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June 1, 2020

VIA E-FILING

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

**Re: Kim Martin v. Metropolitan Edison Company
Docket No. C-2017-2631482**

Dear Secretary Chiavetta:

Attached please find the Main Brief on behalf of Metropolitan Edison Company regarding the above-referenced matter. This document has been served on the all parties as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Tori L. Giesler

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Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KIM MARTIN

v.

METROPOLITAN EDISON COMPANY

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DOCKET NO. C-2017-2631482

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

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Dated: June 1, 2020

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I. INTRODUCTION

On October 31, 2017, Metropolitan Edison Company (“Met-Ed” or the “Company”) was served with the above-captioned Formal Complaint filed by Kim Martin (“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 4030 Sherwood Drive, York, Pennsylvania 17408 (“Service Location”).

As explained in this Main Brief, the Complainant failed to sustain her burden of proof that: (1) installing the smart meter on her property would constitute a violation of the Public Utility Code or any Commission regulation or order; and (2) the Company’s issuance of termination notices due to her refusal of the smart meter’s installation violated 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 October 31, 2017, Met-Ed was served with the Complainant’s Formal Complaint that was filed with the Commission.

On November 20, 2017, 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.

The Complainant did not file an Answer to the Company’s New Matter or its Preliminary Objection.

On January 9, 2018, a Motion Judge Assignment Notice was issued assigning Administrative Law Judge Jeffrey A. Watson (“ALJ”) to this proceeding.

On November 14, 2018, the ALJ issued an Interim Order denying the Company's Preliminary Objection.

On November 19, 2018, an Interim Order Establishing Initial Litigation Schedule was issued, which set forth procedural rules for the proceeding, the deadlines for identifying witnesses, the schedule for discovery, and a deadline of May 10, 2019, for the parties to submit a status report.

On January 24, 2019, Met-Ed served its list of anticipated witnesses along with a brief summary of their expected testimony, in accordance with the November 19, 2018 Interim Order.

On February 22, 2019, Met-Ed filed a Motion to Compel responses to its first set of discovery requests.

On March 1, 2019, the ALJ issued an Order granting Met-Ed's Motion to Compel and directing the Complainant to serve her responses to Met-Ed's discovery requests by March 28, 2019.

On March 19, 2019, the Complainant filed a letter containing various averments as well as providing her responses to Met-Ed's discovery requests.

On May 10, 2019, Met-Ed filed its status report, in accordance with the November 19, 2018 Interim Order. Therein, Met-Ed noted how the Complainant failed to provide notification of her expert and factual witnesses by the January 24, 2019 deadline. The Company also requested a prehearing conference to be scheduled.

On July 26, 2019, the ALJ issued an Interim Order establishing a revised litigation schedule and deadline to file motions in limine and dispositive motions.

On August 11, 2019, the Complainant filed a letter stating that she would testify on her own behalf and describing the general subject matter of her testimony.

On October 15, 2019, Met-Ed filed a status report in accordance with the July 26, 2019 Interim Order.

On October 21, 2019, the ALJ issued an Interim Order requiring the file of status reports to schedule a telephonic or in-person hearing.

On November 4, 2019, Met-Ed filed a status report in accordance with the October 21, 2019 Interim Order and provided the parties' availability for a telephonic evidentiary hearing.

On November 12, 2019, a Hearing Notice was issued scheduling a telephonic evidentiary hearing for January 10, 2020.

On December 5, 2019, the ALJ issued an Interim Order setting forth procedural requirements for the evidentiary hearing.

On December 20, 2019, Met-Ed served copies of the exhibits it intended to present at the evidentiary hearing.

On January 10, 2020, the telephonic evidentiary hearing was held as scheduled.

On February 19, 2020, the ALJ issued an Interim Order establishing the briefing schedule. Under that Interim Order, the parties were directed to file briefs by March 30, 2020.

On April 9, 2020, the ALJ issued an Interim Order extending the deadline for briefs until May 15, 2020.

On May 11, 2020, the ALJ issued an Interim Order further extending the deadline for briefs until June 1, 2020.

On May 28, 2020, the Complainant filed her Main Brief.

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, 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

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

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

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

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

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).

or order of the commission.”⁷ Section 1501 of the Public Utility Code states, in relevant part, that “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities.”⁸ As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501. In complaint proceedings similar to the instant proceeding, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.⁹

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

⁷ 66 Pa.C.S. § 701.

⁸ 66 Pa.C.S. § 1501.

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

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

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”).

IV. SUMMARY OF ARGUMENT

The Complainant wholly failed to meet her burden of proof that: (1) 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; and (2) Met-Ed's issuance of termination notices due to her refusal of the smart meter violated the Public Utility Code or a Commission regulation or order.

Met-Ed has an absolute obligation to install smart meters at all of its customers' service locations under Act 129 of 2008 ("Act 129").¹³ Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to "opt-out" from smart meter installation.¹⁴ Further, both Act 129 and the Commission's *Implementation Order* require that electric distribution companies ("EDCs") install wireless smart meters with specific functionalities. As evidenced by the Commission's approval of the Company's Smart Meter Deployment Plan,¹⁵ Met-Ed's smart meters adhere to the requirements of Act 129 and the Commission's *Implementation Order*.¹⁶ Therefore, Met-Ed must install a smart meter at the 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.

Furthermore, the Complainant failed to establish that the installation of a smart meter would constitute unreasonable service. In her limited testimony, the Complainant expressed

¹³ 66 Pa.C.S. § 2806.1, *et seq.*

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

¹⁵ See 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).

concerns about the smart meters' alleged effects on health.¹⁷ She also contended that she experiences certain symptoms when exposed to radio frequency ("RF") fields.¹⁸ 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, 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 properly issued termination notices to the Complainant due to her refusal of the smart meter. Both the Public Utility Code and the Commission's regulations provide that "[f]ailure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading" is grounds for terminating service.¹⁹ Relatedly, Rule 9 of Met-Ed's Commission-approved tariff expressly states that the Company shall have reasonable access to the customer's premises for, among other reasons, "removing or exchanging any or all equipment belonging to the Company," such as the Company's meters.²⁰ Because the Complainant denied such access to Met-Ed, the Company was authorized to issue termination notices to the Complainant.

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 and

¹⁷ See Tr. 26-27.

¹⁸ See *id.*

¹⁹ See 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3).

²⁰ Rule 9, Electric Pa. P.U.C. No. 52, Original Page 40.

that the Company's issuance of termination notices violated 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.²¹ 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.²² Specifically, Section 2807(f)(2) of the Code directed EDCs to furnish smart meter technology as follows: (1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; (2) in new building construction; and (3) in accordance with a depreciation schedule not to exceed fifteen years.²³

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").²⁴ The Commission issued an Order on June 9, 2010, approving 2009 SMP Plan with certain modifications.²⁵

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

²¹ 66 Pa.C.S. § 101, *et seq.*

²² 66 Pa.C.S. § 2807(f).

²³ 66 Pa.C.S. § 2807(f)(2).

²⁴ *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).

²⁵ *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).

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.²⁶ On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan.²⁷ Under the Revised Deployment Plan, the FirstEnergy Companies proposed to deploy 170,000 smart meters by the end of 2015.²⁸ 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.²⁹

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 (Petition filed December 31, 2012).

²⁷ See Met-Ed Exhibit JCA-1.

²⁸ *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).

²⁹ *Id.*, p. 16.

B. The Complainant Has the Burden of Proof

As a preliminary matter, the Complainant has the burden of proof in this proceeding under Section 332(a) of the Public Utility Code.³⁰ At the evidentiary hearing and in her Main Brief, the Complainant has argued that Section 315(c) of the Public Utility Code places the burden of proof on Met-Ed.³¹ However, Section 315(c) places the burden of proof on the public utility in a proceeding about the “service or facilities of any public utility” when such proceeding is initiated “upon the motion of the commission.”³²

Here, the proceeding was initiated by the Complainant filing her Formal Complaint, not a motion by the Commission.³³ Therefore, as the “proponent of a rule or order” in this proceeding, the Complainant has the burden of proof under Section 332(a) of the Public Utility Code.³⁴

C. 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)

³⁰ See 66 Pa.C.S. § 332(a).

³¹ See Tr. 34; Complainant’s Main Brief, p. 18.

³² 66 Pa.C.S. § 315(c) (emphasis added).

³³ Indeed, at the evidentiary hearing, the Complainant admitted that she had no knowledge of any Commission motion initiating the proceeding. See Tr. 101.

³⁴ 66 Pa.C.S. § 332(a).

(emphasis added).³⁵ In interpreting the smart meter provisions of Act 129, the Commission declared that EDCs must “deploy smart meters system-wide” because of the requirement that smart meters be deployed “in accordance with a depreciation schedule not to exceed 15 years.”³⁶ 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.”³⁷ 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.³⁸ 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.”³⁹ 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,

³⁵ 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 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.’”).

³⁶ *Implementation Order*, p. 14.

³⁷ *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)).

³⁸ See, e.g., *Starr v. PECO Energy Co.*, Docket No. C-2015-2516061, p. 11 (Order Entered Sept. 1, 2016) (footnote omitted).

³⁹ *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.

e.g., House Bill 1564 of 2017-2018 Session), they have never been enacted. Thus, a customer cannot opt-out of the smart meter installation under Act 129.

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.⁴⁰ 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. At the hearing, the Complainant presented limited testimony in support of her allegations.⁴¹ The Complainant testified that she has health concerns about the smart meters because she allegedly experiences adverse health effects when exposed to RF fields from other devices.⁴² Therefore, according to the Complainant, she should be permitted to opt out of the smart meter's installation.⁴³

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 health issues. In fact, the Complainant herself admitted that she is "not an

⁴⁰Met-Ed Exhibit JCA-1, p. 6.

⁴¹ See Tr. 21-96.

⁴² See, e.g., Tr. 26-27.

⁴³ See Tr. 30.

expert.”⁴⁴ The Complainant also presented absolutely no evidence in support of her claims, aside from expressing her concerns about the alleged adverse health effects she experiences when exposed to RF fields from other devices.⁴⁵ Such bald assertions, personal opinions, or perceptions do not constitute evidence.⁴⁶ Further, testimony consisting of guesses, conjecture, or speculation cannot prove a party’s claims.⁴⁷ 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.⁴⁸

Mr. Ahr testified that Met-Ed’s smart meters are safe.⁴⁹ 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.⁵⁰ Moreover, the meter manufacturer, Itron, Inc., enlisted certified personnel to perform the required testing.⁵¹ Mr. Ahr explained that these

⁴⁴ Tr. 61.

⁴⁵ See, e.g., Tr. 26-27.

⁴⁶ See *Mid-Atlantic Power Supply Ass’n v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citation omitted).

⁴⁷ 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).

⁴⁸ Tr. 109-10.

⁴⁹ Tr. 123-24.

⁵⁰ Tr. 123-24.

⁵¹ Tr. 123.

individuals “can detect any product anomalies, if any, during all the ANSI testing,” which the meters passed.⁵² Therefore, the health concerns raised by the Complainant are without merit.

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.

3. Met-Ed Was Authorized to Issue Termination Notices to the Complainant

The Complainant also failed to prove that the Company violated the Public Utility Code or a Commission regulation or order by sending her notices that her electric service would be terminated due to her refusal of the smart meter. Rule 9 of Met-Ed’s Commission-approved tariff expressly states that the Company shall have reasonable access to the customer’s premises for, among other reasons, “removing or exchanging any or all equipment belonging to the Company,” such as the Company’s meters.⁵³ It is well-established that public utilities’ tariffs have the force and effect of law and are binding on the utilities and their customers.⁵⁴ Therefore, a customer is required to grant the Company reasonable access to the property to replace the existing meter.

In addition, Met-Ed is expressly permitted to terminate a customer’s electric service if it is denied such reasonable access and prevented from replacing its meter. Both the Public Utility Code and the Commission’s regulations provide that “[f]ailure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance,

⁵² Tr. 123.

⁵³ Rule 9, Electric Pa. P.U.C. No. 52, Original Page 40.

⁵⁴ See *PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386, 402 (Pa. Cmwlth. 2006) (citing 66 Pa.C.S. § 1303 and *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995)).

repair or meter reading” is grounds for terminating service.⁵⁵ As a result, if a customer denies the Company access to replace its meter, Met-Ed has a legal right to issue a termination notice to a customer.

Here, the Complainant refused, and continues to refuse, the Company’s installation of the smart meter at her Service Location.⁵⁶ In response, Met-Ed issued termination notices to the Complainant pursuant to its rights under the Public Utility Code and the Commission’s regulations. Specifically, the Company originally issued a termination notice on July 5, 2017, due to the Complainant’s refusal of the smart meter.⁵⁷ After the Complainant contacted Met-Ed on July 11, 2017, the Company agreed to temporarily delay the installation of the smart meter for a short period of time.⁵⁸ On July 25, 2017, a second termination notice was issued because the Complainant continued to deny the Company access to her property to install the smart meter.⁵⁹ Eventually, on August 7, 2017, the Company received an email from the Complainant’s physician, alleging that the Complainant was sensitive to electromagnetic fields.⁶⁰ Met-Ed decided to temporarily delay the installation of the smart meter until the Company reached the end of its deployment schedule in that area.⁶¹ When the Company reached the end of its deployment schedule, and the Complainant still refused the smart meter, Met-Ed issued termination notices to the Complainant on October 6 and 18, 2017.⁶² Ultimately, Met-Ed ceased those termination efforts when the Company received service of the Complainant’s Formal

⁵⁵ See 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3).

⁵⁶ See, e.g., Tr. 30, 127.

⁵⁷ Tr. 126.

⁵⁸ Tr. 127.

⁵⁹ Tr. 127.

⁶⁰ Tr. 128.

⁶¹ Tr. 128-29.

⁶² Tr. 129-30.

Complaint.⁶³ Nevertheless, Met-Ed was well within its rights to issue the termination notices to the Complainant because she continuously denied the Company reasonable access to the property to replace its meter.

Based on the foregoing, the Complainant failed to sustain her burden of proof that: (1) the installation of the smart meter would constitute unreasonable or inadequate service under Section 1501 of the Public Utility Code; and (2) the Company's issuance of termination notices violated the Public Utility Code or a Commission regulation or order. Therefore, the Complaint should be dismissed with prejudice.

⁶³ Tr. 130.

VI. CONCLUSION

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

Respectfully submitted,

Dated: June 1, 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 2022.⁶⁴

2. Met-Ed's original Smart Meter Technology Procurement and Installation Plan was filed on August 10, 2009.⁶⁵

3. The Commission ultimately approved the original Smart Meter Technology Procurement and Installation Plan, with modifications, on June 9, 2010.⁶⁶

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.⁶⁷

⁶⁴ Met-Ed Exhibit JCA-1, pp. 10-11.

⁶⁵ *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).

⁶⁶ *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).

⁶⁷ *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,⁶⁸ 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.⁶⁹

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.⁷⁰

8. Met-Ed's smart meters comply with all safety requirements and standards established by various entities, including the FCC, ANSI, and UL.⁷¹

9. Itron, Inc., who is the smart meters' manufacturer, 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.⁷²

10. The Complainant refused, and continues to refuse, the Company's installation of the smart meter at her Service Location.⁷³

11. The Company issued a termination notice on July 5, 2017, due to the Complainant's refusal of the smart meter.⁷⁴

12. After the Complainant contacted Met-Ed on July 11, 2017, the Company agreed to temporarily delay the installation of the smart meter for a short period of time.⁷⁵

⁶⁸ See Smart Meter Deployment Plan.

⁶⁹ Tr. 108-62.

⁷⁰ Tr. 109-10.

⁷¹ Tr. 123-24.

⁷² Tr. 123.

⁷³ See, e.g., Tr. 30, 127.

⁷⁴ Tr. 126.

13. On July 25, 2017, a second termination notice was issued because the Complainant continued to deny the Company access to her property to install the smart meter.⁷⁶

14. On August 7, 2017, the Company received an email from the Complainant's physician, alleging that the Complainant was sensitive to electromagnetic fields.⁷⁷ In response, Met-Ed decided to temporarily delay the installation of the smart meter until the Company reached the end of its deployment schedule in that area.⁷⁸

15. When the Company reached the end of its deployment schedule, and the Complainant still refused the smart meter, Met-Ed issued termination notices to the Complainant on October 6 and 18, 2017.⁷⁹

16. Ultimately, Met-Ed ceased those termination efforts when the Company received service of the Complainant's Formal Complaint.⁸⁰

⁷⁵ Tr. 127.

⁷⁶ Tr. 127.

⁷⁷ Tr. 128.

⁷⁸ Tr. 128-29.

⁷⁹ Tr. 129-30.

⁸⁰ Tr. 130.

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.⁸¹

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.⁸²

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.⁸³

4. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.⁸⁴

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.⁸⁵

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.⁸⁶

⁸¹ 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).

⁸² *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).

⁸³ *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)).

⁸⁴ *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).

⁸⁵ *Lansberry*, 578 A.2d at 602.

⁸⁶ *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.”⁸⁷

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.”⁸⁸

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.⁸⁹

10. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.⁹⁰

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.⁹¹

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.⁹²

⁸⁷ 66 Pa.C.S. § 701.

⁸⁸ 66 Pa.C.S. § 1501.

⁸⁹ *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).

⁹⁰ See 66 Pa.C.S. § 2807; *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

⁹¹ 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.⁹³

14. The Company is permitted to terminate a customer's electric service for denying access to the meter.⁹⁴

15. A lay witness may only provide testimony related to his or her direct knowledge or experience.⁹⁵

16. Any testimony of a lay witness related to technical or specialized knowledge should be excluded and given no evidentiary weight.⁹⁶

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.

18. Rule 9 of Met-Ed's Commission-approved tariff expressly states that the Company shall have reasonable access to the customer's premises for, among other reasons, "removing or exchanging any or all equipment belonging to the Company," such as the Company's meters.⁹⁷

19. Public utilities' tariffs have the force and effect of law and are binding on the utilities and their customers.⁹⁸

⁹² Rule 8, Supplement 35 to Electric Pa. P.U.C. No. 52, Second Revised Page 37.

⁹³ *Id.*

⁹⁴ 66 Pa.C.S. § 1406; 52 Pa. Code § 56.81; Rule 8, Supplement 35 to Electric Pa. P.U.C. No. 52, Second Revised Page 37.

⁹⁵ Pa.R.E. 701.

⁹⁶ *See Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004).

⁹⁷ Rule 9, Electric Pa. P.U.C. No. 52, Original Page 40.

⁹⁸ *See PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386, 402 (Pa. Cmwlth. 2006) (citing 66 Pa.C.S. § 1303 and *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995)).

20. Under both the Public Utility Code and the Commission's regulations, Met-Ed is expressly permitted to terminate a customer's service if it is denied reasonable access to a customer's property and prevented from replacing its meter.⁹⁹

21. Because the Complainant denied Met-Ed reasonable access to the property for the purpose of replacing the Company's meter, Met-Ed was legally authorized to issue the termination notices to the Complainant.

22. The Complainant failed to sustain her burden of proof that the issuance of the termination notices violated the Public Utility Code, a Commission order, or a Commission regulation.

⁹⁹ See 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3).

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. The formal complaint of Kim Martin 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

KIM MARTIN

v.

METROPOLITAN EDISON COMPANY

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:
:
:
:

DOCKET NO. C-2017-2631482

CERTIFICATE OF SERVICE

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

Service by electronic mail as follows:

Kim Martin
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Administrative Law Judge Jeffrey A. Watson
jeffwatson@pa.gov

Dated: June 1, 2020



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