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May 29, 2020

VIA E-FILING

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

**Re: Lauren Zonca v. Metropolitan Edison Company
Docket No. C-2019-3007961**

Dear Secretary Chiavetta:

Attached please find the Main Brief on behalf of Metropolitan Edison Company (“Met-Ed” or the “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**

LAUREN ZONCA

v.

METROPOLITAN EDISON COMPANY

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DOCKET NO. C-2019-3007961

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

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Dated: May 29, 2020

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I. INTRODUCTION

On February 19, 2019, Metropolitan Edison Company (“Met-Ed” or the “Company”) was served with the above-captioned Formal Complaint filed by Lauren Zonca (“Complainant”) with the Pennsylvania Public Utility Commission (“Commission”). In her Complaint, the Complainant contests Met-Ed’s planned installation of a smart meter at her property located at 15 Sherman Road, Ottsville, PA 18942 (“Service Location”).

As explained in this Main Brief, the Complainant failed to sustain her burden of proof that installing the smart meter on her 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 February 19, 2019, Met-Ed was served with the Complainant’s Formal Complaint that was filed with the Commission.

On March 11, 2019, the Company filed its Answer and New Matter denying the material allegations in the Formal Complaint. On the same day, the Company also filed a Preliminary Objection to the Formal Complaint.

On March 28, 2019, the Complainant filed a “Rebuttal to the Answer and New Matter.”

On April 10, 2019, a Motion Judge Assignment Notice was issued assigning Administrative Law Judge Jeffrey A. Watson (“ALJ”) to this proceeding.

On May 3, 2019, ALJ Watson issued an Interim Order denying the Company’s Preliminary Objection.

On October 24, 2019, an Interim Order Establishing Initial Litigation Schedule was issued, which set forth the schedule for discovery and directing the parties to file a joint letter or status report on or before December 30, 2019, about scheduling the evidentiary hearing. A Corrected Interim Order was issued on October 28, 2019, but it did not affect the December 30, 2019 deadline.

On December 30, 2019, in compliance with the Corrected Interim Order, Met-Ed filed a status report that provided the parties' availability for an evidentiary hearing.

On January 9, 2020, a Telephonic Hearing Notice was issued scheduling a telephonic evidentiary hearing for February 19, 2020, before the ALJ.

On February 11, 2020, Met-Ed served copies of the hearing exhibits it planned to present at the evidentiary hearing.

On February 19, 2020, the evidentiary hearing was held as scheduled.

On April 6, 2020, a Briefing Order was issued, which stated that if the parties wanted to file briefs, such briefs would be due by no later than May 29, 2020.

III. LEGAL STANDARDS

Under Section 332(a) of the Public Utility Code, the Complainant has 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 Complainant establishes a *prima facie* case does it become the responsibility of the Company to provide rebuttal evidence.² To establish a *prima facie* case,

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).

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 Complainant always has the overarching burden of proof in the proceeding. It is clearly established that the Complainant's "burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence."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 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."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

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).

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.

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 adverse health effects.¹¹ Specifically, in smart 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 Complainant wholly failed to meet her burden of proof that the installation of a smart meter at her Service Location would constitute unreasonable service in violation of Section 1501 of the Public Utility Code or would otherwise violate the Public Utility Code 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

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*”).

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.*

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 In fact, the Complainant agreed at the evidentiary hearing that Act 129 requires Met-Ed to install the smart meter.¹⁷ Therefore, Met-Ed must install a smart meter at the Complainant’s 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 Complainant failed to establish that the installation of a smart meter would constitute unreasonable service. In her limited testimony, the Complainant expressed general “concerns” about the smart meters’ alleged health effects and safety issues. The Complainant also noted privacy “concerns” about the smart meters. However, the Complainant never presented any credible or convincing evidence to support her 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,

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

¹⁵ See Met-Ed Exhibit JCA-1 (“Smart Meter Deployment Plan”) (containing a copy of Met-Ed’s Final “Smart Meter Deployment Plan,” approved by the Commission at Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (filed June 16, 2014).

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).

¹⁷ Tr. 18.

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.

Additionally, Met-Ed witness Ahr explained that the Complainant's privacy concerns are without merit. Through the smart meter, Met-Ed only collects information about the total electric usage at the premises and, therefore, cannot determine what appliance is being used in the customer's house. The Company also adheres to its Commission-approved Smart Meter Privacy Policy,¹⁸ which governs how Met-Ed must treat customer information, specifies the types of information transmitted through the smart meters, and outlines the security protections in place to protect against unauthorized access of customer information on the smart meter network.

Thus, the Complainant 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.¹⁹ 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.²⁰ 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

¹⁸ See Met-Ed Exhibit JCA-2.

¹⁹ 66 Pa.C.S. § 101, *et seq.*

²⁰ 66 Pa.C.S. § 2807(f).

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.²¹

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”).²² The Commission issued an Order on June 9, 2010, approving 2009 SMP Plan with certain modifications.²³

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 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.²⁴ On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which *intra alia*

²¹ 66 Pa.C.S. § 2807(f)(2).

²² *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).

²³ *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).

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 (Petition filed December 31, 2012).

accelerated the smart meter deployment schedule laid out in their original Deployment Plan.²⁵ Under the Revised Deployment Plan, the FirstEnergy Companies proposed to deploy 170,000 smart meters by the end of 2015.²⁶ 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.²⁷

B. The Complainant Failed to Meet Her 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

Under Act 129, Met-Ed has an absolute obligation to install smart meters for all of its customers, including the Complainant. 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).²⁸ In interpreting the smart meter provisions of Act 129, the Commission

²⁵ See Met-Ed Exhibit JCA-1.

²⁶ *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).

²⁷ *Id.*, p. 16.

²⁸ Importantly, Pennsylvania courts have held in several cases 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

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.”²⁹ 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.”³⁰ Therefore, Met-Ed must install the new smart meters for every customer in its service territory, including the Complainant.

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.³¹ 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.”³² 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

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.’”).

²⁹ *Implementation Order*, p. 14.

³⁰ *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)).

³¹ See, e.g., *Starr v. PECO Energy Co.*, Docket No. C-2015-2516061, p. 11 (Order Entered Sept. 1, 2016) (footnote omitted).

³² *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.

cannot opt-out of the smart meter installation under Act 129. In fact, the Complainant herself conceded at the evidentiary hearing that Act 129 requires Met-Ed to install the smart meter.³³

Moreover, Met-Ed must comply with the relevant Commission orders directing the Company to deploy the new smart 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.³⁴ Therefore, the Company's Commission-approved Smart Meter Deployment Plan mandates that all of Met-Ed's meters must be replaced with smart meters.

For these reasons, the Complainant has failed to demonstrate that she 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 Complainant maintains that the installation of the smart meter would violate Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501. (Tr. 10-18.) At the hearing, the Complainant presented limited testimony in support of her allegations. (Tr. 10-18.) The Complainant testified that she has "health," "safety," and "privacy" concerns about the smart meters. (Tr. 12-13, 15.)

The Complainant's claims are unfounded and should be rejected entirely. Nothing in the record demonstrates that the Complainant possesses the requisite technical expertise to testify about these alleged issues. The Complainant also presented absolutely no evidence in support of her claims, aside from expressing her "concerns" about alleged health, safety, and privacy issues related to the smart meters. Such bald assertions, personal opinions, or perceptions do not

³³ Tr. 18.

³⁴Met-Ed Exhibit JCA-1, p. 6.

constitute evidence.³⁵ Further, testimony consisting of guesses, conjecture, or speculation cannot prove a party's claims.³⁶ Thus, the Complainant failed to establish a *prima facie* case that the smart meter's installation would violate Section 1501 of the Public Utility Code, and her testimony should be completely disregarded.

Even assuming *arguendo* that the Complainant established a *prima facie* case, her 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: (1) Director of System Operations; (2) Director of Energy Procurement; (3) Director of Meter Reading and Collections; (4) Manager, Regulatory Compliance for Smart Meters; and (5) his current position of Advisor in Regulatory Compliance for Smart Meters. (Tr. 21-22.)

Mr. Ahr testified that Met-Ed's smart meters are safe. (Tr. 45-46.) 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. 45-46.) Moreover, the meter manufacturer, Itron, Inc., enlisted certified personnel to perform the required testing. (Tr. 45-46.) Mr. Ahr explained that "these individuals are aware of product behavior and are able to detect product anomalies, if any, during all of the ANSI testing," which the meters passed. (Tr. 45-46.) Therefore, the health and safety concerns raised by the Complainant are without merit.

In addition, Met-Ed witness Ahr thoroughly refuted the Complainant's privacy concerns. (Tr. 40-45.) The Company follows its Commission-approved Smart Meter Privacy Policy,³⁷

³⁵ See *Mid-Atlantic Power Supply Ass'n v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citation omitted).

³⁶ 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).

³⁷ See Met-Ed Exhibit JCA-2.

which governs how Met-Ed must treat customer information, specifies the types of information transmitted through the smart meters, and outlines the security protections in place to protect against unauthorized access of customer information on the smart meter network. (Tr. 43-44.) For example, under that policy, Met-Ed will not share sensitive customer information with third parties without the customer's informed consent. (Tr. 43-44.) Moreover, "[n]o names, addresses, Social Security numbers, or similar sensitive account numbers are transmitted through the smart meter network." (Tr. 44.) Indeed, only the customer's total electric usage is transmitted through the customer's smart meter to the Company. (Tr. 41, 44.) As a result, Met-Ed cannot determine what appliance is being used in the customer's house. (Tr. 41, 44.) Further, Met-Ed's smart meter network is cybersecure, employing "a number of security protections to prevent against the unauthorized access of a customer's usage data," such as "encryption, firewalls, password protection and continuous security monitoring." (Tr. 44.) The network also complies with the guidelines published by the North American Energy Standards Board and the National Institute of Standards and Technology. (Tr. 45.) Thus, the Complainant's privacy concerns are unfounded.

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

VI. CONCLUSION

WHEREFORE, Metropolitan Edison Company respectfully requests that the Formal Complaint of Lauren Zonca be dismissed with prejudice.

Respectfully submitted,

Dated: May 29, 2020



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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 2022.³⁸

2. Met-Ed's original Smart Meter Technology Procurement and Installation Plan was filed on August 10, 2009.³⁹

3. The Commission ultimately approved the original Smart Meter Technology Procurement and Installation Plan, with modifications, on June 9, 2010.⁴⁰

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.⁴¹

³⁸ Met-Ed Exhibit JCA-1, pp. 10-11.

³⁹ *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).

⁴⁰ *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).

⁴¹ *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,⁴² 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. 20-53.)

7. Mr. Ahr has a degree in electrical engineering and has worked for Met-Ed since 1984 in various positions, including: (1) Director of System Operations; (2) Director of Energy Procurement; (3) Director of Meter Reading and Collections; (4) Manager, Regulatory Compliance for Smart Meters; and (5) his current position of Advisor in Regulatory Compliance for Smart Meters. (Tr. 21-22.)

8. Met-Ed's smart meters comply with all safety requirements and standards established by various entities, including the FCC, ANSI, and UL. (Tr. 45-46.)

9. Itron, Inc., who is the smart meters' manufacturer, enlisted certified personnel to perform the required testing. (Tr. 45-46.) Such personnel would have been aware of any deficiencies if the smart meters failed to pass those standards. (Tr. 45-46.)

10. The Company follows its Commission-approved Smart Meter Privacy Policy,⁴³ which governs how Met-Ed must treat customer information, specifies the types of information transmitted through the smart meters, and outlines the security protections in place to protect against unauthorized access of customer information on the smart meter network. (Tr. 43-44.)

11. Under that policy, Met-Ed will not share sensitive customer information with third parties without the customer's informed consent. (Tr. 43-44.)

12. No names, addresses, Social Security numbers, or similar sensitive account numbers are transmitted through the smart meter network. (Tr. 44.)

⁴² See Smart Meter Deployment Plan.

⁴³ See Met-Ed Exhibit JCA-2.

13. Met-Ed cannot determine what appliance is being used in the customer's house because only the customer's total electric usage is transmitted through the customer's smart meter to the Company. (Tr. 41, 44.)

14. Met-Ed's smart meter network is cybersecure, employing "a number of security protections to prevent against the unauthorized access of a customer's usage data," such as "encryption, firewalls, password protection and continuous security monitoring." (Tr. 44.)

15. The Company's smart meter network complies with the guidelines published by the North American Energy Standards Board and the National Institute of Standards and Technology. (Tr. 45.)

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. Under Section 332(a) of the Public Utility Code, the Complainant has the burden of proof in this proceeding.⁴⁴
2. The first step in carrying the burden of proof is establishing a *prima facie* case that Met-Ed violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establishes a *prima facie* case does it become the responsibility of the Company to provide rebuttal evidence.⁴⁵
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.⁴⁶
4. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.⁴⁷
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.⁴⁸
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.⁴⁹

⁴⁴ 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).

⁴⁵ *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).

⁴⁶ *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)).

⁴⁷ *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).

⁴⁸ *Lansberry*, 578 A.2d at 602.

⁴⁹ *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.”⁵⁰

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.”⁵¹

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.⁵²

10. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.⁵³

11. The Complainant failed to establish that the Company’s installation of a smart meter at the Complainant’s service location would violate Act 129 or any related Commission orders.⁵⁴

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.⁵⁵

⁵⁰ 66 Pa.C.S. § 701.

⁵¹ 66 Pa.C.S. § 1501.

⁵² *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).

⁵³ See 66 Pa.C.S. § 2807; *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

⁵⁴ 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.⁵⁶

14. The Company is permitted to terminate a customer's electric service for denying access to the meter.⁵⁷

15. A lay witness may only provide testimony related to his or her direct knowledge or experience.⁵⁸

16. Any testimony of a lay witness related to technical or specialized knowledge should be excluded and given no evidentiary weight.⁵⁹

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

⁵⁵ Electric Pa. P.U.C. No. 81, Original Page 45, issued May 1, 2015; effective May 3, 2015.

⁵⁶ *Id.*

⁵⁷ 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.

⁵⁸ Pa.R.E. 701.

⁵⁹ *See Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004).

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. The formal complaint of Lauren Zonca 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**

LAUREN ZONCA :
 :
 : **DOCKET NO. C-2019-3007961**
 :
 :
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 email as follows:

Lauren Zonca
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Administrative Law Judge Joel H. Cheskis
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Dated: May 29, 2020



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