1501.

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

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

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

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

In addition, the Complainant has failed to establish that the installation of a smart meter constitutes unreasonable service. At hearing, the Complainant failed to present any evidence supporting her assertions about the safety of smart meters or the impact that a smart meter will have on her health, service or privacy. Indeed, the evidence presented by the Company at hearing

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

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

<sup>12</sup> *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and 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 Exhibit PD-4.

demonstrates that the smart meters being installed by Met-Ed are safe and that the Company has appropriate procedures in place, which have been approved by the Commission, to protect customers' information.

Moreover, the lay testimony offered by the Complainant should carry little weight. Although the Pennsylvania Rules of Evidence are not strictly adhered to at the Commission, the Pennsylvania Supreme Court has unequivocally stated that any relaxation of the rules of evidence in administrative settings cannot allow lay witnesses to testify to technical matters "without personal knowledge or specialized training."<sup>13</sup> Lay witness testimony only carries evidentiary weight where the witness has actually perceived the situation, and the opinion is not based on scientific, technical or specialized knowledge.<sup>14</sup> In this case, almost none of the testimony offered by the Complainant was based on her own experience or personal knowledge related to smart meters. In fact, because a smart meter has yet to be installed at her Service Location, the Complainant has no direct, personal knowledge or experience of relevance here. As such, all lay testimony from the Complainant related to more specialized topics, including privacy and the purported health impact of smart meters, should be disregarded and given no evidentiary weight under the Pennsylvania Rules of Evidence.

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

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<sup>13</sup> *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602, 701 and 702 generally applicable in agency proceedings).

<sup>14</sup> Pa.R.E. 701.

#### IV. ARGUMENT

**A. The Complainant failed to meet her 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. Met-Ed's Smart Meter Deployment Plan, approved by the Commission, explicitly states that no opt-out option is available.<sup>15</sup>

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code ("Code").<sup>16</sup> Act 129 required EDCs with at least 100,000 customers, such as Met-Ed, to file a smart meter technology procurement and installation plan ("SMP Plan") with the Commission for approval.<sup>17</sup> Specifically, Section 2807(f)(2) of the Code directed EDCs to furnish smart meter technology as follows: 1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; 2) in new building construction; and 3) in accordance with a depreciation schedule not to exceed fifteen years.<sup>18</sup>

On December 31, 2012, Met-Ed, along with FirstEnergy Corp.'s other EDCs in Pennsylvania (collectively, the "Companies"), filed their Joint Petition for Approval of their Smart Meter Deployment Plan, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission's Implementation

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<sup>15</sup> *Smart Meter Deployment Plan*, p. 9; Respondent Ex. JCA-1.

<sup>16</sup> 66 Pa.C.S. § 101, *et seq.*

<sup>17</sup> 66 Pa.C.S. § 2807(f).

<sup>18</sup> 66 Pa.C.S. § 2807(f)(2); *see also* Exhibit PD-1; *see also* Hearing Tr. at 335:19-337:11 (Ahr Direct Testimony).

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.<sup>19</sup> On March 19, 2014, the Companies submitted their revised Smart Meter Deployment Plan,<sup>20</sup> which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan.

In this proceeding, the Complainant's 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 Complainant points to portions of the Commonwealth of Pennsylvania Legislative Journal dated October 8, 2008, which she alleges prove that the Legislature did not intend Act 129 to mandate smart meter installation for all customers.<sup>21</sup> 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.<sup>22</sup> Indeed, the Complainant acknowledged at hearing that Act 129 does not contain an "opt-out" provision.<sup>23</sup> The Commission has recently reaffirmed this conclusion, holding in a similar complaint proceeding that (1) there is no provision in the Code,

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<sup>19</sup> *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; see also Hearing Tr. at 343:22-25.

<sup>20</sup> See Respondent Ex. JCA-1.

<sup>21</sup> See Hearing Tr. at 182:2-6 (Kelly Direct Testimony).

<sup>22</sup> *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).

<sup>23</sup> Hearing Tr. at 165:21-25, 193:4-7 (Kelly Direct Testimony).

Commission regulations or Orders that allows a customer to “opt-out” of a smart meter installation; (2) there is Commission precedent that no opt-out provision exists in current Pennsylvania law; and (3) the EDC is legally required to install smart meters by Act 129 and Commission Orders.<sup>24</sup>

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 Complainant to opt-out of smart meter installation is in any way a violation of the Company’s Smart Meter Deployment Plan or other Commission order. As such, the Complainant’s argument must fail.

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

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

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

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

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons,

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<sup>24</sup> *Evangeline Hoffman-Lorah v. PPL Electric Utilities Corporation*, Docket No. C-2018-2644957 (Order entered May 23, 2019).

employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.<sup>25</sup>

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

At hearing, the Complainant presented little to no evidence supporting her general concerns that smart meters may have harmful health impacts. While the Complainant generally discussed her medical history and her belief that the installation of a smart meter may have a negative impact on her health,<sup>26</sup> she presented no admissible evidence justifying such belief. She similarly did not provide any evidence supporting her assertion that “[o]ther devices have impacted [her] health,” and that the emissions from such devices are similar to any emissions from the smart meter being deployed by Met-Ed.<sup>27</sup> The Complainant’s general speculation regarding these health concerns and the similarity of smart meters to other devices is not sufficient to find that the smart meters being deployed by Met-Ed present health risks for its customers.

At hearing, the Complainant also expressed her belief that the information gathered by Met-Ed through the use of smart meters was a violation of her privacy and that such information was subject to be sold or otherwise obtained by third parties.<sup>28</sup> The Complainant further believes that Met-Ed may sell her information to third parties.<sup>29</sup> The Complainant’s concerns, however, are completely unsupported by the record.

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<sup>25</sup> 66 Pa.C.S. § 1501.

<sup>26</sup> *See, e.g.* Hearing Tr. at 31:18-21.

<sup>27</sup> Hearing Tr. at 31:18-21.

<sup>28</sup> *See, e.g.*, Hearing Tr. at 30:15-19, 306:14-16,

<sup>29</sup> Hearing Tr. at 209:18-20.

During his testimony at hearing, Company Witness Ahr presented and explained the Company's Commission-approved Privacy Policy related to smart meters.<sup>30</sup> The Company's Privacy Policy explains the type of customer information that can be transmitted through smart meters and addresses the security protocols in place to protect against unauthorized access to a customer's usage information. 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.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> 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 Complainant's privacy concerns are warranted.

Finally, the Complainant expressed concerns about the safety of smart meters and the potential impact the installation of a smart meter may have on the service at her property.<sup>34</sup>

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<sup>30</sup> Hearing Tr. at 350:20-354:2 (Ahr Direct Testimony).

<sup>31</sup> Hearing Tr. at 352:7-17 (Ahr Direct Testimony).

<sup>32</sup> Hearing Tr. at 353:13-22 (Ahr Direct Testimony).

<sup>33</sup> Hearing Tr. at 353:23-354:2 (Ahr Direct Testimony).

<sup>34</sup> *See, e.g.*, Hearing Tr. at 30:20-31:1 (Kelly Direct Testimony).

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 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;<sup>35</sup> (2) are developed and tested to meet the requirements of the American National Standards Institute;<sup>36</sup> and (3) certified by Underwriters Laboratory.<sup>37</sup> In stark contrast to the Complainant's 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 Complainant has failed to meet her burden to demonstrate that the installation of a smart meter constitutes unreasonable or inadequate service. While the Complainant raised general concerns about the health, 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 Complainant's claims must be dismissed accordingly.

**3. 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 Complainant 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, the Complainant was not qualified to testify or offer exhibits related to any issues

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<sup>35</sup> Hearing Tr. at 354:14-18 (Ahr Direct Testimony).

<sup>36</sup> Hearing Tr. at 354:18-22 (Ahr Direct Testimony).

<sup>37</sup> Hearing Tr. at 355:6-10 (Ahr Direct Testimony).

outside of her direct personal knowledge. The Complainant's testimony on these items was objected to as appropriate and not admitted into the record.

According to Pennsylvania Rule of Evidence 701,<sup>38</sup> 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.”<sup>39</sup> Lay witness testimony only carries evidentiary weight where the witness has actually perceived the situation, and the opinion is not based on scientific, technical or specialized knowledge.<sup>40</sup> In this case, the bulk of the Complainant's testimony related to issues outside the scope of her personal knowledge and were based on hearsay.<sup>41</sup> All such testimony was properly excluded upon objection. To the extent such testimony was not objected to, such testimony should carry insignificant weight that cannot support the Complainant's burden of proof in this proceeding.

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<sup>38</sup> Pa.R.E. 701.

<sup>39</sup> *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602, 701 and 702 generally applicable in agency proceedings).

<sup>40</sup> Pa.R.E. 701.

<sup>41</sup> In fact, because a smart meter has yet to be installed at her Service Location, the Complainant has no personal knowledge or experience of relevance here.


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

**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 Cindy Kelly with prejudice.

Respectfully submitted,

Dated: January 30, 2020

Handwritten signature in blue ink: "Tori L. Giesler / KBW". The signature is written over a horizontal line.

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Counsel for Metropolitan Edison Company

## APPENDIX A

### PROPOSED FINDINGS OF FACT

1. Act 129 of 2008 required electric distribution companies with more than 100,000 customers to adopt smart meter deployment plans.<sup>42</sup>
2. Act 129 provides a list of required smart meter functionality.<sup>43</sup>
3. Met-Ed's Smart Meter Technology Procurement and Installation Plan was approved by the Commission on June 9, 2010.<sup>44</sup>
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.<sup>45</sup>
5. The Smart Meter Deployment Plan identifies Itron as Met-Ed's smart meter vendor and network provider.<sup>46</sup>
6. The Smart Meter Deployment Plan explicitly states that there is "no opt-out for customers."<sup>47</sup>
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.<sup>48</sup>

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<sup>42</sup> Hearing Tr. 347:5-7 (Ahr Direct Testimony).

<sup>43</sup> Hearing Tr. 338:13-17 (Ahr Direct Testimony).

<sup>44</sup> Hearing Tr. 341:24-342:2 (Ahr Direct Testimony).

<sup>45</sup> Hearing Tr. 344:1-6 (Ahr Direct Testimony); Exhibit PD-4.

<sup>46</sup> Respondent Ex. JCA-1.

<sup>47</sup> Respondent Ex. JCA-1.

<sup>48</sup> Hearing Tr. 348:10-349:5 (Ahr Direct Testimony); *see also* Respondent Ex. JCA-2.

8. To date, Met-Ed has not installed a smart meter at the Complainant's service location.<sup>49</sup>

9. The Complainant 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, or other similar sensitive account numbers.<sup>50</sup>

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.<sup>51</sup>

13. Met-Ed's smart meter network utilizes a number of cybersecurity protections to guard against unauthorized access to customer's usage data.<sup>52</sup>

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.<sup>53</sup>

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<sup>49</sup> Hearing Tr. 359:25-360:1 (Ahr Direct Testimony).

<sup>50</sup> Hearing Tr. 353:1-5 (Ahr Direct Testimony).

<sup>51</sup> Hearing Tr. 350:8-13 (Ahr Direct Testimony).

<sup>52</sup> Hearing Tr. 353:13-22 (Ahr Direct Testimony).

<sup>53</sup> Hearing Tr. 351:5-10; Exhibit PD-5.

## APPENDIX B

### PROPOSED CONCLUSIONS OF LAW

1. Under Section 332(a) of the Public Utility Code, the Complainant maintains the burden of proof in this proceeding.<sup>54</sup>

2. The first step in carrying the burden of proof is establishing a prima facie case that Met-Ed violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establishes a prima facie case does it become the responsibility of the Company to provide rebuttal evidence.<sup>55</sup>

3. In order to establish a prima facie case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.<sup>56</sup>

4. A party's burden of proof is met by establishing a preponderance of the evidence, which requires proof by a greater weight of the evidence.<sup>57</sup>

5. A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.<sup>58</sup>

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

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<sup>54</sup> 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Commw. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

<sup>55</sup> *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980); *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528 (Order entered Oct. 9, 1980).

<sup>56</sup> *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Mid-Atlantic Power Supply Assoc. v. Pa. Public Utility Comm'n*, 746 A.2d 1196, 1200 (Pa. Commw. Ct. 2000).

<sup>57</sup> *Lansberry*, 578 A.2d at 602.

<sup>58</sup> *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015); see also *Se-Ling Hosiery*, *supra*.

or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission.”<sup>59</sup>

7. As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501 of the Public Utility Code. Section 1501 states, in relevant part: “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities....”<sup>60</sup>

8. In similar complaint proceedings, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.<sup>61</sup>

9. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.<sup>62</sup>

10. The Complainant failed to establish that the Company’s installation of a smart meter at the Complainant’s service location would violate Act 129 or any related Commission orders.<sup>63</sup>

11. A lay witness may only provide testimony related to his or her direct knowledge or experience.<sup>64</sup>

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<sup>59</sup> 66 Pa.C.S. § 701.

<sup>60</sup> 66 Pa.C.S. § 1501.

<sup>61</sup> *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).

<sup>62</sup> 66 Pa.C.S. § 2806.1, *et seq.*; *see Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

<sup>63</sup> *See id.*; *see also 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 (Sec. Letter dated June 20, 2014).

<sup>64</sup> 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.<sup>65</sup>

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.<sup>66</sup>

14. The Company is permitted to terminate a customer's electric service for denying access to the meter.<sup>67</sup>

15. Any testimony of a lay witness related to technical or specialized knowledge should be excluded and given no evidentiary weight.<sup>68</sup>

16. The hearsay evidence presented in this case was properly objected to and excluded and may not support any findings of fact.<sup>69</sup>

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

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<sup>65</sup> Electric Pa. P.U.C. No. 81, Original Page 45, issued May 1, 2015; effective May 3, 2015.

<sup>66</sup> *Id.*

<sup>67</sup> 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.

<sup>68</sup> See *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004).

<sup>69</sup> *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa Commw. Ct. 1976).

## APPENDIX C

### **PROPOSED ORDERING PARAGRAPHS**

1. The formal complaint of Cindy Kelly 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**

**CINDY KELLY**

**v.**

**METROPOLITAN EDISON COMPANY**

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**Docket No. C-2018-3006841**

**CERTIFICATE OF SERVICE**


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

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

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Administrative Law Judge Jeffrey A. Watson  
Pennsylvania Public Utility Commission  
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Dated: January 30, 2020

  
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