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April 16, 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 Linda Licht v. Metropolitan Edison Company
Docket No. C-2018-3004078**

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

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Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THOMAS AND LINDA LICHT	:	
	:	
v.	:	DOCKET NO. C-2018-3004078
	:	
METROPOLITAN EDISON COMPANY	:	

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

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Dated: April 16, 2020

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I. INTRODUCTION

On August 17, 2018, Metropolitan Edison Company (“Met-Ed” or the “Company”) was served with the above-captioned Formal Complaint filed by Thomas and Linda Licht (“Complainants”) with the Pennsylvania Public Utility Commission (“Commission”). In their Complaint, the Complainants contest Met-Ed’s planned installation of a smart meter at their property located at 74 Cedar Lane, Birdsboro, Pennsylvania 19508 (“Service Location”).

As explained in this Main Brief, the Complainants failed to sustain their burden of proof that installing the smart meter on their property would constitute a violation of the Public Utility Code or any Commission regulation or order. Therefore, the Commission should dismiss the Complaint in its entirety and with prejudice.

II. STATEMENT OF THE CASE

On or about August 14, 2018, the Complainants filed the above-captioned Formal Complaint against Met-Ed with the Commission, which was electronically served on the Company on August 17, 2018.

On September 6, 2018, the Company filed its Answer and New Matter denying the material allegations in the Formal Complaint. On the same day, the Company also filed Preliminary Objections to the Formal Complaint.

On October 11, 2018, a Motion Judge Assignment Notice was issued assigning Administrative Law Judge Jeffrey A. Watson (“ALJ Watson”) to this proceeding.

On December 14, 2018, ALJ Watson issued an Interim Order denying the Company’s Preliminary Objections and ordering that the Formal Complaint be referred to the Commission’s Mediation Unit for mediation review.

Also on December 14, 2018, an Interim Order Establishing Initial Litigation Schedule was issued, which set forth the schedule for discovery, the identification of witnesses, and filing of motions in this proceeding. Under that Interim Order, ALJ Watson set a witness notification deadline of January 31, 2019, and a discovery deadline of April 5, 2019.

On January 31, 2019, in accordance with the Interim Order Establishing a Litigation Schedule, the Company provided notice and summaries of testimony for its factual and expert witnesses. No witness information was provided by the Complainants.

On February 19, 2019, the Company submitted a Motion to Compel due to the lack of any response from the Complainants to the Company's discovery requests.

On March 14, 2019, ALJ Watson issued an Interim Order, which granted Met-Ed's Motion to Compel and directed the Complainants to serve complete responses to all of the Company's discovery requests by no later than April 5, 2019.

On April 15, 2019, in accordance with the Interim Order Establishing a Litigation Schedule, the Company provided a status report.

On April 24, 2019, the Company filed a Motion to Dismiss the Complaint due to the Complainants' repeated failures to abide by the Interim Orders of ALJ Watson and failure to exchange expert and factual witness information.

A response to the Company's Motion to Dismiss was not timely filed.

On May 2, 2019, an Interim Order was entered by ALJ Watson, setting a prehearing conference to be held on June 13, 2019 in this matter.

On May 31, 2019, an Interim Order was entered by ALJ Watson, advising all parties that their attendance would be required at the scheduled June 13, 2019 prehearing conference.

On June 13, 2019, the prehearing conference was convened as scheduled. At that prehearing conference, it was agreed that deadlines would be set such that any response of the Complainants to the Company's April 24, 2019 Motion to Dismiss must be filed and received no later than June 21, 2019, and that the Company may file, no later than June 21, 2019, a motion for sanctions against Complainants for their failure to adhere to the procedural orders entered in this proceeding or to respond to the Company's discovery requests for consideration in the alternative should the Company's Motion to Dismiss is denied.

Later on June 13, 2019, an Interim Order was issued by ALJ Watson memorializing the deadlines that were adopted at the prehearing conference held earlier that day.

On June 17, 2019, the Complainants filed their Answer to the Company's Motion to Dismiss.

On June 21, 2019, Met-Ed filed a Motion for Sanctions, in which the Company requested that if its Motion to Dismiss was denied, the Complainants be barred from presenting any testimony or exhibits related to: (1) the possibility of smart meters causing fires and the associated property damage risks associated with fires; (2) the possibility that smart meters could cause negative health conditions or exacerbate existing health conditions; and (3) the possibility of smart meters causing invasion of the Complainants' privacy and release of their customer data.

On June 27, 2019, the Complainants filed an Answer to the Company's Motion for Sanctions.

On September 4, 2019, ALJ Watson issued an Interim Order holding the Company's Motion to Dismiss and Motion for Sanctions in abeyance and requiring the Complainants to comply with his prior Interim Orders.

On October 4, 2019, Met-Ed filed a letter withdrawing its Motion to Dismiss because: (1) the Complainants provided partial responses to the Company's discovery requests; and (2) the Complainants indicated that they would not be presenting any witnesses other than themselves at the evidentiary hearing.

On October 21, 2019, an Interim Order was issued directing the parties to provide dates for the evidentiary hearing by no later than November 1, 2019.

On October 31, 2019, the Complainants sent a letter to ALJ Watson requesting an in-person evidentiary hearing on February 24, 25, or 26, 2020, in Harrisburg, Pennsylvania.

On November 1, 2019, Met-Ed filed a letter stating, among other things, that the Company was available for an in-person hearing in Harrisburg, Pennsylvania on any of the Complainants' proposed dates.

On November 19, 2019, the Complainants faxed an *ex parte* communication to Chairman Gladys Brown-Dutrieuille, Vice Chairman Sweet, Commissioner Place, Commissioner Yanora, and Commissioner Coleman, which contained baseless and unfounded allegations about the impartiality of ALJ Watson.

On November 22, 2019, the Commission served a copy of the Complainants' *ex parte* communication on the Company.

On December 11, 2019, the Commission issued a Notice replacing ALJ Watson with Deputy Chief Administrative Law Judge Joel H. Cheskis ("ALJ Cheskis").

On December 19, 2019, a Notice was issued scheduling an in-person evidentiary hearing for February 27, 2020, in Harrisburg, Pennsylvania.

On December 23, 2019, ALJ Cheskis issued a Prehearing Order, setting forth certain procedural rules for the proceeding.

On February 18, 2020, Met-Ed served copies of its potential hearing exhibits on ALJ Cheskis and the Complainants in accordance with the Prehearing Order. No exhibits were served by the Complainants.

On February 27, 2020, the in-person evidentiary hearing was held as scheduled in Harrisburg, Pennsylvania.

On March 19, 2020, ALJ Cheskis issued a Briefing Order, which directed the parties to file Main Briefs by April 16, 2020, and Reply Briefs by May 7, 2020.

III. LEGAL STANDARDS

Under Section 332(a) of the Public Utility Code, the Complainants have 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 Company to provide rebuttal evidence.² 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 have the overarching burden of proof in the proceeding. It is clearly established that the Complainants' "burden of proof before administrative tribunals as well as

¹ 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *appeal denied*, 602 A.2d 863 (Pa. 1992).

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

³ *Lyft, Inc. v. Pa. Pub. Util. Comm'n*, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016) (citing *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).

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

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 part, that “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

In addition, a person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, “taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive.”¹⁰ Rather, the person must demonstrate by a preponderance of the evidence that such exposure actually causes

⁵ *Lansberry*, 578 A.2d at 602.

⁶ See *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008); *Pa. Pub. Util. Comm’n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015) (citing *Lansberry*, 578 A.2d at 602).

⁷ 66 Pa.C.S. § 701.

⁸ 66 Pa.C.S. § 1501.

⁹ *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at *86-88 (Order entered May 3, 2018); *Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered Jan. 28, 2016).

¹⁰ *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Cntys.*, 1992 Pa. PUC LEXIS 160, at *210-11 (June 29, 1992) (Initial Decision) (“*Woodbourne-Heaton*”).

adverse health effects.¹¹ Specifically, in AMI meter-related matters, the Commission has held that “[t]he Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.”¹²

IV. SUMMARY OF ARGUMENT

The Complainants wholly failed to meet their burden of proof 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 or would otherwise violate the Public Utility Code or any 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”).¹³ Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.¹⁴ Further, both Act 129 and the Commission’s *Implementation Order* require that electric distribution companies (“EDCs”) install wireless smart meters with specific functionalities. As evidenced by the Commission’s approval of the Company’s Smart Meter Deployment Plan,¹⁵ Met-Ed’s smart meters adhere to the requirements of Act 129 and the Commission’s *Implementation Order*.¹⁶ Therefore, Met-Ed must install a smart meter at the

¹¹ *Id.* at *211.

¹² *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Order entered Sept. 3, 2015); *see also Romeo v. Pa. PUC*, 154 A.3d 422, 429 (Pa. Cmwlth. 2017) (finding that the smart meter complainant should have a hearing to try to prove his claim through “the testimony of others as well as other evidence that goes to that issue”).

¹³ 66 Pa.C.S. § 2806.1, *et seq.*

¹⁴ *Id.*; *see Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) (“*Implementation Order*”).

¹⁵ *See* “Smart Meter Deployment Plan,” Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (filed June 16, 2014), available at <http://www.puc.state.pa.us/pcdocs/1292199.pdf> (“Smart Meter Deployment Plan”).

¹⁶ *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).

Complainants' Service Location so that the Company remains in compliance with Act 129, related Commission orders, and its Commission-approved Smart Meter Deployment Plan.

In addition, the Complainants failed to establish that the installation of a smart meter would constitute unreasonable service. In their limited testimony, the Complainants expressed general "concerns" about the smart meters' safety, such as allegations about the meters' potential to cause fires and damage appliances. As alleged support, the Complainants averred that the Company had to undertake a second wave of smart meter deployments due to safety issues. However, the Complainants never presented any credible or convincing evidence to support their allegations.

By contrast, Met-Ed witness John C. Ahr directly rebutted the Complainant's allegations and testified that Met-Ed's smart meters are safe. As explained by Mr. Ahr, Met-Ed's smart meters comply with all safety requirements and standards established by various entities, including the Federal Communications Commission ("FCC"), the American National Standards Institute ("ANSI"), and Underwriters Laboratories ("UL"). Moreover, the meter manufacturer, Itron, Inc., enlisted certified personnel to perform the required testing. Such personnel would have been aware of any deficiencies if the smart meters failed to pass those standards. Lastly, contrary to the Complainants' allegation, Mr. Ahr testified that the Company never had to undertake a second wave of meter deployments due to safety issues.

Thus, the Complainants failed to establish by a preponderance of the evidence that Met-Ed's installation of the smart meter would violate a Commission statute, regulation, or order. Accordingly, the Complaint should be dismissed with prejudice.

V. ARGUMENT

A. Background on Act 129 and the Company’s Smart Meter Deployment Plan

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code.¹⁷ 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.¹⁸ 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.¹⁹

Pursuant to Section 2807(f) of the Public Utility Code, Met-Ed jointly filed its Petition for Approval of Smart Meter Technology Procurement and Installation Plan with Pennsylvania Electric Company and Pennsylvania Power Company on August 14, 2009 (“2009 SMP Plan”).²⁰ The Commission issued an Order on June 9, 2010, approving 2009 SMP Plan with certain modifications.²¹

On December 31, 2012, Met-Ed, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively referred to hereafter as “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

¹⁷ 66 Pa.C.S. § 101, *et seq.*

¹⁸ 66 Pa.C.S. § 2807(f).

¹⁹ 66 Pa.C.S. § 2807(f)(2).

²⁰ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Petition dated Aug. 10, 2009).

²¹ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Order entered June 9, 2010).

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.²² On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan.²³ Under the Revised Deployment Plan, the FirstEnergy Companies proposed to deploy 170,000 smart meters by the end of 2015.²⁴ In its June 25, 2014 Opinion and Order, the Commission recognized the benefits of early deployment of smart meters and approved the revised Smart Meter Deployment Plan, stating:

[T]his Commission has already observed the benefits of early deployment. We find that the use of Penn Power as a case study may help the Companies identify other more cost-effective meter deployment strategies that can then be leveraged by FirstEnergy's other operating companies. If deployment and operational savings prove very positive, FirstEnergy may also be able to further accelerate smart meter deployment, thus enabling an option to enhance customer savings even more.²⁵

B. The Complainants Failed to Meet Their Burden of Proof 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

In this proceeding, the Complainants have argued that they should be able to opt-out of the smart meter's installation because the Commission allegedly misinterpreted Act 129 as

²² *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 (Petition filed December 31, 2012).

²³ See note 15, *supra*.

²⁴ *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, p. 8 (Order entered June 25, 2014).

²⁵ *Id.*, p. 16.

requiring smart meters. (Tr. 7-8, 46.) The Complainants also contend that other states allow persons to opt-out of smart meters, so they should be able to as well. (Tr. 46.) The Complainants' arguments entirely lack merit.

Under Act 129, Met-Ed has an absolute obligation to install smart meters for all of its customers, including the Complainants. Section 2807(f) of the Public Utility Code prescribes that EDCs, like Met-Ed, must file smart meter plans and “**shall** furnish smart meter technology” in any of the following situations: (1) “[u]pon request from a customer that agrees to pay the cost of the smart meter at the time of the request”; (2) “[i]n new building construction”; and (3) “[i]n accordance with a depreciation schedule not to exceed 15 years.” 66 Pa.C.S. § 2807(f)(1)-(2) (emphasis added).²⁶ In interpreting the smart meter provisions of Act 129, the Commission declared that EDCs must “deploy smart meters system-wide” because of the requirement that smart meters be deployed “in accordance with a depreciation schedule not to exceed 15 years.”²⁷ The Commission also “recognize[d] that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment.”²⁸ Therefore, Met-Ed must install the new smart meters for every customer in its service territory, including the Complainants.

²⁶ Importantly, Pennsylvania courts have long held that the word “shall” means “must.” See *Whiteford v. Dep’t of Transp.*, 728 A.2d 1127, 1131 (Pa. Cmwlth. 2001) (“[T]he word ‘shall’ denotes a mandatory, not discretionary instruction.”) (citations omitted); *C.B. v. J.B.*, 65 A.3d 946, 952 (Pa. Super. 2013) (finding that “[t]he use of ‘shall’ means . . . must” and that to hold otherwise “would be to flout the legislative will”); *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1233 (Pa. 2004) (“[W]e are not compelled to pretend that ‘shall’ means ‘may’ under Section 3146.6(a).”); *Griesmer v. Hill*, 36 Pa. Super. 69 (Pa. Super. 1908) (“This provision is mandatory, and not directory merely. It means what it says. The word ‘shall’ means ‘shall’ [The defendant] not only may but ‘must.’”). Therefore, the PUC has no discretion to delay when the rates go into effect.

²⁷ *Implementation Order*, p. 14.

²⁸ *Id.*, pp. 9, 14; see also *Springirth v. Nat’l Fuel Gas Distrib. Corp.*, 1991 Pa. PUC LEXIS 44, at *1-3, 6, 16-17 (Order entered Apr. 12, 1991) (dismissing complaint of customer seeking to make installation of automated meter reading devices optional, noting that the Commission previously found in another case that “[t]he customer should not be given the option of refusing installation of equipment” because “[t]o permit customer discretion in this area would be inefficient and uneconomical”) (quoting *Stenker v. The York Water Co.*, Docket No. C-871318 (Order entered July 27, 1987)).

In addition, nothing in Act 129 permits a customer to “opt-out” of a smart meter installation. The Commission has found in several other cases that Act 129 contains no such opt-out language.²⁹ Specifically, in *Starr*, the Commission observed that it has “rejected similar claims that the installation of smart meters is not mandatory or that an opt-out is permissible under Act 129.”³⁰ Only the General Assembly can amend Act 129 to add an opt-out provision. Notably, although bills have been proposed in the General Assembly to add such an opt-out (see, e.g., House Bill 1564 of 2017-2018 Session), they have never been enacted. Thus, a customer cannot opt-out of the AMI meter installation under Act 129.

Moreover, Met-Ed must comply with the relevant Commission orders directing the Company to deploy the new AMI meters. Nothing in Act 129 or the Commission’s related orders permit customers to “opt-out” from smart meter installation. In fact, Met-Ed’s Smart Meter Deployment Plan, approved by the Commission, explicitly states that no opt-out option is available.³¹ Therefore, the Company’s Commission-approved Smart Meter Deployment Plan mandates that all of Met-Ed’s meters must be replaced with smart meters.

Furthermore, the Complainants’ reliance on the laws of other states permitting opt-outs should be rejected. The Commission and Pennsylvania courts have made clear that the practices and policies of other jurisdictions have little, if any, relevance for Pennsylvania.³²

²⁹ See, e.g., *Starr v. PECO Energy Co.*, Docket No. C-2015-2516061, p. 11 (Order Entered Sept. 1, 2016) (footnote omitted).

³⁰ *Id.*; see *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at *11-13 (Order entered May 3, 2018); *Povacz v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 102, at *156-59 (Order entered Mar. 28, 2019), *appeal pending*, 492 C.D. 2019; *Sunstein Murphy v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 159, at *157-59 (Order entered May 9, 2019), *appeal pending*, 606 C.D. 2019; *Randall & Albrecht v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 160, at *145-48 (Order entered May 9, 2019), *appeal pending*, 607 C.D. 2019.

³¹ *Smart Meter Deployment Plan*, p. 6.

³² See, e.g., *Petition of Columbia Gas of Pennsylvania, Inc. for Approval of its Long-Term Infrastructure Improvement Plant*; *Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Distribution System Improvement Charge*, Docket No. P-2012-2338282, 2014 Pa. PUC LEXIS 93, at *34-35 (Recommended Decision Feb. 25, 2014) (“Although the OCA points to the practice of utilities in other states to support its argument to include ADIT in the DSIC, the jurisdictions that the OCA has identified in this proceeding have mechanisms that are

For these reasons, the Complainants have failed to demonstrate that they can legally opt-out of the smart meter's installation under Act 129 and related Commission orders.

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

The Complainants also maintain that the installation of the smart meter would violate Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501. (Tr. 9-23.) At the hearing, the Complainants presented limited testimony in support of their allegations. (Tr. 9-24.) The Complainants testified that they are “concerned” about the smart meter potentially causing fires and damage to their appliances. (Tr. 12-14.) They also claimed that the Company had to undertake a second wave of smart meter deployments because of safety issues. (Tr. 16.) Further, the Complainants asserted that there are people who have been advised by doctors “not to say around electromechanical radiation.” (Tr. 23.)

The Complainants' claims are unfounded and should be rejected entirely. Nothing in the record demonstrates that the Complainants possess the requisite technical expertise to testify about these alleged safety issues. The Complainants also presented absolutely no evidence in support of their claims, aside from expressing that they are “concerned” about the safety of the smart meters. Such bald assertions, personal opinions, or perceptions do not constitute

dissimilar from the Pennsylvania mechanism. In the instant case, even if a review of the practices of other states in interpreting the Pennsylvania statute was appropriate, the mechanisms in the other states vary significantly from the Pennsylvania DSIC such that that they provide no relevant guidance in judging the reasonableness of the proposed ADIT adjustment.”), *adopted*, Docket Nos. P-2012-2338282, et al. (Order entered May 22, 2014); *Performance Metrics & Remedies (PMO III F0013) 2008 Guidelines Updates*, 2008 Pa. PUC LEXIS 1105, at *19-20 (Order entered July 22, 2008) (“[W]hether the NY PSC has adopted a particular change for use in NY (or whether other states in the footprint have adopted a particular change) does not control Pennsylvania’s decision to adopt or reject a particular change for use in Pennsylvania. . . . We shall not, however, adopt changes or refrain from adopting changes for use in Pennsylvania based solely on what happens in NY or any other jurisdiction.”); *Petition for Declaratory Order Regarding Ownership of Alt. Energy Credits, Associated with Non-Utility Generating Facilities Under Contract to Pa. Elec. Co. and Metro. Edison Co.*, 2007 Pa. PUC LEXIS 7, at *26-27 (Order entered Feb. 12, 2007) (stating that neither the ALJ nor the Commission grounded their decisions on the analysis of the decisions of foreign jurisdictions); *see also Elder v. Orlucky*, 515 A.2d 517, 522 (Pa. 1986) (noting that it was not appropriate to consider another jurisdiction’s statute where there was no indication that the General Assembly based Pennsylvania legislation on legislation adopted in other jurisdictions).

evidence.³³ Further, testimony consisting of guesses, conjecture, or speculation cannot prove a party's claims.³⁴ Thus, the Complainants failed to establish a *prima facie* case that the smart meter's installation would violate Section 1501 of the Public Utility Code, and their testimony should be completely disregarded.

Even assuming *arguendo* that the Complainants established a *prima facie* case, their evidence was fully rebutted by Met-Ed. At the hearing, the Company presented the testimony of John C. Ahr, who has a degree in electrical engineering and has worked for Met-Ed since 1984 in various positions, including Director of System Operations, Director of Energy Procurement, Director of Meter Reading and Collections, and Manager, Regulatory Compliance for Smart Meters. (Tr. 25-26.)

Mr. Ahr testified that Met-Ed's smart meters are safe. (Tr. 28-29.) As explained by Mr. Ahr, Met-Ed's smart meters comply with all safety requirements and standards established by various entities, including the FCC, ANSI, and UL. (Tr. 28-29.) Moreover, the meter manufacturer, Itron, Inc., enlisted certified personnel to perform the required testing. (Tr. 28-29.) Such personnel would have been aware of any deficiencies if the smart meters failed to pass those standards. (Tr. 29.) The smart meters also have internal surge protection "built into the metrology circuitry of the smart meters." (Tr. 28.) And after several years of deploying these smart meters, Mr. Ahr confirmed that the Company has no "indication" of "any issues with these meters." (Tr. 37.) Finally, Mr. Ahr explained that, contrary to the Complainants' belief, Met-Ed never had to undertake a second wave of meter deployments due to safety issues with the smart meters. (Tr. 29-30.)

³³ See *Mid-Atlantic Power Supply Ass'n v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citation omitted).

³⁴ See *Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Dep't of Highways*, 398 Pa. 518, 159 A.2d 206 (1960).

Based on the foregoing, the Complainants failed to sustain their burden of proof that the installation of the smart meter would constitute unreasonable or inadequate service under Section 1501 of the Public Utility Code. Thus, the Complaint should be dismissed with prejudice.

VI. CONCLUSION

WHEREFORE, Metropolitan Edison Company respectfully requests that the Formal Complaint of Thomas and Linda Licht be dismissed with prejudice.

Dated: April 16, 2020

Respectfully submitted,



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APPENDIX A

PROPOSED FINDINGS OF FACT

1. Met-Ed's Commission-approved Smart Meter Deployment Plan called for 98.5% of the Company's smart meter installation to be completed by 2019, with the remaining 1.5% of meters being installed by the end of 2022.³⁵

2. Met-Ed's original Smart Meter Technology Procurement and Installation Plan was filed on August 10, 2009.³⁶

3. The Commission ultimately approved the original Smart Meter Technology Procurement and Installation Plan, with modifications, on June 9, 2010.³⁷

4. On December 31, 2012, 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.³⁸

³⁵ Smart Meter Deployment Plan, pp. 10-11.

³⁶ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Petition dated Aug. 10, 2009).

³⁷ *See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Order entered June 9, 2010).

³⁸ *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 (Petition filed December 31, 2012).

5. On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan,³⁹ which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan.

6. In this proceeding, Met-Ed presented the testimony of John C. Ahr. (Tr. 24-40.)

7. Mr. Ahr has a degree in electrical engineering and has worked for Met-Ed since 1984 in various positions, including Director of System Operations, Director of Energy Procurement, Director of Meter Reading and Collections, and Manager, Regulatory Compliance for Smart Meters. (Tr. 25-26.)

8. Met-Ed's smart meters comply with all safety requirements and standards established by various entities, including the FCC, ANSI, and UL. (Tr. 28-29.)

9. Itron, Inc., who is the smart meters' manufacturer, enlisted certified personnel to perform the required testing. (Tr. 28-29.) Such personnel would have been aware of any deficiencies if the smart meters failed to pass those standards. (Tr. 29.)

10. The smart meters also have internal surge protection "built into the metrology circuitry of the smart meters." (Tr. 28.)

11. After several years of deploying these smart meters, the Company has no "indication" of "any issues with these meters." (Tr. 37.)

12. Met-Ed never had to undertake a second wave of meter deployments due to safety issues with the smart meters. (Tr. 29-30.)

³⁹ See Smart Meter Deployment Plan.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. Under Section 332(a) of the Public Utility Code, the Complainants have the burden of proof in this proceeding.⁴⁰

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.⁴¹

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.⁴²

4. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.⁴³

5. 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.⁴⁴

6. 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.⁴⁵

⁴⁰ 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *appeal denied*, 602 A.2d 863 (Pa. 1992).

⁴¹ *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).

⁴² *Lyft, Inc. v. Pa. Pub. Util. Comm'n*, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016) (citing *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980)).

⁴³ *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987); *Mid-Atlantic Power Supply Ass'n. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000).

⁴⁴ *Lansberry*, 578 A.2d at 602.

⁴⁵ *See Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008); *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015) (citing *Lansberry*, 578 A.2d at 602).

7. 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.”⁴⁶

8. 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, that “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities.”⁴⁷

9. 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.⁴⁸

10. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.⁴⁹

11. 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.⁵⁰

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.⁵¹

⁴⁶ 66 Pa.C.S. § 701.

⁴⁷ 66 Pa.C.S. § 1501.

⁴⁸ *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018); *Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered Jan. 28, 2016).

⁴⁹ See 66 Pa.C.S. § 2807; *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

⁵⁰ See *id.*; see also *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn 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).

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.⁵²

14. The Company is permitted to terminate a customer's electric service for denying access to the meter.⁵³

15. A lay witness may only provide testimony related to his or her direct knowledge or experience.⁵⁴

16. Any testimony of a lay witness related to technical or specialized knowledge should be excluded and given no evidentiary weight.⁵⁵

17. The Complainants failed to sustain their burden of proof that the installation of a smart meter would violate the Public Utility Code, a Commission order, or a Commission regulation.

⁵¹ Electric Pa. P.U.C. No. 81, Original Page 45, issued May 1, 2015; effective May 3, 2015.

⁵² *Id.*

⁵³ 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.

⁵⁴ Pa.R.E. 701.

⁵⁵ *See Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004).

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. The formal complaint of Thomas and Linda Licht 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 AND LINDA LICHT :
 :
 v. : DOCKET NO. C-2018-3004078
 :
 METROPOLITAN EDISON COMPANY :

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 mail as follows:

Thomas and Linda Licht
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Administrative Law Judge Joel H. Cheskis
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Dated: April 16, 2020



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