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July 30, 2020

**VIA ELECTRONIC FILING**

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

**Re: Ethan Habrial v. Metropolitan Edison Company**  
**Docket No. C-2018-3005907**

Dear Secretary Chiavetta:

Enclosed please find the Reply of Metropolitan Edison Company to the Exceptions of Ethan Habrial. This document has been served on the Complainant as shown in the Certificate of Service.

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

Very truly yours,



Tori L. Giesler

c: Per Certificate of Service  
Office of Special Assistants (via email at [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ethan Habrial	:	
	:	
v.	:	Docket No. C-2018-3005907
	:	
Metropolitan Edison Company	:	

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**REPLY OF METROPOLITAN EDISON COMPANY TO THE  
EXCEPTIONS OF ETHAN HABRIAL**

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Date: July 30, 2020

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## **I. INTRODUCTION**

Metropolitan Edison Company (“Met-Ed” or the “Company”), pursuant to 52 Pa. Code § 5.535, hereby respectfully submits these Replies to the Exceptions of Ethan Habrial (“Complainant”). On June 30, 2020, Deputy Chief Administrative Law Judge Joel H. Cheskis (the “ALJ”) issued an Initial Decision (“I.D.”), which dismissed the Complainant’s Formal Complaint challenging the Company’s planned installation of a smart meter at the Complainant’s service location. The ALJ correctly held that the Complainant failed to demonstrate by a preponderance of evidence that Met-Ed provided unsafe or unreasonable service under 66 Pa.C.S. § 1501, or otherwise violated the Public Utility Code, a Commission order or regulation, or the Company’s Commission-approved tariff. I.D., pp. 8, 10. Specifically, the ALJ correctly found that the Complainant failed to demonstrate that: (1) the installation of a smart meter has or will cause an existing alleged medical condition (tinnitus) to worsen (I.D., p. 9); (2) the installation of a smart meter caused birds to not come to his backyard (I.D., p. 8); (3) the smart meter will be able to control his appliances (I.D., p. 8); and (4) Met-Ed’s smart meters posed fire safety, security and privacy concerns (I.D., pp. 9-10). As such, the ALJ properly concluded that the Complainant failed to provide the substantial evidence required to meet his burden and dismissed the Complaint.

On July 13, 2020, the Complainant filed his Exceptions to the I.D. Per the Secretarial Letter serving the I.D. on April 13, 2020, Complainant’s Exceptions were due on Tuesday, July 20, 2020, and any Replies to Exceptions would be due ten (10) days after the due date for Exceptions.

As explained herein, the Exceptions are without merit and should be denied. Accordingly, the Company respectfully requests that the Commission deny the Exceptions and adopt the I.D. without modification.<sup>1</sup>

## **II. REPLIES TO EXCEPTIONS**

### **A. THE ALJ CORRECTLY DISMISSED THE COMPLAINT DUE TO THE COMPLAINANT'S FAILURE CARRY HIS BURDEN OF PROOF.**

As an initial matter, none of the arguments advanced in the Complainant's Exceptions demonstrate that the ALJ erred in concluding he failed to carry his burden. Importantly, the ALJ correctly found that the Complainant's health claims were unsupported and the Complainant did not provide medical testimony or exhibits demonstrating his claims. *See* I.D., pp. 8-9. The ALJ correctly concluded that the Complainant's attempts to corroborate his non-specific and non-expert opinion were unavailing because the Complainant did not call the authors of any of the various exhibits as witnesses who could be cross examined by Met-Ed. I.D., p. 9. Moreover, the ALJ correctly determined that the Complainant failed to satisfy his burden with regarding to his alleged concerns regarding the environment, fire safety, security and privacy of smart meters. I.D., p. 10. Importantly, even though these concerns were "essentially comprised of his own perceptions and hearsay," Met-Ed witness Mr. Ahr credibly testified and rebutted these claims. Therefore, the Complainant's Exceptions should be denied and the Commission should adopt the Initial Decision without modification.

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<sup>1</sup> The Complainant failed to number his Exceptions as required by the Commission's regulations. *See* 52 Pa. Code § 5.533(b) (stating "[e]ach exception must be numbered"). However, Met-Ed notes that the principal issues raised in the Complainant's exceptions are his assertions that: (1) the I.D. erred with respect to several Findings of Fact; (2) the I.D. erred in rejecting and/or attributing little weight to Complainant's evidence; (3) the I.D. erred in concluding that the installation of a smart meter on the Complainant's residence has not exacerbated his tinnitus; (4) the I.D. erred in concluding that the installation of a smart meter on the Complainant's residence has not caused birds/bees to no longer come to his backyard; and (5) the I.D. erred in reaching several of its conclusions of law. Mr. Habrial argues that Met-Ed has provided unreasonable service and that he should be exempted from the installation of a smart meter. *See* Exceptions, pp. 1, 4. Met-Ed addresses each of these arguments below.

**B. THE COMPLAINANT IS NOT ENTITLED TO AN OPT-OUT FROM THE INSTALLATION OF A SMART METER ON HIS RESIDENCE. EXCEPTIONS, P. 1.**

Complainant asserts that he “should be exempt from a smart meter.” Exceptions, p. 1. However, Met-Ed has an absolute obligation to install smart meters at all of its customers’ service locations under Act 129 of 2008 (“Act 129”). 66 Pa.C.S. § 2806.1. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation. *Id.*; see *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009). Further, both Act 129 and the Commission’s Implementation Order require that electric distribution companies (“EDCs”) install wireless smart meters with specific functionality. Finally, Commission precedent is uniform that the Commission cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to “opt-out.” Therefore, Complainant’s Exception should be denied.

**C. THE ALJ’S FINDINGS OF FACT ARE BASED ON SUBSTANTIAL EVIDENCE AND THE ALJ PROPERLY USED HIS DISCRETION TO WEIGH THE EVIDENCE IN REACHING THESE FINDINGS OF FACT. EXCEPTIONS, PP. 1-2.**

The Complainant identifies several alleged errors in the I.D.’s Findings of Fact. Exceptions, pp. 1-2. However, the Complainant fails to demonstrate that any of the identified Findings of Fact is not based on substantial evidence or is not borne out by the weight of the evidence.

- The Complainant presents no evidence that impeaches or otherwise undermines the credibility of Met-Ed witness Mr. Ahr. Mr. Ahr’s testimony is credible based on his over 35 years of experience working in the field and at FirstEnergy Service Corporation. Tr. 39.
- The Complainant attempts to rely on extra-record evidence to assert that Met-Ed can see individual smart appliances through the smart meter. Exceptions, p. 1 (¶ 2). However, Mr. Ahr credibly testified that the smart meter does not have this capability

without the customer purchasing and requesting that such a device be paired with their smart meter. Tr. 49-50.

- The Complainant scoffs at the Company's privacy policy and Findings of Fact 8 and 9. Exceptions, p. 1 (¶ 3). However, he presented and cites to no record evidence that demonstrates the privacy policy was violated or otherwise not adhered to by Met-Ed. Moreover, the Commission-approved privacy policy was admitted into the record and, therefore, constitutes substantial evidence supporting Findings of Fact 8 and 9.
- The Complainant takes issue with the Finding that Met-Ed's smart meters comply with American National Standards tests for smart meters. Exceptions, pp. 1-2 (¶ 4). However, Complainant did not present and does not cite evidence showing Met-Ed's smart meters do not comply with these standards and does not present or cite evidence showing that the American National Standards violation the Public Utility Code, or the Commission's regulations or orders.
- The Complainant repeats his claim that smart meters are capable of communication with smart appliances. Exceptions, p. 2 (¶ 5). Met-Ed witness Mr. Ahr credibly testified that without a customer purchasing an additional device and having it paired to the smart meter, the smart meter is not capable of controlling a customer's appliances. Tr. 49-50. Moreover, Mr. Ahr presented and cites to no evidence in support of his claim that Met-Ed can "override a customer's decision" regarding use or control of appliances, once the additional device is installed.
- Mr. Habrial further asserts that "Anything can be hacked!!!" Exceptions, p. 2 (¶ 6). Although this speculation is unsupported by record evidence, Mr. Ahr credibly testified that Met-Ed's smart meters are a "very secure environment." Tr. 49. Mr. Ahr explained that the smart meter has security protocols such as firewalls, passwords and continuous security monitory to protect the network. Tr. 49.
- The Complainant lastly asserts that Mr. Ahr's lack of knowledge regarding bill increases after the installation of a smart meter renders him biased. Exceptions, p. 2 (¶ 7). The Complainant's attempt to inquire on this issue on cross examination was objected to, and sustained, because it was based on speculative experiences not relative to the Complaint. Tr. 50. Furthermore, Mr. Ahr credibly testified he was not aware of such circumstances, and the Complainant presented no record evidence to the contrary. Tr. 51.

Each of the I.D.'s Findings of Fact contains a citation to substantial record evidence that supports it. The Complainant's Exceptions, however, do not cite to contrary record evidence or otherwise demonstrate that these Findings are unsupported. Therefore, his exceptions must be denied.

**D. THE ALJ CORRECTLY REJECTED OR ATTRIBUTED LITTLE OR NO WEIGHT TO COMPLAINANT’S EVIDENCE. EXCEPTIONS, PP. 2-3.**

The Complainant further appears to except to the I.D.’s conclusion that “The evidence presented by Mr. Habrial in support of his complaint is outweighed by the evidence presented in response by Met-Ed.” I.D., p. 8; Exceptions, p. 2 (“I have provided plenty of solid evidence...”). Mr. Habrial then makes reference to three categories of evidence: (1) research conducted by the federal and/or county government; (2) “real supporting evidence that people documented first hand”; and (3) his own first hand evidence and experience. Exceptions, p. 2.

With regard to the first two categories of evidence, a lay witness<sup>2</sup> is limited to giving opinion testimony that is rationally based on the witness's own perceptions under Pennsylvania Rule of Evidence 701. Pa.R.E. 701. Lay witness testimony only carries evidentiary weight where the witness has actually perceived the situation, and the opinion is not based on scientific, technical or specialized knowledge. *Id.* In this case, the bulk of the Complainant’s testimony and exhibits related to issues outside the scope of his personal knowledge and were based on hearsay. All such testimony, where objected to, were properly excluded upon objection or afforded little/no weight by the ALJ. Therefore, the Complainant’s Exceptions regarding hearsay evidence in the form of government research, or the experiences of others that may/may not have been communicated to him, should be denied.

With regard to the Complainant’s own first hand evidence, the ALJ properly concluded that the Complainant’s evidence was outweighed by the Company’s. The Complainant is not a doctor or scientist, and called no doctor or scientist to testify regarding his alleged health conditions or the effects of the smart meter. *See* I.D., pp. 8-9. Rather, as noted by the I.D., Mr. Habrial primarily relied on hearsay “articles and reports” and adduced “general concerns”

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<sup>2</sup> Met-Ed notes that the Complainant was at no time certified as an expert witness and, therefore, his testimony is limited to that of a lay witness.

regarding smart meters, but failed to prove the Met-Ed's smart meter would specifically result in unreasonable service to himself. I.D., pp. 9-10.

For these reasons, the Complainant's Exceptions must be denied.

**E. THE ALJ CORRECTLY CONCLUDED THAT THE COMPLAINT FAILED TO DEMONSTRATE THAT THE INSTALLATION OF A SMART METER ON HIS RESIDENCE WOULD EXACERBATE HIS ALLEGED MEDICAL CONDITION. EXCEPTIONS, PP. 2-3.**

The Complainant further asserts that the I.D. erred in concluding he failed to demonstrate Met-Ed's smart meter would exacerbate his alleged medical condition. Exceptions, pp. 2-3. Importantly, Mr. Habrial is not a medical doctor and did not call a doctor to testify regarding his alleged medical condition. Moreover, the I.D. correctly recognized that the Complainant could have, but did not, provide "exhibits that demonstrate how smart meters specifically affect him." I.D., p. 9. Complainant was directed to testify or present evidence specifically regarding himself at hearing, and simply failed to do so. *See, e.g.*, Tr. 15, 18, 21. Despite these directives, Complainant repeatedly testified regarding his general beliefs and concerns, and did not testify regarding how smart meters specifically affected him. As such, the Complainant failed to present credible evidence demonstrating Met-Ed's smart meters cause or exacerbate his alleged medical condition.

**F. THE ALJ CORRECTLY CONCLUDED THAT THE COMPLAINANT FAILED TO DEMONSTRATE THAT THE INSTALLATION OF A SMART METER ON HIS RESIDENCE CAUSE BIRDS/BEES TO NO LONGER COME TO HIS BACKYARD. EXCEPTIONS, P. 3.**

The Complainant further asserts that the I.D. erred in concluding he did not carry his burden of proof to demonstrate that birds and/or bees no longer come to his backyard. Exceptions, p. 3. However, the Complainant cites no record evidence in support of this claim. Moreover, Met-Ed submits that this allegation is irrelevant to the question of whether "the Complainant was adversely affected by the smart meter or whether [the utility's] use of a smart

meter will constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances in this case.” *Romeo v. Pa. Pub. Util. Comm’n*, 154 A.3d 422, 429 (Pa. Cmwlth. 2017). For these reasons, the Complainant’s Exception should be denied.

**G. THE ALJ’S CONCLUSIONS OF LAW ARE CORRECT AND NOT IN ERROR. EXCEPTIONS, PP. 4-5.**

The Complainant next argues that the ALJ’s Conclusions of Law are in error. Exceptions, pp. 4-5. In essence, Complainant’s Exception regarding the Conclusions of Law simply restate prior Exceptions or raise the same arguments as in prior Exceptions. Met-Ed hereby incorporates its prior Replies and submit that, for the reasons more fully explained above, Mr. Habrial’s Exceptions should be denied.

**III. CONCLUSION**

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in the Initial Decision of Deputy Chief Administrative Law Judge Joel H. Cheskis, the Company respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions filed by Ethan Habrial and adopt the Initial Decision without modification.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**


I hereby certify that I have this day served a true copy of the Reply of Metropolitan Edison Company to the Exceptions of Ethan Habrial 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:

Ethan Habrial  
greentree@govinvineyards.com

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

Dated: July 30, 2020

  
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