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April 27, 2020

**Via Efiling:** [rchiavetta@pa.gov](mailto:rchiavetta@pa.gov)

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

**Re: Judith D. Hendin v. Metropolitan Edison Company  
Docket No. C-2018-3003324**

Dear Secretary Chiavetta:

Enclosed for e-filing, please find Judith Hendin's Answer in Opposition to the Motion to Strike of Metropolitan Edison Company ("Met-Ed") with regard to the above-captioned matter. This document has been served on Met-Ed as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,



Joanna A. Waldron, Esquire  
CURTIN & HEEFNER LLP

cc: Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                             |   |                |
|-----------------------------|---|----------------|
| Judith D. Hendin            | : |                |
|                             | : |                |
| V.                          | : | C-2018-3003324 |
|                             | : |                |
| Metropolitan Edison Company | : |                |

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**ANSWER IN OPPOSITION TO METROPOLITAN EDISON COMPANY’S MOTION TO  
STRIKE PORTIONS OF COMPLAINANT’S BRIEF**

Complainant Judith D. Hendin, (“Complainant” or “Ms. Hendin”), by and through her attorneys, respectfully files this Answer in Opposition to the Motion to Strike of Metropolitan Edison Company (“Met-Ed”). As explained herein, Met Ed’s request to strike portions of the brief identified in its Appendix A misinterprets the Complainant’s exhibits and ignores the procedural events leading to the filing of the pending motion for late-filed exhibits. For the reasons discussed herein, Met-Ed’s motion must be denied.

**I. BACKGROUND**

1. Complainant Judith Hendin filed a *pro se* Complaint in this matter on June 26, 2018.
2. An Interim Order was entered by Administrative Law Judge Watson on October 18, 2018.
3. Ms. Hendin was not represented at the commencement of this action, and Counsel entered appearance on behalf of Ms. Hendin in November 2018.
4. Ms. Hendin served the written testimony of Dr. Kracht on January 18, 2019.
5. Met-Ed and Ms. Hendin submitted status updates on May 9, 2019.
6. Ms. Hendin indicated that the parties has scheduled a settlement discussion, and

therefore, had no opposition to a prehearing conference, provided it was after June 30, 2019.

7. On May 23, 2019, a second Interim Order Requiring a proposed prehearing conference and hearing dates was entered, directing the parties to identify hearing dates in September and October of 2019, and to file a status report by July 15, 2019.

8. The parties met to discuss relocation settlement options on June 14, 2019.

9. The parties then submitted additional status updates in July 2019, with potential dates for prehearing conferences before and after July 25, 2019. A true and correct copy of the July 15 and July 16, 2019 letters are attached hereto as Exhibit "A."

10. On August 13, 2019, Administrative Law Judge Watson ordered that the parties would appear for hearing in December of 2019, and that a prehearing conference should be scheduled after September 30, 2019.

11. A prehearing conference was not scheduled.

12. On September 5, 2019, a hearing notice was issued for December 19 and December 20, 2019, with no prehearing conference.

13. On December 13, 2019, counsel indicated by email that Ms. Hendin would be appearing in person, and that as previously discussed, Dr. Kracht would appear by telephone. A true and correct copy of the December 13, 2019 email is attached hereto as Exhibit "B."

14. On December 16, 2019, Met-Ed indicated that all of its witnesses would be appearing by telephone. A true and correct copy of the December 16, 2019 email is attached hereto as Exhibit "C."

15. On December 19, 2019, the counsel for the parties and Ms. Hendin appeared before Deputy Chief Administrative Law Judge Cheskis at the Public Utility Commission ("Commission") in Harrisburg.

16. The Hearing Notice indicated that two days were reserved for testimony, December

19 and December 20.

17. On December 19, 2019, Ms. Hendin and Dr. Kracht testified and were cross examined, as well as some of Defendant's witnesses.

18. At the end of the hearing day on December 19, 2019, the parties agreed that the following day would start at 9:00 a.m., beginning with testimony from Defendant's witness, Dr. Israel, who had not been called as a witness but was participating by phone. December 19, 2019 Transcript at 196: 23-25, 197:1- 18.

19. The December 20, 2019 hearing began at 9:00 a.m. but was unexpectedly cut short within an hour due to conflict of Dr. Israel revealed during the course of questioning, prior to 10:00 a.m. December 20, 2019 Transcript at 228:1- 9.

20. At 10:21 a.m. the abbreviated hearing concluded with the parties agreeing to reschedule an additional hearing date. *Id.* at 244.

21. The parties mutually agreed that the hearing for Dr. Israel's cross examination would continue on January 24, 2020, with the parties appearing by telephone.

22. On January 20, 2020, per Your Honor's instruction, Ms. Hendin served corrected Confidential and Non-Confidential versions of the witness statements of Ms. Hendin and Dr. Kracht.

23. Ms. Hendin also produced clean copies of the Confidential Medical Records, pursuant to Your Honor's instructions at the hearing.

24. On January 23, 2020, Cross examination Exhibits X1 through X19 were overnighted<sup>1</sup> and emailed via sharefile link to opposing counsel and Your Honor.

25. On February 14, 2020, pursuant to the discuss at the hearing on January 24, 2020, Ms. Hendin filed a motion for late filed exhibits (hereinafter "February Motion").

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<sup>1</sup> Copies were sent for the Court Reporter as well.

26. On March 9, 2020, Met-Ed filed an Opposition to the February Motion.

27. On March 16, the parties served Main Briefs, with Ms. Hendin mailing a confidential and non-confidential version of the main brief on March 20, 2020.

28. Ms. Hendin and Met-Ed filed Reply Briefs, and Met-Ed also filed the instant motion.

29. As set forth in her Reply Brief, Ms. Hendin withdraws her request for admission of certain exhibits in the February Motion: Exhibit 36 (Politico article), Exhibit 35 (Carpenter article), and Exhibit X8 (Cherry).

## **II. ARGUMENT**

### **A. No Prehearing Conference was held on exchange and acceptance of service of exhibits to be offered into evidence.**

A prehearing conference was contemplated by Administrative Law Judge Watson, and the parties. The parties proposed dates, but a prehearing conference was not scheduled. Section 5.222 of the Commission's regulations provides that "it is the policy of the Commission to arrange for conferences between parties to the proceedings prior to the commencement of hearings." 52 Pa. Code § 5.222. A prehearing conference may be conducted telephonically 52. Pa. Code 5.222(b), and the regulations provide for the matters that "shall be considered at a prehearing conference" including the following:

...other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice, including the following:

- (i) The simplification of the issues.
- (ii) The exchange and acceptance of service of exhibits proposed to be offered in evidence.
- (iii) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.
- (iv) The limitation of the number of witnesses.

52 Pa. Code § 5.222(c)(4). The parties did not have a prehearing conference and did not agree on the exchange and acceptability of service of exhibits or a protective order prior to the hearing date. Further no agreement was reached on the appearance of witnesses in person versus telephonically until the week of the hearing. Prior to the week of the hearing, counsel for the parties had discussed an in-person hearing, with only Dr. Kracht appearing by telephone, and the other witnesses appearing in person. *See* Status Report of July 15, 2019.<sup>2</sup> An in-person hearing would allow that cross examination exhibits could be shown to the witnesses at the hearing. Moreover, some cross examination exhibits were admitted into the record on day one of the hearing. *See, e.g., Cross examination of Ahr*, December 19, 2019, Transcript 159:15-22 (admitting cross examination Exhibits 1 -5 into the record).

**B. Scheduled hearing days were not observed because of Met-Ed's witness**

One of the scheduled hearing days was not observed, although the parties and witnesses had set aside two days for the hearing. The parties had to reschedule the examination of Dr. Israel for January 24, 2020. The second day of the hearing (December 20, 2019) had to be cut short after only one hour, even though counsel had agreed to start an hour earlier than originally contemplated per the witnesses request. December 19, 2019 Transcript, 196:23-25; 197:1-18. After the unusual situation, the parties agreed to reconvene in January 2020 to continue the cross examination. This agreement was consistent with the agreement determined the prior day (December 19) that Ms. Hendin would provide corrected confidential and non confidential versions of written statements, and medical exhibits within 30 days of the hearing and that Met-Ed would have a chance to object and, the parties would reconvene if necessary.<sup>3</sup> December 19, 2019

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<sup>2</sup> Ms. Hendin brought several boxes of documents to the in person hearing, including the more than 1,000 page 2012 BioInitiative Report, (Exhibit X17) discussed and cited in Dr. Israel's rebuttal testimony, which were not used due to the adjournment.

<sup>3</sup> Deputy Chief Judge Cheskis stated:

Usually I give people 20 days to do that. With the holidays involved, I'd be willing to

Transcript at 111: 15-24.

**C. The record is not closed and the February Motion is pending**

The record has not been closed, and the February Motion was pending at the time the briefs were filed and is still pending. Filing a formal motion for the additional exhibits was suggested on January 24, 2020, “but given what's already happened and where we are currently, I think the best thing for you to do is to file some type of a motion to admit these additional exhibits as late-filed exhibits. And, you know, again, the company would have an opportunity to respond to that.”<sup>4</sup> Ms. Hendin filed the February Motion was filed on February 16, 2020 and Met-Ed responded on March 9, 2020. The receipt of evidence is controlled by the presiding officer having “all necessary authority to control the receipt of evidence” “to direct and focus the proceedings consistent with due process.”<sup>5</sup>

As explained more fully in the February Motion, the exhibits should be admitted. The

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extend that to 30 days. And then once that happens the company then can have ten days to file any objections to the admission of that material and preserve the right to question a witness on that material. So, to the extent that there's things here that are redacted now that are relevant to the case and the company wants to ask questions, then we could reconvene, hopefully not in person. I mean, it doesn't have to be in person.

Transcript December 19, 2019, at 111: 15-25.

<sup>4</sup> Deputy Chief Administrative Law Judge Cheskis stated:

I think the best thing to probably do -- and I'm really trying to simplify this, not make things more difficult -- but given what's already happened and where we are currently, I think the best thing for you to do is to file some type of a motion to admit these additional exhibits as late-filed exhibits. And, you know, again, the company would have an opportunity to respond to that. I would then address both the Motion for Extension of Time and the motion to admit late-filed exhibits and try, again, to move this case closer to its conclusion.

Transcript January 24, at 262: 3-14.

<sup>5</sup> 52 Pa. Code §5.403. Control of receipt of evidence, provides:

- (a) The presiding officer shall have all necessary authority to control the receipt of evidence, including the following:
  - (1) Ruling on the admissibility of evidence.
  - (2) Confining the evidence to the issues in the proceeding and impose, where appropriate:
    - (i) Limitations on the number of witnesses to be heard.
    - (ii) Limitations of time and scope for direct and cross examinations.
    - (iii) Limitations on the production of further evidence.
    - (iv) Other necessary limitations.
- (b) The presiding officer will actively employ these powers to direct and focus the proceedings consistent with due process.

Commission permits late filed exhibits when instructed by ALJs to file. *See, e.g., Bachman v. PECO Energy Company*, Pa. P.U.C. Docket No. F-2012-2322438 (2013) (admitting PECO late filed exhibits); *Pendergast v. Philadelphia Gas Works*, 2014 Pa. PUC (Docket No. F-2012-2317187) (permitting late filed exhibit by both Complainant and PGW). In an administrative law setting, hearsay rules are relaxed, and exhibits are not precluded from admission because of hearsay, authenticity or reliability, as those issues go to the weight of the exhibits. *Rox Coal Co. v Workers' Comp. Appeal Bd.*, 807 A.2d 906 (Pa. 2002). Furthermore, exhibits filed after the close of the record, or with briefs can be accepted as late-filed exhibits. *See, e.g., Pennsylvania Pub. Util. Comm'n v. Pittsburgh Thermal Limited Partnership* Pa. P.U.C. Docket No. No. R-00994641, (Feb. 15, 2000) (determining that ALJ properly admitted late-filed exhibit. As an administrative body, the Commission is not bound by technical rules of evidence at its proceedings. 2 Pa. C.S. § 505. *Application of Max Lightyear, Inc.*, Pa. P.U.C. Docket No. A-2013-2397663 (Opinion and Order, June 11, 2015)(denying application but permitting late filed exhibits into the record offered based on the directive of the ALJ during the hearing, and ruled upon prior to parties filing main briefs and reply briefs).

Here, many of the exhibits were offered for admission at the hearing. Ms. Hendin filed the February Motion as suggested.<sup>6</sup> The February Motion sought admissibility on some documents introduced at the hearing, but given the unusual timing where the briefing deadlines passed while

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<sup>6</sup> Chief Administrative Law Judge Cheskis stated later in the hearing on January 24, 2020:  
with regards to the proposed exhibits you circulated yesterday, that my recommendation is that if you want any of them admitted, that you submit them as late-filed exhibits or as -- make a motion to admit them via late-filed exhibits.  
MS. WALDRON: Your Honor --  
JUDGE CHESKIS: Yes, go ahead.  
MS. WALDRON: We will get a motion to you on those late-filed exhibits, the ones that we did get a chance to ask Dr. Israel about as well as the other ones which we were not able to get an opportunity to ask him about.  
Transcript January 24, 2020 at 283: 6-18.

the February Motion was still pending, where Ms. Hendin would be precluded from briefing the issues on exhibits that may ultimately be part of the record. Accordingly, the exhibits should not be stricken unless such determination is made upon the pending February Motion.<sup>7</sup>

**D. Met-Ed’s proposed redactions as the relate to Ms. Hendin’s February Motion**

Both Met-Ed and Ms. Hendin have addressed the admissibility of the exhibits –in the hearings, in the Motion for Late-Filed Exhibits and opposition thereto, and in the main brief and reply briefs, as well as in this instant motion. As set forth in Ms. Hendin’s Reply Brief, the exhibits fall into the following descriptive groups: Group I, Medical records<sup>8</sup>; Group II, Met-Ed’s statements<sup>9</sup>; Group III, Studies cited by Dr. Israel<sup>10</sup>; Group IV, WHO (World Health Organization) and IARC (International Agency for Research on Cancer) documents<sup>11</sup>; Group V, Studies showing deleterious health effects of radio frequency radiation<sup>12</sup>; Group VI, Legislation passed to protect citizens from electromagnetic frequency radiation<sup>13</sup>; Group VII, BioInitiative Reports<sup>14</sup>; Group VIII, Letters and Resolutions<sup>15</sup>; Group IX, Smart meter facts<sup>16</sup>; Group X, Credibility cross examination documents.

The respective groups, are explained in detail in Ms. Hendin’s February Motion and Ms. Hendin’s Reply Brief. Identification with Groups I through X is indicated below in bold, as the Groups and Exhibits correlate to Met-Ed’s requested redactions from Paragraph 45 of the Motion to Strike:

- a. **Cross Examination Exhibits X1-X19 (made reference to in Attachment 1 “Hendin – Master List of Cross Examination Exhibits)**

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<sup>8</sup> Exhibits Hendin-1, 1, 9, 10, 11, 12, 13, 14, 15.

<sup>9</sup> Exhibit 32.

<sup>10</sup> Exhibits X3, X5, X14.

<sup>11</sup> Exhibits 23, 25, 27, 28, 29, X12.

<sup>12</sup> Exhibits 3, 4, 38, 39, X6, X7, X8, X9, X10, X15, X16.

<sup>13</sup> Exhibit 37, also in Exhibit 38.

<sup>14</sup> Exhibits X17, X18, X19.

<sup>15</sup> Exhibits 6, 24, 26, 30, 31, 40, X1, X2, X4, X13.

<sup>16</sup> Exhibits 5, 7, 33, 34, 35, 36, X11.

- b. Hendin Exhibits 23-41 (made reference to in Attachment 1 “Hendin – December Hearing List of Exhibits)
- c. Proposed Finding of Fact 28, based upon Complainant’s Cross Examination Exhibit X11 (Complainant’s MB at 6) **Group IX, Smart meter facts**
- d. Proposed Finding of Fact 30, based upon Complainant’s Cross Examination Exhibit X17 (Complainant’s MB at 6) **Group VII, BioInitiative Reports**
- e. Proposed Finding of Fact 31, based upon Complainant’s Cross Examination Exhibit X33<sup>17</sup> (Complainant’s MB at 6) **Group IX, Smart meter facts**
- f. Proposed Finding of Fact 33, based upon Complainant’s Exhibits 37 and 40 (Complainant’s MB at 6) **Group VI, Group VII, BioInitiative Reports**
- g. Proposed Finding of Fact 40, based upon Complainant’s Exhibit 40 (Complainant’s MB at 6) **Group VIII, Letters and Resolutions**
- h. References to and argument based upon Complainant’s Cross Examination Exhibits X17, X18 and X19, *i.e.* Section III.B. of the Complainant’s MB (Complainant’s MB at 22-24) **Group VII, BioInitiative Reports**
- i. Reference to and argument based upon Complainant’s Cross Examination Exhibits X33 and X17 (Complainant’s MB at 25) **Group VII, BioInitiative Reports; Group IX, Smart meter facts**
- j. Reference to and argument based upon Complainant’s Cross Examination Exhibits 32 and X1 (Complainant’s MB at 25), **Group X, Credibility**
- k. Reference to and argument based upon Complainant’s Cross Examination Exhibit X17 (Complainant’s MB at 26), **Group VII, BioInitiative Reports**
- l. Reference to and argument based upon Complainant’s Cross Examination Exhibit X17 (Complainant’s MB at 27) **Group VII, BioInitiative Reports**
- m. Reference to and argument based upon Complainant’s Cross Examination Exhibit X11 (Complainant’s MB at 27-28) **Group IX, Smart meter facts**
- n. Reference to and argument based upon Complainant’s Cross Examination Exhibit X40<sup>18</sup> (Complainant’s MB at 29) **Group VIII, Letters and Resolutions**
- o. Reference to and argument based upon Complainant’s Cross Examination Exhibits X11, X14, X15, X16, X17, X18, X19 (Complainant’s MB at 31), **Group III, Studies cited by Dr. Israel; Group VII, BioInitiative Reports; Group X, Credibility**
- p. Reference to and argument based upon Exhibit X40 (Complainant’s MB at 29), **Group VIII, Letters and Resolutions**
- q. Reference to Complainant’s Exhibits 30 and 40, and Cross Examination Exhibits X1, X2 , X13 and X17 (Complainant’s MB at 31), **Group VII, BioInitiative Reports; Group VIII, Letters and Resolutions**

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<sup>17</sup> Hendin Exhibit 33, incorrectly identified as Exhibit X33. A true and correct copy Exhibit 33 is attached hereto as Exhibit “D”

<sup>18</sup> Hendin 40, incorrectly identified as Exhibit X40.

- r. Reference to and argument based upon Complainant’s Exhibit 41 (Complainant’s MB at 50) **Group X, Credibility**
- s. Reference to and argument based upon Complainant’s Exhibit 41 (Complainant’s MB at 51) **Group X, Credibility**
- t. Reference to and argument based upon Complainant’s Exhibit 25 (Complainant’s MB at 51-52) **Group IV, WHO and IARC documents**
- u. Reference to Complainant’s Cross Examination Exhibit X3 (Complainant’s MB at 52) **Group III, Studies cited by Dr. Israel**
- v. Reference to Complainant’s Cross Examination Exhibits X5 and X14 (Complainant’s MB at 54) **Group III, Studies cited by Dr. Israel**
- w. Reference to and argument based upon Complainant’s Cross Examination Exhibit X14 (Complainant’s MB at 55) **Group III, Studies cited by Dr. Israel**
- x. Reference to and argument based upon Complainant’s Cross Examination Exhibit X6 (Complainant’s MB at 56) **Group V, Health effects studies**
- y. Reference to and argument based upon Complainant’s Cross Examination Exhibits X7, X9 and X10 (Complainant’s MB at 56) **Group V, Health effects studies**
- z. Reference to and argument based upon Complainant’s Cross Examination Exhibit X12 and “Exhibit ++”<sup>19</sup> (Complainant’s MB at 57) **Group IV, WHO and IARC documents**
- aa. Reference to and argument based upon Complainant’s Exhibit 27 (Complainant’s MB at 57-58) **Group IV, WHO and IARC documents**
- bb. Reference to and argument based upon Complainant’s Cross Examination Exhibit X16 (Complainant’s MB at 58) **Group V, Health effects studies**
- cc. Reference to and argument based upon Complainant’s Exhibits 24, 31 and 39 (Complainant’s MB at 58-59) **Group V, Health effects studies, Group VIII, Letters and Resolutions,**
- dd. Reference to and argument based upon Complainant’s Exhibit 38 (Complainant’s MB at 59) **Group VI, Legislation**
- ee. Reference to and argument based upon Complainant’s Exhibits 37 and 38 (Complainant’s MB at 60) **Group VI, Legislation**
- ff. Reference to Complainant’s Exhibit 38 (Complainant’s MB at 60) **Group VI, Legislation**
- gg. Reference to and argument based upon Complainant’s Cross Examination Exhibit X13 (Complainant’s MB at 60) **Group VIII, Letters and Resolutions**
- hh. Reference to and argument based upon Complainant’s Exhibit 38 (Complainant’s MB at 60-61) **Group VI, Legislation**
- ii. Reference to and argument based upon Complainant’s Exhibit 38 (Complainant’s MB at 61) **Group VI, Legislation**

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<sup>19</sup> The inadvertent reference to ++ was removed in the March 20, 2020 Public and Non-Public versions.

Determinations on the admissibility of the exhibits should mirror any determination on the proposed redactions..

**E. Ms. Hendin’s Brief references to violations of federal law are permitted**

Met-Ed claims that Ms. Hendin’s reference to potentially applicable federal statutes must be stricken from the brief because of due process and notice. Ms. Hendin’s brief seeks to clarify evidence already in the record, and is directly related to Ms. Hendin’s position in response to the interplay between the statute (Act 129) and Met-Ed’s tariff.

The cases that Met-Ed relies on for the are inapposite because they are transmission line siting application cases. *Hess* and *Application of PPL*, are transmission line siting application cases. In both, the protestors in proceedings commenced by the utility were prevented from introducing evidence about the utilities actions against the utility at the reply brief stage. *Hess v. Pa. PUC*, 107 A.3d 246, 266 (citations omitted); *Application of PPL Electric Utilities Corp., Pa. P.U.C.* Docket No. 2009-20826252 (Recommended decision Nov. 12, 2009), at 132, *adopted with certain modifications*, (Order Feb. 12, 2010). The *ARRIPA* case involved electric utilities application for a merger, again a proceeding commenced by the utility. In *ARRIPA*, the Commonwealth Court determined that due process was not violated because the intervenors in that case had reasonable notice. *ARRIPA v. Pennsylvania Public Util. Comm’n*, 792 A.2d 636, 661 (Pa. Cmwlth. Ct. 2002) (reviewing decision on utility companies’ application for a proposed merger, and determining that due process rights were not violated with respect to intervenors notice of a settlement stipulation). None of the cases involved a complainant in a smart meter case raising federal statutes related to medical accommodations or opt-outs.

Where the parties introduce issues at a hearing, the issues “shall be treated in all respects as if they had been raised in the pleadings.” 52 Pa. Code § 5.92. In other words, a complaint is assumed to be amended to conform to the testimony. Ms. Hendin’s reference to violations of the

Rehabilitation Act, and Fair Housing Act Amendments are not novel. Met-Ed has been on notice that Ms. Hendin's complaint about Met-Ed's proposed smart meter installation is based on her individual medical conditions. Ms. Hendin's treating physician provided a written statement months ago, which included a 2012 letter of medical necessity for Ms. Hendin. WK- Exhibit 2. Met-Ed's witness testified that the tariff and Act 129 require it to install smart meters at 100% of customers. Based on the 100% identified in its tariff, Met-Ed asserts it is therefore prohibited from providing any opt out or accommodation. St. of Ahr, pages 10- 11. Ms. Hendin's Main brief suggests that the Commission's position on prohibitions against opt outs violates federal law. Main Brief at 67.

Ms. Hendin identified the federal laws to clarify her request for an analog meter, as the relates to the interpretation of Act 129 and reasonableness of service based on the interpretation. Under the Supremacy Clause, federal law is the supreme law of the land and any conflicts between federal and state laws must be resolved in favor of federal law. *Krentz v. Consolidated Rail Corporation*, 589 Pa. 576, 595, 910 A.2d 20, 31–32 (2006); *Office of Disciplinary Counsel v. Marcone*, 579 Pa. 1, 855 A.2d 654 (2004); *Mastrocola v. Se. Pennsylvania Transportation Auth.*, 941 A.2d 81, 88 (Pa. Cmwlth. Ct. 2008) (federal preemption is an issue of subject matter jurisdiction; and the issue of subject matter jurisdiction may be raised by the parties at any stage of the proceedings.)

Lastly, Met-Ed's request that pages of Ms. Hendin's Brief be stricken should be considered in light of the Commission's regulation at 52 Pa. Code § 1.2, which permits liberal construction of the rules. Section 1.2(a) allows: "The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties." *See also Samall Assoc., Inc. v. Delaware Valley Utilities, Inc.*, Pa. P.U.C. Docket No. C-00004517 (Opinion and Order entered Feb. 28, 2002)(waiving page limit on

exceptions). Because the parties abbreviated the projected two days of hearings, as discussed herein, additional pages were necessary to explain Complainant's position. Furthermore, a six page exceedance of the page limit requirement on a brief,<sup>20</sup> where the parties are entitled to, and do file a reply brief, does not affect the substantive rights. As such, to the extent that any exceedance of the length requirement is identified after resolution of the instant motion, Ms. Hendin respectfully requests that the page limit requirement be waived.

**III. CONCLUSION**

For the foregoing reasons, Ms. Hendin respectfully requests that Met-Ed's Motion to Strike be denied.

Date: April 27, 2020

s/Joanna A. Waldron  
Joanna A. Waldron, Esq,  
P.A. ID # 84768  
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<sup>20</sup> Ms. Hendin's Brief also cited references within the body of the text rather than footnotes.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                             |   |                |
|-----------------------------|---|----------------|
| Judith D. Hendin            | : |                |
|                             | : |                |
| V.                          | : | C-2018-3003324 |
|                             | : |                |
| Metropolitan Edison Company | : |                |

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Answer in Opposition to the Motion to Strike of Metropolitan Edison Company has been served upon the following persons in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**Via Email**

Lauren M. Lepkoski, Esquire  
Tori L. Giesler, Esquire  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001

**Via Email**

Administrative Law Judge Joel H. Cheskis  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
400 North Street, 2<sup>nd</sup> Floor West  
Harrisburg, PA 17120

Dated: April 27, 2020

s/Joanna A. Waldron  
Joanna A. Waldron, Esquire  
Pa. ID # 84768  
CURTIN & HEEFNER LLP  
Doylestown Commerce Center  
2005 South Easton Road, Suite 100  
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*Attorney for the Complainant*

***EXHIBIT "A"***

Tori L. Giesler, Esq.  
(610) 921-6658  
(330) 315-9263 (Fax)

July 15, 2019

**VIA FIRST CLASS MAIL**

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

**Re: Judith Hendin v. Metropolitan Edison Company**  
**Docket No. C-2018-3003324**

Dear Secretary Chiavetta:

In accordance with the Interim Order issued on May 23, 2019 in the above-referenced matter, this letter serves as a status report on behalf of Metropolitan Edison Company (“Met-Ed”). As indicated in our status report issued May 10, 2019, discovery exchange amongst the parties has been completed and witness lists have been exchanged. Further, the parties were evaluating whether relocation of the smart meter would be an option. To date, Ms. Hendin, through her counsel, has not indicated whether she would like to move forward with relocation of the smart meter.

With regard to the anticipated evidentiary hearing, the parties have agreed that an in-person hearing would be preferred given the number of witnesses for both parties. Unfortunately, the parties have not agreed upon a location at this time, although it is anticipated that the parties will be able to reach an agreement as to a location and will provide an update as promptly as possible. Counsel for Penelec and counsel for Ms. Hendin have communicated regarding availability for evidentiary hearings. Counsel for Ms. Hendin indicated that she would not be able to have her witnesses available until December 2019 as Ms. Hendin is again traveling out of the country in the fall. Penelec opposes delaying the evidentiary hearing until December 2019. Ms. Hendin has been well aware of the September/October time frame for evidentiary hearing since at least May 23, 2019 when the Interim Order was issued. As such, the parties have not agreed upon available dates. To that end, Penelec advises that counsel and its witnesses are available for hearings as follows: September 12, October 11, 22 and 24, and November 1, 2019.

At this point, Met-Ed suggests that a prehearing conference be set in anticipation of evidentiary hearings should relocation not be pursued by Ms. Hendin. Additionally, Penelec avers that there is an outstanding issue regarding Ms. Hendin’s standing that we believe should be

Rosemary Chiavetta, Secretary

July 15, 2019

Page 2 of 2

addressed. The parties are available the following dates for a prehearing conference should one be scheduled: July 24 (afternoon), 26 (afternoon), 29, and 30 (afternoon), 2019.

---

Please contact me if you have any questions regarding this matter.

Very truly yours,

  
Tori L. Giesler

krak

Enclosure

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JUDITH HENDIN**

v.

**METROPOLITAN EDISON COMPANY**

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**Docket No. C-2018-3003324**

**CERTIFICATE OF SERVICE**

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

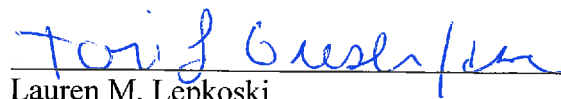
Service by electronic and First Class Mail, postage prepaid, as follows:

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Administrative Law Judge Jeffrey A. Watson  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
Piatt Place, Suite 220  
301 5th Avenue  
Pittsburgh, PA 15222  
[Jeffwatson@pa.gov](mailto:Jeffwatson@pa.gov)

Judith D. Hendin  
P.O. Box 1449  
Easton, PA 18044

Dated: July 15, 2019



Lauren M. Lepkoski  
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JOANNA A. WALDRON  
JAW@curtinheefner.com

July 15, 2019

**VIA EMAIL & U.S. MAIL (jeffwatson@pa.gov)**

Administrative Law Judge Jeffrey A. Watson  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
Piatt Place, Suite 220  
301 5<sup>th</sup> Street  
Pittsburgh, PA 15222

**Re: Judith Hendin v. Metropolitan Edison Company, Docket No. C-2018-3003324**

Dear Judge Watson:

We represent Ms. Hendin in the above-referenced matter. Pursuant to the Interim Order Requiring Proposed Prehearing Conference and Hearing Dates dated May 23, 2019 (“Order”), we submit this second status update. The parties met on-site to discuss potential meter relocation on June 14, 2019. Unfortunately, the visit did not appear to yield an agreeable solution.

Ms. Hendin prefers a telephonic hearing, as we understand that an in-person hearing in Scranton or other locations closer to Ms. Hendin and Drs. Kracht and Carpenter is not available. We would further request consideration that Dr. Kracht’s testimony be scheduled on a Thursday if at all possible.

Ms. Hendin’s teaching schedule requires her to be in Europe this fall. She will not be available on the dates identified in the Order in September, and October, including October 29-31. She and the two expert witnesses have availability beginning in December. Therefore, we respectfully request that Your Honor consider altering the proposed schedule by the approximately four to six weeks to accommodate Ms. Hendin’s teaching schedule.

Lastly, we understand that Met-Ed identifies Ms. Hendin’s status as both a Met-Ed customer and a tenant as a legal issue. We respectfully disagree; however, a prehearing conference as previously contemplated appears advisable. In discussions with opposing counsel,

Administrative Law Judge Jeffrey A. Watson  
Pennsylvania Public Utility Commission  
Page 2  
July 15, 2019

we've identified the following mutually agreeable dates for a prehearing conference: the afternoons of July 24<sup>th</sup>, 26<sup>th</sup> and 29<sup>th</sup> and anytime on July 30<sup>th</sup>.

Respectfully submitted,



Joanna A. Waldron, Esquire  
CURTIN & HEEFNER LLP

Cc: Rosemary Chiavetta, Secretary (via e-filing)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Judith D. Hendin

V.

Metropolitan Edison Company

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:  
:  
:

C-2018-3003324

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Status Update has been served upon the following persons in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**Via EMAIL & FIRST CLASS MAIL**

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[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

Dated 7/15/2019

*s/Joanna A. Waldron*  
Joanna A. Waldron, Esquire  
Pa. ID # 84768  
CURTIN & HEEFNER LLP  
Doylestown Commerce Center  
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*Attorney for the Complainant*



# PENNSYLVANIA

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***EXHIBIT "B"***

## Waldron, Joanna A.

---

**From:** Waldron, Joanna A.  
**Sent:** Friday, December 13, 2019 10:21 AM  
**To:** 'Cheskis, Joel'; Giesler, Tori; 'llepkoski@firstenergycorp.com'  
**Subject:** RE: Hendin v. Met-Ed; DN C-2018-3003324

Your Honor,

Dr. Kracht will participate by phone, and is available on Thursday. We will confer with Ms. Geisler and Ms. Lepkosi on settlement again per your suggestion.

--

Joanna A. Waldron, Esquire (<mailto:JAW@curtinheefner.com>)  
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---

**From:** Cheskis, Joel <jcheskis@pa.gov>  
**Sent:** Friday, December 13, 2019 9:46 AM  
**To:** Giesler, Tori <tgiesler@firstenergycorp.com>; 'llepkoski@firstenergycorp.com' <llepkoski@firstenergycorp.com>; Waldron, Joanna A. <JAW@curtinheefner.com>  
**Subject:** Hendin v. Met-Ed; DN C-2018-3003324

In anticipation of the hearing scheduled for this case on Thursday and Friday next week, please let me know if anyone will be participating telephonically. If several people will be participating by telephone, I will circulate a bridge number for multiple people to use to access the hearing.

Also, I see that a confidential version of Ms. Hendin's testimony was served in advance but I did not see that a protective order has been issued in this case governing the treatment of proprietary material. If one has been entered, can someone please forward it to me? If not, can the company circulate a proposed protective order? We will need to discuss the confidential version of Ms. Hendin's testimony on Thursday.

Finally, I am interested in knowing the status of settlement discussions and would like to discuss that before we go on the record on Thursday. This seems like a case that could be settled.

Thank you and have a nice weekend.

***EXHIBIT "C"***

## Rivera, Amy L.

---

**From:** Giesler, Tori <tgiesler@firstenergycorp.com>  
**Sent:** Monday, December 16, 2019 9:23 AM  
**To:** Waldron, Joanna A.; Cheskis, Joel; Lepkoski, Lauren M  
**Cc:** 'Tom Watson'; Curt Renner  
**Subject:** RE: Hendin v. Met-Ed; DN C-2018-3003324

Your Honor,

In follow up to your note below, the Company respectfully requests the opportunity to present each of its three witnesses by telephone rather than in person. Counsel for the Company intends to appear in person, of course. I would note that our expectation would be that Ms. Lepkoski, Mr. Renner and Mr. Watson (note the outstanding motion to admit Mr. Watson) will be representing the Company in person that day. I will personally be unable to attend.

Separately, we do not have a protective agreement in this matter but will be routing one later today to this group. As for settlement, we had previously discussed that at some length, but are circling back in with Ms. Waldron with respect to any further opportunities there.

---

Tori L. Giesler | [FirstEnergy](#) | [Supervising Counsel](#) | 2800 Pottsville Pike Reading PA 19612 |  
office: 610.921.6658 | fax: 330.315.9263 | [tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

---

**From:** Waldron, Joanna A. <JAW@curtinheefner.com>  
**Sent:** Friday, December 13, 2019 10:21 AM  
**To:** Cheskis, Joel <jcheskis@pa.gov>; Giesler, Tori <tgiesler@firstenergycorp.com>; Lepkoski, Lauren M <llepkoski@firstenergycorp.com>  
**Subject:** [EXTERNAL] RE: Hendin v. Met-Ed; DN C-2018-3003324

Your Honor,

Dr. Kracht will participate by phone, and is available on Thursday. We will confer with Ms. Geisler and Ms. Lepkoxi on settlement again per your suggestion.

--

Joanna A. Waldron, Esquire (<mailto:JAW@curtinheefner.com>)  
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***EXHIBIT "D"***



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

**FILED**

11-01-11  
04:59 PM

Application of Pacific Gas and Electric Company for Approval of Modifications to its SmartMeter™ Program and Increased Revenue Requirements to Recover the Costs of the Modifications (U 39 M)

Application 11-03-014  
(Filed March 24, 2011)

**(NOT CONSOLIDATED)**

Application of Utility Consumers' Action Network for Modification of Decision 07-04-043 so as to Not Force Residential Customers to Use Smart Meters.

Application 11-03-015  
(Filed March 24, 2011)

**(NOT CONSOLIDATED)**

Application of Consumers Power Alliance, Public Citizen, Coalition of Energy Users, Eagle Forum of California, Neighborhood Defense League of California, Santa Barbara Tea Party, Concerned Citizens of La Quinta, Citizens Review Association, Palm Springs Patriots Coalition Desert Valley Tea Party, Menifee Tea Party - Hemet Tea Party – Temecula Tea Party, Rove Enterprises, Inc., Schooner Enterprises, Inc., Eagle Forum of San Diego, Southern Californians For Wired Solutions To Smart Meters, and Burbank Action For Modification of D.08-09-039 and A Commission Order Requiring Southern California Edison Company (U338E) To File An Application For Approval of A Smart Meter Opt- Out Plan.

Application 11-07-020  
(Filed July 26, 2011)

**(NOT CONSOLIDATED)**

**PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO  
ADMINISTRATIVE LAW JUDGE'S OCTOBER 18, 2011 RULING  
DIRECTING IT TO FILE CLARIFYING RADIO FREQUENCY  
INFORMATION**

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Attorneys for  
PACIFIC GAS AND ELECTRIC COMPANY

Dated: November 1, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
for Approval of Modifications to its SmartMeter™  
Program and Increased Revenue Requirements to  
Recover the Costs of the Modifications (U 39 M)

Application 11-03-014  
(March 24, 2011)

**PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO  
ADMINISTRATIVE LAW JUDGE'S OCTOBER 18, 2011  
RULING DIRECTING IT TO FILE CLARIFYING RADIO  
FREQUENCY INFORMATION**

**I. INTRODUCTION**

On October 18, 2011, Administrative Law Judge (ALJ) Yip-Kikugawa issued *Administrative Law Judge's Ruling Seeking Clarification* from Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE) and Southern California Gas Company (SoCalGas) (collectively, the utilities or IOUs), in the above-captioned proceeding. Specifically, the Ruling directs the utilities to file clarifying information concerning the frequency and duration of radio frequency (RF) emissions from wireless smart meters by November 1, 2011. PG&E hereby timely responds to the Ruling.

**II. PG&E'S SMARTMETERS™ COMPLY WITH FEDERAL COMMUNICATIONS COMMISSION (FCC) RADIO FREQUENCY (RF) EMISSIONS STANDARDS**

PG&E's SmartMeters™ RF emissions are substantially below the Federal Communications Commission's (FCC) limits for radio transmitters of all types, including SmartMeters™. Indeed, and as PG&E noted in its Response to the Division of Ratepayer Advocates' *Motion to Amend the Scope of the Proceeding to Include Data on RF Emissions and to Order PG&E To Serve Supplemental Testimony on the Costs of an Analog Meter*, "the CPUC has previously found that PG&E's SmartMeters™ comply with FCC RF emissions standards. Specifically, the Commission found that '[a]ll radio devices in PG&E's SmartMeters™ are

licensed or certified by the FCC and comply with all FCC requirements.<sup>1</sup> Further, the FCC itself has articulated that PG&E's SmartMeters™ comply with RF emissions levels."<sup>2</sup> (*See, PG&E's Opposition to DRA's Motion, p.3*)(August 8, 2011);(see also, *FCC letters, Attachments A and B*).

PG&E continues to recommend and support its proposed radio-off SmartMeter™ as the most feasible alternative to its SmartMeter™ Program, as fully described in Application (A.) 11-03-014 and supporting Testimony. PG&E's radio-off proposal provides an opt-out alternative with no wireless RF communications for customers who want to limit wireless telecommunications technology in their lives.

### **III. PG&E's RESPONSES TO THE CLARIFYING QUESTIONS IN THE OCTOBER 18, 2011 ALJ RULING**

On September 14, 2011, ALJ Yip-Kikugawa held a combined workshop to consider alternatives for customers who may wish to opt-out of receiving wireless smart meters. During the workshop, various parties raised questions and made comments concerning the frequency and duration of the RF-transmissions from the wireless smart meters. The ALJ subsequently requested that the utilities respond to eleven RF-related questions as set forth below.

Each of PG&E's SmartMeter™ vendors – Silver Springs Network (SSN), General Electric (GE), Landis + Gyr (L+G), and Aclara – has confirmed that their SmartMeter™ products fully comply with applicable FCC regulations. PG&E's SmartMeter™ vendors provided the below RF-related data, as applicable to their respective products, in response to the ALJ Ruling.

---

<sup>1</sup> CPUC Decision 10-12-001, Finding of Fact 2.

<sup>2</sup> FCC Letters to Cindy Sage, dated August 6, 2010, and the Honorable Lynn C. Woolsey, dated April 21, 2011

**Question 1:**

What is an average duration (in seconds) that a residential smart meter transmits in a 24 hour period?

**Response 1:**

**Electric:** As PG&E has described many times previously, both in this proceeding and publicly, a typical PG&E electric SmartMeter™ communicates intermittently throughout the day for a total cumulative period of approximately 45 seconds per 24-hour period. This typical cumulative communication period is comprised of thousands of very brief communications.

This reflects the findings of a detailed SSN study in which SSN collected actual field data from 88,000 deployed meters and compared the number of transmissions per meter for roughly 30 minutes each in order to determine that half of the meters transmitted for less than 45 seconds-per-day and half of the meters transmitted for longer than 45 seconds-per-day. In the study, a small number of electric SmartMeters™ in the outer range of the population communicated somewhat longer than 45 seconds-per-day, which resulted in an overall mean duration of approximately 62 seconds.<sup>3</sup>

**Gas:** The PG&E gas SmartMeter Module (MTU) has a single radio that utilizes the licensed 450-470 MHz band. The module is a one way transmitter; i.e., it sends but does not receive signals. The average duration that a gas SmartMeter™ Module transmits in a 24-hour period is 0.676 seconds. This is a calculated value based on observed individual transmission rates of 0.16 seconds each, and the designed transmission frequency of between 4.15 and 4.35 transmissions per day.

**Question 1.a.:**

How is this average computed or measured?

**Response 1.a.:**

**Electric:** SSN supplies PG&E with the “chipset” contained in the electric SmartMeters™ that GE and L+G supply to PG&E. The chipset, referred to as a “Network Interface Card” or “NIC,” processes and stores the data and provides the radio communication back to PG&E. SSN has conducted several studies on these data to compute the type and duration of these transmissions.

In the SSN study referenced in Response 1, SSN calculated the median transmission-time by collecting actual field data from 88,000 deployed meters. By checking the number of transmissions per meter for roughly 30 minutes each, SSN computed the length of these

---

<sup>3</sup> PG&E’s electric SmartMeters™ have two radios installed: 1) a radio that utilizes the licensed 902-928 megahertz (MHz) band for connection to the PG&E back office, and 2) a 2.4 gigahertz (GHz) radio to transmit to devices in the customer premises. The transmissions measured and addressed in this Response relate to the 900 MHz radio. Currently, PG&E does not have any SmartMeters™ utilizing the 2.4 GHz radio.

transmissions per 24-hour day. In another study, SSN worked with PG&E to evaluate the transmissions of roughly 50,000 meters over a 48-hour period to similarly compute these numbers.

**Gas:** The duration of each transmission from the gas SmartMeter™ Module is less than 0.16 seconds. Using the typical transmission rate of 4.228 transmissions per 24 hours, the average duration over a 24-hour period is approximately 0.676 seconds ( $4.228 \times 0.16 = 0.676$ ).

**Question 2:**

How many times in total (average and maximum) is a smart meter scheduled to transmit during a 24-hour period?

**Response 2:**

**Electric:** Table 2-1 presents scheduled electric SmartMeter™ system messages and their durations. As noted in Response 1, the information presented applies only to the 900 MHz radio. Table 2-1 presents data for all “scheduled” messages; i.e., those inherently required to sustain communications in the network that occur routinely without user intervention. “Non-Scheduled” messages created only at non-recurring times are addressed in Response 3.

**TABLE 2-1**

| <b>Electric System Message Type</b><br>[a] | <b>Transmission Frequency Per 24-Hour Period: Average</b><br>[b] | <b>Transmission Frequency Per 24-Hour Period: Maximum (99.9<sup>th</sup> Percentile)</b><br>[c] |
|--|--|---|
| Meter Read Data                            | 6  | 6   |
| Network Management                         | 15   | 30  |
| Time Synch                                 | 360  | 360   |
| Mesh Network Message Management            | 9,600  | 190,000   |
| <b>Weighted Average Duty Cycle</b>         | <b>45.3 Seconds<sup>4</sup></b>                                  | <b>875.0 Seconds</b>  |

The electric system message types are defined as:

- Meter Read Data refers to the messages generated by each meter to transmit energy usage data.
- Network Management refers to network tasks that need to be performed to maintain the health of the network (e.g., route establishment).
- Time Synch refers to network administration messages needed to update the internal clock in the NIC.
- Mesh Network Message Management refers to activities required to forward routed messages.

**Gas:** Table 2-2 presents scheduled gas SmartMeter™ system messages and their durations.

**TABLE 2-2**

| <b>Gas System Message Type</b><br>[a] | <b>Transmission Frequency Per 24-Hour Period: Average</b><br>[b] | <b>Transmission Frequency Per 24-Hour Period: Maximum</b><br>[c] |
|---------------------------------------|--|--|
| Meter Read Data                       | 4.228  | 4.305  |
| <b>Weighted Average Duty Cycle</b>    | <b>0.676 Seconds</b>   | <b>0.689 Seconds</b>   |

<sup>4</sup> As stated in Response 1, a small number of electric SmartMeters™ communicate somewhat longer than 45 seconds-per-day, which resulted in an overall mean duration of approximately 62 seconds.

**Question 2.a.:**

**How many of those times (average and maximum) are to transmit electric usage information?**

**Response 2.a.:**

**Electric:** Generally, the Meter Read Data messages shown in Table 2-1 transmit electric usage data from the meter generating the data. Mesh Network Message Management messages also transmit electric usage data from neighbor meters.

**Gas:** In Table 2-2, the Meter Read Data messages transmit gas usage data.

**Question 2.b.:**

**How many of those times (average and maximum) are for other purposes? What are those other purposes? Please specify number of times (average and maximum) by type/category of transmission.**

**Response 2.b.:**

**Electric:** The scheduled electric messages are shown in Table 2-1 and defined in Response 2. The Network Management and Time Synch messages are for administration and mesh maintenance, as explained in Response 2. They are required to sustain the routing capability of the mesh network.

**Gas:** There are no other standard messages than the usage data transmission.

**Question 3:**

**Under what scenarios does a meter transmit outside of the daily schedule, i.e., unscheduled transmission such as on-demand read, tamper/theft alert, last gasp, firmware upgrade etc.?**

**Response 3:**

**Electric:** For purposes of providing this data, PG&E is using data for all messages that inherently are required to sustain communications in the network, and occur routinely without user intervention as “scheduled”; messages created only at non-recurring times such as startup or to satisfy non-typical events or user requests are considered “non-scheduled”.

Table 3-1 shows the categories of electric messages generated outside of the daily schedule. These messages are event-driven and are not predictable on any given day.

**TABLE 3-1**

| <b>Electric Message Type</b>         | <b>Scenario</b>  |
|--------------------------------------|--|
| Interrogation for network (Initial)  | Initial attempt to discover network availability or after an outage restoration              |
| Interrogation for network (Extended) | Infrequent polling when network discovery is not immediate                                   |
| Network Activation                   | Upon successful discovery of network route either upon initial startup or outage restoration |
| Last gasp                            | Upon loss of power   |
| On-demand read                       | Request from PG&E back-office user   |
| Firmware upgrade                     | Pushed from PG&E back-office user  |
| Power status check                   | Request from PG&E back-office user   |
| Other ‘as-triggered’ alarms          | Sent as needed (e.g., power restored)  |
| Meter disconnect or reconnect        | Request from PG&E back-office user   |

**Gas:** The only unscheduled transmission would be for a tamper alarm. Tamper alarms are rare.

**Question 4:**

**Typically, how much of the communication between the customer's meter and the utility is unscheduled vs. scheduled?**

**Response 4:**

**Electric:** Typically, the majority of the communication between the customer's electric SmartMeter™ and PG&E is scheduled. SSN estimates that very little of the overall electric SmartMeter™ transmission time would be for unscheduled transmissions.

**Gas:** Aclara estimates that effectively 100 percent of the transmissions are due to scheduled activity. Tamper alarms are rare.

**Question 5:**

**Are there any other factors that go into determining duration and/or frequency of meter transmissions (e.g., if a meter can't access the network when it's trying to send data, type of a meter etc.)? If yes, please identify these factors.**

**Response 5:**

**Electric:** With respect to PG&E's electric SmartMeter™ system, there are no other factors that go into determining the duration or frequency of the electric meter system transmission other than those discussed in Responses 2 and 3.

**Gas:** With respect to PG&E's gas SmartMeter™ system, there are no other factors that go into determining the duration or frequency of the gas meter system transmission other than those discussed in Responses 2 and 3.

**Question 6:**

**What is the amount of RF emission at the source when a meter is transmitting data (instantaneous maximum peak level, averaged over 30 minutes)?**

**Response 6:**

Table 6-1 provides the requested data for electric SmartMeters™ and gas SmartMeter™ Modules.

**TABLE 6-1<sup>5</sup>**

| Radio Type                          | Transmit Power | Antenna Gain (Decibel Isotropic) | Instantaneous Peak Level (Effective Isotropic Radiated Power) | Average Exposure Over 30 Minutes | Percent of FCC Allowable RF Emissions |
|-------------------------------------|----------------|----------------------------------|---|----------------------------------|---------------------------------------|
| [a]                                 | [b]            | [c]                              | [d]   | [e]                              | [f]                                   |
| <b>Electric 900 MHz</b>             | 1000 mW        | 4.0 dBi                          | 2500 mW   | 0.35 μW/cm <sup>2</sup>          | 0.058%                                |
| <b>Electric 2.4 GHz<sup>6</sup></b> | 125 mW         | None                             | 125 mW  | N/A                              | N/A                                   |
| <b>Gas Standard Module</b>          | 132 mW         | None                             | 132 mW  | 0.01μW/cm <sup>2</sup>           | 0.0033%                               |
| <b>Gas Extended Range Module</b>    | 794 mW         | None                             | 794 mW  | 0.059μW/cm <sup>2</sup>          | 0.02%                                 |

<sup>5</sup> Average electric exposure has been calculated from duty cycles consistent with field observations at a distance of 20 centimeters. Average gas exposure has been calculated based on system specifications.

<sup>6</sup> As stated in Response 1, the 2.4 GHz radio is not currently in use in PG&E's SmartMeter™ system.

**Question 7:**

**Does the amount of RF emission vary depending on duration of transmission/volume of data being sent? For example, are RF emissions higher when there is a larger volume of data to be transmitted?**

**Response 7:**

**Electric:** While the power-level in PG&E's electric SmartMeters™ is fixed, the total RF energy varies based on the duration of the communication. When a larger volume of data is transmitted, the duration of the communication may increase, resulting in a greater emission of RF energy.

**Gas:** The usage read data messages are fixed in length and fixed in scheduled transmissions. Only tamper alarms are sent outside of scheduled transmissions. As noted earlier, tamper alarms are very rare.

**Question 8:**

**Are there any other factors that impact the amount of RF emissions? If so, please identify the factor(s) and its impact on RF emissions.**

**Response 8:**

**Electric:** PG&E is not aware of any other factors that affect the amount of RF emissions at the electric endpoint, i.e., at the customer's premises.<sup>7</sup>

**Gas:** PG&E is not aware of any other factors that affect the amount of RF emissions at the gas endpoint, i.e., at the customer's premises.<sup>8</sup>

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<sup>7</sup> PG&E notes that in addition to electric meters, there are network devices – generally mounted on PG&E distribution facilities at 25 feet or higher above the ground – called Relays or Access Points that receive the data from electric meters and forward the data over a public network cellular back haul (850 MHz or 1900 MHz) to the PG&E data center.

<sup>8</sup> PG&E notes that in addition to gas meters, there are network devices – generally mounted on PG&E distribution facilities at 25 feet or higher above the ground – called Data Collection Units (DCUs) which receive the data from the gas SmartMeter™ Modules and forward the data over a public network cellular back haul (850 MHz or 1900 MHz) to the PG&E data center. The DCUs also send out one network administration message per day over the 450-470 MHz band.

**Question 9:**

**Is there RF emission when the meter is not transmitting? If yes, what is the amount of RF emission?**

**Response 9:**

Yes, all digital circuitry – from that contained in clocks, in stereo equipment, or in answering machines – emits de minimus RF that is governed by FCC limits for unintentional RF emissions.<sup>9</sup>

Table 9-1 provides the requested data for electric SmartMeters™ and gas SmartMeter™ Modules.

**TABLE 9-1**

| <b>Meter Type</b> | <b>RF Measured Value With Radio Off</b> | <b>FCC Allowable RF Emissions</b> |
|-------------------|---|-----------------------------------|
| [a]               | [b]                                     | [c]                               |
| Electric: GE      | 39.3 dB $\mu$ V/m                       | 49.0 dB $\mu$ V/m                 |
| Electric: L+G     | 24.7 dB $\mu$ V/m                       | 49.0 dB $\mu$ V/m                 |
| Gas: Aclara       | No discernable emissions                | 40.0 – 54.0 dB $\mu$ V/m          |

**Electric:** Note that PG&E’s electric system communications equipment is installed inside of either of two SmartMeters™, one manufactured by GE and the other manufactured by L+G. Both of these meters are tested during meter certification testing and have been shown to emit de minimus RF when the SSN communications radio is turned off. The radio-off RF emissions are below FCC limits for unintentional RF emissions.

**Gas:** With respect to PG&E’s gas SmartMeter™ Modules, there are no RF emissions when the Module is not transmitting.

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<sup>9</sup> See Code of Federal Regulations, Title 47, Part 15, for a Class B digital device.

**Question 10:**

**Is there a difference in the amount of RF emissions for a wireless smart meter with the radio off and a smart meter with the radio out? If yes, what is that difference and how is it calculated?**

**Response 10:**

Table 10-1 provides the requested data for electric SmartMeters™ and gas SmartMeter™ Modules.

**TABLE 10-1**

| <b>Meter Type</b> | <b>RF Measured Value With Radio Out</b> | <b>RF Measured Value With Radio Off</b> | <b>FCC Allowable RF Emissions</b> |
|-------------------|---|---|-----------------------------------|
| [a]               | [b]                                     | [c]                                     | [d]                               |
| Electric: GE      | 38.3 dBμV/m                             | 39.3 dBμV/m                             | 49.0 dBμV/m                       |
| Electric: L+G     | 31.3 dBμV/m                             | 24.7 dBμV/m                             | 49.0 dBμV/m                       |
| Gas: Aclara       | No discernable emissions                | No discernable emissions                | 40.0 – 54.0 dBμV/m                |

**Electric:** Both of PG&E’s electric SmartMeter™ manufacturers test the meters without any communications radio installed during meter certification. The information provided in Table 10-1 reflects the measured values of the RF emissions from the electric SmartMeters™ with the radio out.

Note that the difference between the radio-out RF-emissions shown in Table 10-1 and the radio-off RF-emissions presented in Table 9-1 (and re-presented in Table 10-1 for comparison purposes) are de minimus.

**Gas:** With respect to PG&E’s gas SmartMeter™ Modules, there are no discernable RF emissions when the radio is off.

**Question 11:**

Is there a difference in the amount of RF emissions for a wireless smart meter with the radio off and an analog meter? If yes, what is that difference and how is it calculated?

**Response 11:**

Electromechanical meters emit no RF. Therefore, there is a de minimus difference in RF between radio-off and an analog meter. Please also see PG&E's Response to Question 9.

**IV. CONCLUSION**

PG&E respectfully submits the requested clarifying information concerning the frequency and duration of RF emissions from its electric and gas SmartMeter™ technology.

Respectfully Submitted,

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