

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**CINDY KELLY v.**

**METROPOLITAN EDISON COMPANY**

**Docket No. C-2018-3004681**

**Reply Brief of Cindy Kelly, Complainant (Pro se) V. Metropolitan Edison  
Company – Due August 3, 2020**

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## 2 INTRODUCTION

On 08/31/2018, after Met-Ed failed 3 times to meet their commitments to provide safety information prior to an install of their smart meter, the Complainant filed a complaint. She filed against Met-Ed with PUC for accommodation for her health regarding a smart meter installation. She requested either exemption from installation or proof that they will not cause her harm.

Cindy Kelly seeks relief as a pro se complainant in this proceeding so that she can continue to follow her doctor's prescribed treatment to avoid EMFs, a treatment that Met-Ed wants to render impossible by installing a smart meter at her residence. EMF can be defined as Electric and magnetic fields (EMFs) that are invisible areas of energy, often referred to as radiation, that are associated with the use of electrical power and various forms of natural and man-made lighting.

The Respondent's case does not stand up to scrutiny. They maintain that the Complainant failed to establish by a preponderance of the evidence that MetEd violated a Commission statute, regulation, or order. Specifically, that she has not met her burden of proof to establish that the installation of a smart meter constitutes unreasonable service by the Company. They also maintain that almost none of the testimony offered by the Complainant was based on her own experience or personal knowledge related to smart meters.

The Complainant submitted and attempted to admit over 100 pieces of evidence. Almost every one was denied on a technicality and had nothing to do with the viability of the claims. Most were deemed hearsay due to not having the authors of the peer reviewed studies in the all day hearing and available for cross examination. These actions are grossly unfair to all of the citizens of Pennsylvania and biased in favor of the power of the utilities like Met-Ed to do as they please, causing harm to selective citizens of the state.

The claim that she needs to have her own experience or personal knowledge related to smart meters themselves, is an insufficient defense. The electronic emissions from a smart meter are no different than those of similar wirelessly connected devices already on the market and heavily studied. Met-Ed has offered zero evidence that smart meters do not cause harm to human health. Met-Ed has taken no action to verify each device is safe either before installing it or after it has been installed. No funding was allocated to monitor health or environmental impacts that may have surfaced, throughout the long installation project or after completion of the deployment.

The Complainant's particular need for accommodation is consistent with the smart meter legislation. Act 129 is clear that utilities are not prohibited from providing accommodations to individual consumers. To remain a certificated public utility as part of its mandate under 66 Pa.C.S. § 1501, utilities are required to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" and make "necessary" "repairs, changes, alterations, substitutions, extensions and improvements," "necessary or proper for the accommodation, convenience, and safety of its patrons." 66 Pa.C.S. § 1501. The Commission frequently looks to the practices of public utility commissions in other jurisdictions, and it should be no different with smart meter installation.

Accommodations in the form of opt-outs are standard across the industry, and only Pennsylvania appears adamant on mandating smart meters at every residence, regardless of individual consumer medical needs. The General Assembly, however, considered and rejected language providing for a "one hundred percent" installation requirement. The Freeman Amendment was incorporated into the bill on February 11, 2008, and House Bill 2200 (Printer's Number 3233) was passed by the House on February 12, 2008. The Freeman Amendment was later rejected by the Senate and was not in the Senate version of House Bill 2200 (Printer's Number 4526) which was passed by the Senate on October 8, 2008. Moreover, the alleged smart meter roll out mandate is irreconcilable with other provisions of Act 129 that permit a consumer to opt out of the incentivizing capabilities of the smart meter, a contradiction that makes no rational sense after forced installation.

The Complainant has shown that Met-Ed's smart meter installation at her residence, given her condition, constitutes unsafe and unreasonable service making it impossible for her to follow her doctor's treatment. She is entitled to an accommodation as part of Met-Ed's electric service, which can easily be accomplished legally and practically by installing an analog meter, as an "alteration" or "substitution" at her residence.

## 3 RECENT HISTORY OF THE PROCEEDING

On 11/07/2019 an evidentiary hearing was held.

On 12/20/2019 a representative from Met-Ed came to the Complainant's door and when no one answered, he promptly replaced the meter on the home with a smart meter. This act caused significant mental and physical distress over the holidays when there was no ability to turn off the frequencies emitting from the device 24 hours a day, 7 days a week. It also caused several lights in the home to flicker wildly and others to burn out.

On 12/20/2019 An Interim Order was issued to set the briefing schedule.

On 01/15/2020 a representative from Met-Ed came to the door and said he was there to replace the smart meter with a digital meter. He said that the smart meter had been installed in error and that they have been getting significant amount of negative feedback on the

devices.

On 01/30/2020 Briefs were filed according to schedule.

On 3/11/2020 a Global Pandemic was declared and Pennsylvania became one of the top six states within the US in terms of cases and deaths from COVID-19. As of 3/16/2020, most businesses and schools in the state were shut down. Stay at home orders for everyone in the state soon followed. Lehigh County where the complainant lives is one of the top six counties in the state in terms of cases.

On 04/29/2020 an order granting request for reply briefs was issued, with a due date of 05/28/2020.

On 5/22/2020 complainant filed a motion for an extension until September 1, 2020, due to the unprecedented impact from the pandemic on her daily life and the ability to compile a proper reply brief.

On 5/28/20 An Interim order granting request for a short extension of reply briefs was granted. Time extended until August 3, 2020 (4 weeks shorter than requested).

## 4 PROPOSED FINDING OF FACT

Many of the findings of fact proposed by the Met-Ed are slanted and cherry-picked to avoid the true facts. See below for detailed response to each of these. The numbers in Met-Ed's Main Brief, are prefixed with a 'MPFF' to identify a response to a numbered item in Met-Ed's Main Brief section of Proposed Findings of Fact.:

1. **Regarding MPFF 6** – Met-Ed claims that their Smart Meter Deployment Plan explicitly states that there is “no opt-out for customers.”, which is merely an assumption they have made. It is an irrelevant statement in this matter and is merely pointing out what is missing from the law, which contains no mandate. The law itself does not say, that there is no ability to opt-out of a smart meter. ACT 129 never once indicates that the smart meters are mandatory for every customer. In fact, just the opposite. ACT 129 states that they will be installed at the customers request. The law plainly spells out the 3 rules for furnishing smart meters:

(2) Electric distribution companies shall furnish smart meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

Neither Met-Ed or their approved Smart Meter Deployment Plan have the ability to establish or change the law regarding smart meters. The Implementation Order succinctly reiterates the terms for what the Met-Ed Deployment Plan is to contain with regard to meters. “Each EDC smart meter plan must describe the smart meter technologies the EDC proposes to install, upon request from a customer at the customer’s expense, in new construction and in accordance with a depreciation schedule not to exceed 15 years.” (PD2 pg 2 of 35)

While installing at 100% of its customer sites may be financially beneficial to the company, it is not a requirement of Pennsylvania law or regulations. (PD-1 page 28 of 51)

2. **Regarding MPFF 7** - Met-Ed's misrepresents what it's own smart meter deployment plan says with its claim that it is required to deploy to 100% of its customers. The fact is that the plan makes assumptions that they are now representing as law. Just because it is their number one assumption, does not make it a legal requirement and something that should be imposed on all customers. (JCA-1 Pg 9 of 80) If their stated number one assumption was truly a requirement of the law and a certainty, it would not be classified as an assumption within the plan. Assumptions are added to a plan to deal with uncertainty. Typically key assumptions are added to a plan to test the assumptions, accommodate unexpected outcomes and address uncertainty. Clearly Met-Ed knew that Act 129 did not call for 100% deployment of smart meters and that an opt-out was not necessary.

3. **Regarding MPFF 7** – Met-Ed casually conflates a percentage of customers with a percentage smart meters to be installed. This is like saying apples and oranges are the same, because they are both fruit. The deployment plan talks about a pool of new meters being installed as 100%, not customers. They could still install 100% of the smart meters planned, without 100% of customer sites having a smart meter. The plan also uses the word approximately with regard to the percentage of meters that they expect to be installed. There are no hard numbers and to imply they must be installed on 100% of customer service locations, is mischaracterizing the evidence provided. (JCA-1 Pg 40 of 80, 47 of 80, 53 of 80)

When Expert Witness John Ahr was asked if this statement referenced customers or if it only referenced meters that are installed at that point? John confirmed he did not see any reference to customers. (TR 381:7-382:10) (Exhibit JCA-1)

4. **Regarding MPFF 8** – It is a completely false statement to assert that a smart meter has not been installed at the complainant's service location. A representative from Met-Ed installed one on December 20<sup>th</sup> 2019 while they were not home. Met-Ed was well aware of this when compiling their brief.
5. **Regarding MPFF 12** – It is common knowledge that smart meter computers like the one installed by Met-Ed can detect a

great deal more than just total usage in the home. To say that smart meters can only extract usage information and not what is causing the usage is false. The Met-Ed Implementation Order discusses third party access to this type of information and potential customer benefits of using it. (PD2 26 of 35)

When cross-examined about the capability. John Ahr (subject matter expert for smart meters at Metropolitan Edison) testified he was not aware if the smart meters were capable of identifying the electric signatures of appliances through the data that is collected by the company. (TR 374:4-7). He contradicted **MPFF 12** that concludes it is not possible – (Tr. 350:8-13) (Ahr Direct Testimony).

## 5 ARGUMENT

### A. Is there a Smart Meter Mandate for Met-Ed to force smart meters on all customers in PA?

Met-Ed claims in their brief that the installation of Smart Meters is required by law. Which as stated is somewhat true, they need to make them available in all their service areas so willing customers can take advantage of any cost saving benefits to them.

What is untrue and unproven in Met-Ed's main brief, is that "Under Act 129, Met-Ed has an absolute obligation to install smart meters at all of its customers' service locations.". The Respondent has failed to meet their burden of proof to demonstrate that there is a mandate of Act 129 or any obligation to install smart meters for customers that do not request them. (Met-Ed main brief -Argument 1 pg 7).

#### 1. Met-Ed's Summary Argument (III)

In the Summary Argument Met-Ed (Met-Ed Brief – pg 5):

- a. Claimed "Met-Ed has an absolute obligation to install smart meters at all of its customers' service locations under Act 129 of 2008 ("Act 129")."
- b. Claimed "Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to "opt-out" from smart meter installation."
- c. Claimed "both Act 129 and the Commission's Implementation Order require that electric distribution companies ("EDCs") install wireless smart meters with specific functionality."
- d. Claimed "Met-Ed must install a smart meter at the Complainant's Service Location in order to remain in compliance with Act 129, related Commission orders, and its Smart Meter Deployment Plan."

Act 129 or Public Utilities Title 66 is the highest standard and the law of Pennsylvania. There is no mandate or 'absolute obligation' anywhere in Act 129, with regard to installing smart meters at all of its customers' service locations and plainly requires the customer to opt-in or request a meter, not opt-out.

#### 2. Met-Ed's Argument (IV) (Met-Ed Main Brief - Argument 1 page 7).

Met-Ed:

- a. stated that the law does not indicate that there is an "opt-out".
- b. stated Act 129 requires them to file a smart meter technology and procurement plan.
- c. stated Act 129 requires them to *furnish* (or provide) smart meter technology
  - 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.
- d. stated they filed for approval that the Commission find that their proposed deployment plan satisfied requirements for Act 129 and the Commission's Implementation order.

All of these statements are true, however not one of them supports a claim that there is a mandate to install smart meters at all customer locations or that there is no ability for a customer to opt out.

1. The Complainant did not request a smart meter or agree to pay the cost.
2. The Complainant does not have a new building construction.
3. Depreciation is an accounting issue and has nothing to do with mandating smart meters upon customers.

Note that there is a clear distinction between the concept of 'furnishing smart meter technology' and a deployment plan created by the utility company to roll out that technology. One concerns the "what" or directive and the other the "how" or implementation of the directive by Act 129. They are not one and the same.

#### 3. Met-Ed made the assumption concerning 100% customer deployment and no opt-out

Met-Ed's Deployment plan makes assumptions that they are mis-representing as law. Just because it is their number one assumption, does not make it a requirement and something that should be mandated for all customers. (JCA-1 Pg 9

of 80) If their number one assumption was truly a requirement of the law and a certainty, it would not be classified as an assumption within the plan. Assumptions are added to a plan to deal with uncertainty. Typically, key assumptions are added to a plan to test assumptions, accommodate unexpected outcomes and address uncertainty. Clearly Met-Ed knew that Act 129 did NOT call for 100% deployment of smart meters and that an opt-out was not necessary. It is precisely why they added it to the plan as an assumption.

4. Does Met-Ed approved plan override Act 129?

Met-Ed claims that their approved plan carries equally binding with Act 129 in the governance of smart meter installations. The Implementation Order and their approved plan, however, does not have legal authority according to the ALJ and is merely a guideline and not a regulation.

(PD3 page 14 of 61) Opinion and Order - ALJ's Recommendation in the public meeting on April 15, 2010, "The ALJ approved the deployment timeframe set forth in the Companies' Plan. The ALJ found that the Implementation Order is not a regulation and does not have the full force and effect of law. Instead, it acts as a policy to provide guidelines to EDCs regarding the Commission's expectations about smart meter plans. The ALJ found the Companies' proposed time frame for deployment reasonable."

5. PUC and General Assembly acknowledge customers must request smart meters:

The Implementation order from June 2009 was clear about the Customer Request and what it meant (PD-2 pg 9 of 35 #2 Customer Request). It stated:

- a. "Once this grace period expires, each covered EDC must supply a smart meter upon request by a customer, per Act 129."
- b. "The Commission recognizes that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment. The General Assembly recognized this as well when it included the proviso that the customer requesting the smart meter must agree to pay for the cost of the smart meter."

Both the PUC and General Assembly have plainly acknowledged that customers must request a smart meter and that piecemeal requests prior to the system being fully available would be more costly, than afterward. Provisions were made to adjust the costs for the customer accordingly.

6. Implementation order provided standards and guidance on expectations.

The Implementation order states the intended purpose (PD2 pg 1 of 35) which is to establish standards for the plan and guidance on submittal, review and approval procedures and deployment expectations. It does not claim to alter or improve on Act 129 in any way.

- a. "The Pennsylvania General Assembly ("General Assembly") has directed that electric distribution companies with more than 100,000 customers file smart meter technology procurement and installation plans with the Commission for approval. 66 Pa.C.S. § 2807(f).
- b. This Implementation Order will establish the standards each plan must meet and provide guidance on the procedures to be followed for submittal, review and approval of all aspects of each smart meter plan.
- c. This Implementation Order will also establish minimum smart meter capability and guidance on the Commission's expectations for deployment of smart meters."

7. Depreciation is an accounting term relating to the reduction in value of an asset, over time.

The word 'depreciation' is used in Act 129 § 2807(f)(2)(iii) and in Title 66 the Public Utility Code. (PD-1 page 28 of 51). This is one of only three points made about how "Electric distribution companies shall furnish smart meter technology"

- a. The complainant submitted an exhibit to gain clarity on the definition of the term used in Act 129 regarding depreciation of smart meters. (TR 172:1-177:6) The simple attempt to define the word "depreciation" was highly argued, objected to and not admitted as evidence.
- b. John Ahr stated the purpose of his testimony was to explain the regulatory requirements for the smart meter plans in Pennsylvania. (TR 332:25)

When asked what portion of ACT 129 specifically mandates that 100% of customers be given a smart meter. John Ahr testified under cross examination, that paragraph iii states "(iii) "in accordance with the depreciation schedule not to exceed 15 years."

He also stated that the depreciation covered all smart meter technology equipment and not just the meters. He then agreed that paragraph does not specifically say that 100 percent of the customers will get them, it just says the smart meter technology that you're deploying must be depreciated on a schedule not to exceed 15 years.

Several times he stated that this is the wording that indicates there is a mandate for all customers to have smart meters in ACT 129.” (Kelly Main Brief Pg 6 – Fact 48) (TR 377:3-379:17)

- c. When John Ahr was asked if depreciation had to do with writing off equipment, he said he believed it did. (Kelly Main Brief Pg 6 – Fact 50) (TR 381:3-6)
- d. Act 129 § 2807(f)(2)(iii) does not refer to replacing AMR meters or analog meters. Rather it plainly spells out that AMI (Smart Meters) are to have a service period not to exceed 15 years and Met-Ed’s Smart Meter Deployment Plan confirms this.
- e. In the June 2009 PUC Implementation order, it is clear the PUC understood the meaning of depreciation, as it relates to useful life and the ability to recover cost over that life. They show their expectation that this is an accounting term that relates to exhaustion, wear and tear over an asset’s useful life. The PUC would know that depreciation has nothing to do with “mandatory deployment”, as Met-Ed would like to claim. The PUC states:  
“As with all equipment, meters have a useful life. EDCs determine how much to invest in meter equipment based on its useful life and have an opportunity to depreciate that investment over the useful life of the meter. In addition, EDCs have an opportunity to recover the cost of the meter from ratepayers. Therefore, if a meter is replaced prior to the end of its useful life, the EDC will not be able to take advantage of the full depreciation of that meter or the ratepayers will pay an increased rate to cover the cost of both meters.” (PD-2 Pg 12 of 35)
- f. Cost Recovery of deployment and installation is discussed in the Implementation Order. The Order states:  
“These costs will include both capital and expense items relating to all plan elements, equipment and facilities, as well as an analysis of all related administrative costs. More specifically, these costs would include, but not be limited to, capital expenditures for any equipment and facilities that may be required to implement the smart meter plan, as well as depreciation, operating and maintenance expenses, a return component based on the EDC’s weighted cost of capital, and taxes.” (PD-2 pg 29 of 35)

Once again depreciation is used as an accounting term and is not in any way suggesting deployment is mandatory or optional for any given customer.

The PUC’s discussion above of recovery costs comes from Section 2807(f)(7) of Act 129 2008, which states depreciation is an expense for the exhaustion, wear and tear and obsolescence of a smart meter.

- g. Met-Ed also understands the proper definition of depreciation as a tax and accounting term, as shown in their Deployment plan section titled “Book and Tax Depreciation”. (JCA-1 pg 55 of 80).  
“Each of the cost categories were assessed to determine if they were capital or O&M related costs. For Capex, the estimated book lives used for depreciation purposes were 15 year for smart meters and communications equipment, 5 years for hardware and 7 years for software. Book lives were determined based on input from external resources and internal subject matter experts while tax lives were based on IRS guidelines.”

The depreciation schedule for smart meters maps to requirements in Section 2807 (f)(2)(iii) of Act 129 2008. The Act also ties the costs of smart meters to a useful life not to exceed 15 years and internal experts at Met-Ed have agreed with their external resources on the matter.

- h. Met-Ed’s Deployment plan also has a discussion on depreciation under the paragraph concerning the cost accounting for Legacy Meters. (JCA-1 79-80)  
“For meters that are removed or become obsolete due to the installation of smart meters (“Legacy Meters”), the Companies propose to retire the meters out of stock, continue their existing depreciation schedule unaltered over their remaining lives as a regulatory asset, and continue cost recovery through base rates.  
The rate base equivalent of the regulatory asset for Legacy Meters plus the Cost of removal net of Salvage will continue to be included in the respective Company’s rate base. This protocol would have no current impact on customer rates. For accounting purposes, the Companies are asking the Commission to approve an accounting treatment that would allow them to create a “regulatory asset” for the Legacy Meters with a recovery schedule equal to the remaining depreciable lives of the assets per the Companies’ depreciation records.”

Met-Ed demonstrates that they completely understand depreciation is an accounting term tied to the cost of an asset and allocation of that cost over the useful life of the asset and nothing more.

- 8. Mandates for smart meters were clearly rejected by legislature, prior to passing Act 129.  
The words used and the legislative history of Act 129 disprove any interpretation that the General Assembly mandated that utility companies deploy the smart meters to one hundred percent of the company's customers. (Kelly Main Brief Pg11 #7) In fact that language was rejected, before passing the bill.

The bill was reported from committee, and on second consideration Representative Robert Freeman offered Amendment No. A5807 which among other things provided the following:

Section 2807. Duties of electric distribution companies. E 6 ii states “(ii) Electric distribution companies shall furnish smart meter technology to:

(A) Customers responsible for 40% of the distribution company's annual peak demand within four years after the effective date of this paragraph.

(B) Customers responsible for 75% of the distribution company's annual peak demand within six years after the effective date of this paragraph.

(C) One hundred percent of its customers within ten years after the effective date of this paragraph. Electric distribution companies shall, with customer consent, make available electronic access to customer meter data to third parties, including electric generation suppliers and providers of conservation and load management services.”

The Freeman Amendment was incorporated into the bill on February 11, 2008, and House Bill 2200 (Printer's Number 3233) was passed by the House on February 12, 2008. The Freeman Amendment was later rejected by the Senate and was not in the Senate version of House Bill 2200 (Printer's Number 4526) which was passed by the Senate on October 8, 2008.

9. No mandate in PA Code Chapter 57 Subchapter O.

It is clear from Pennsylvania Code that the move to automated metering was based upon customer choice, was not mandatory, and required a written request from the customer. (TR 188:16-189:21; PA Code Chapter 57 Subchapter O)

PA Code Chapter 57 Subchapter O:

57.251. (a).: “This subchapter does not require the public to participate in an advanced metering program.”

57.253 (b)(1): “Customers using a qualified advanced meter or meter-related device may be assessed a bill surcharge by the EDC to cover any net incremental cost associated with the choice to use an advanced meter.”

57.255. (a): “Upon written request from both a customer and the EGS of that customer, the EDC shall make available and install for use a qualified advanced meter or meter related device.”

10. Met-Ed plan confirms customer request required

The approved plan from Met-Ed plainly states that Act 129 requires a customer request for a smart meter:

“These plans were to be filed by August 14, 2009. Each plan was to describe the smart meter technologies the EDC proposes to install, upon request from a customer at the customer’s expense, in new construction, and in accordance with a depreciation schedule not to exceed 15 years.” (PD-3 pg 6 of 61)

In describing current status of the deployment Met-Ed describes the plan for collecting payment of customer requests, prior to build out:

“Following the expiration of the Grace Period and during network system build-out, the Companies will provide smart meters based on customer requests and for all new construction. To obtain a smart meter during this period, the customer must agree to pay the incremental costs of installing the meter. At a later date, the Companies will submit an estimate of these costs for Commission review. (PD-3 pg 9 of 61)

11. Met-Ed’s burden of proof.

In the PA PUC’s Public Meeting held April 15, 2010 (PD3 page 13 of 61) (the joint petition of Met-Ed and other EDCs), the discussion on page 9 states the following:

“In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600 (Pa. Comwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. PUC, 489 Pa. 109, 413 A.2d 1037 (1980).”

Met-Ed has falsely claimed an absolute obligation to force a meter on the complainant’s service location to remain in compliance with Act 129.

Met-Ed has wholly failed to meet their burden of proof that ACT 129 is indeed mandatory and requires an opt-out by the customer.

**CONCLUSION**

**Complainant has met the burden of proof that Act 129 does not require her to accept a Smart Meter on her home.**

Put simply, it is irrelevant in this proceeding that Act 129 does not provide for customers to opt-out of a smart meter installation which is clearly optional or opt-in by letter and spirit of the law. The fact that the Respondent's approved plan assumed a mandate, is immaterial. In summary:

- There is no legal obligation on the company to deploy to 100% of their customers for compliance to Act 129.
- Act 129 and Title 66 Public Utilities Code is plain and explicit. It overrides any changes assumed by the company.
- The Implementation Order is not a regulation and does not have the full force and effect of the law.
- Both the Commission and the General Assembly acknowledge a customer request is required to install the smart meter.
- Depreciation is an accounting concept for the maximum service life of an asset and is not related to smart meter deployment matters, as John Ahr, subject matter expert for smart meters at Metropolitan Edison, indicated it did.
- Mandates for smart meters were explicitly rejected by the General Assembly.
- Met-Ed has failed to meet their burden of proof that a mandate exists.
- The Complainant has not requested a smart meter and does not have new construction.

There is no evidence to support Met-Ed's position that Section 2807(f)(2)(iii) mandates deployment of smart meters to all customers not covered in sections 2807(f)(2)(i) and (ii). The Respondent has not supported their claim that Act 129 is mandatory for all customers or proven any legal obligation they have to force them as a condition of service on customers that decline them. There is no reason under the law that the Complainant must accept a smart meter on her home as a condition of receiving electricity.

## B. Is forced installation of a smart meter unreasonable or inadequate Service?

1. The Respondent's claim is based on the statement that even though the Complainant
  - o "raised a few different health, safety, service and privacy concerns related to smart meters, she failed to provide any reliable evidence in support of her allegations" (Met-Ed Main Brief pg 9)
  - o That she "failed to establish a bare minimum of proof to show that deployment of a smart meter to her home is unreasonable or inadequate utility service."

In fact, the Complainant spent 100's of hours to carefully prepare and submit over 190 exhibits to use for her case as suggested in the hearing order and attempted to introduce 83 of them. Only 5 exhibits were admitted during the hearing and 2 afterward. (Kelly Brief pg 3 PFF 7) The moment a document was introduced and denied, she was forbidden from discussing any of the points on that topic as part of her testimony and forced to move on.

Given the breadth and depth of her complaint, she was unable to financially pay witnesses to be at a 2-day hearing and relied on evidence from carefully selected, reliable sources that were based on facts. The majority of her evidence was denied due to a "hearsay" rule, because she did not have the 100's of sources for the documents available in person or on a phone, for cross examination or because the peer reviewed research document was an abstract, or summary. This was not a clear requirement mentioned in the complaint hearing order.

Some evidence was even denied as irrelevant simply because it related to the smart meter being deployed in another state. This included court testimony from a highly experienced property claims examiner, as well as an engineer having significant experience with the technology used in AMI Meters Met-Ed deploys. The Respondent claimed "it's not relevant to what's happening in other states. It's the law in Pennsylvania." (TR 212:16) and "we're talking about the State of Pennsylvania, not what other states are doing." (TR 201:13) "this is before the New Mexico Public Regulatory Commission, so I would object to this being irrelevant since this is in a different jurisdiction dealing with a different company and different requirements and different literature." (TR 284:6) "it's in a different state, different company, so relevance." (TR 289:13)

It is illogical to conclude that Pennsylvania and Met-Ed believes it is so unique in their deployment of smart meters, technology or jurisdiction, that sworn court testimony from out of state regarding safety of same or similar smart meters should be not be admitted in an administrative hearing in Pennsylvania.

As requested in the hearing order, the Complainant organized the evidence into 8 logical groups and numbered every page for easy access. She also included a matrix that contained a list of every document in each group. The groups included:

Exhibit A Health Impacts: 10 documents related to health issues she faces that support the case that EMF from wireless devices like the smart meter, negatively affect her. 5 of these documents were peer reviewed research from Pub-Med. Pub-Med contains citations and abstracts that include the fields of biomedicine and health, covering portions of the life

sciences, behavioral sciences, chemical sciences, and bioengineering. PubMed is a free resource that is developed and maintained by the National Center for Biotechnology Information (NCBI), at the U.S. National Library of Medicine (NLM), located at the National Institutes of Health (NIH). Publishers of journals can submit their citations to NCBI and then provide access to the full-text of articles at journal web sites.

Exhibit B contained documents concerning general health impacts related to the smart meter and wireless devices that emit EMF (Electromagnetic Fields): 75 documents were submitted for inclusion in this proceeding. 47 studies that were peer reviewed and published in Pub-Med from 1980-2019, documented an impact to human body, potential impact or impact to the environment from EMF and radio frequency sources.

Exhibit C contained documents showing the privacy impacts from smart meters: 9 documents were submitted. This group also included a detailed report on smart meters that was commissioned and delivered to the US Congress in 2012.

Exhibit D contained documents related to the safety of the smart meters: 25 documents were submitted, to be used as evidence. It included proof of fires and safety issues in other states as well as Pennsylvania. It also contained information from several lawsuits and expert witness testimony from 2 court cases in other states. Information that should have been admissible in lieu of paying the same expert witness to appear in the Complainant's case.

Exhibit E contained 15 documents about hacking in the US. These documents support the Complainants claim that there was risk of hacking of her smart meter by a bad actor, that posed a danger to both her and her family. These contained information and warnings from areas like the FBI (Federal Bureau of Investigation), Utility CEO's, CIA (Central Intelligence Agency), and DNI (Director of National Intelligence). There was also a report commissioned and created for congress with information pertinent to this case.

Exhibit L contained 42 documents related to law or legislation to be referenced during the hearing. Due to the size it was broken up in to 4 separate groups for ease of use.

- Group 1 contained 15 documents
- Group 2 contained 14 documents
- Group 3 contained 4 documents
- Group 4 contained 9 documents

Exhibit M contained 5 documents related to the medical health of the Complainant.

Exhibit T contained 6 documents that documented the history of the events and interactions in complaint.

Overwhelming reliable evidence exists to prove Complainant's case. However, she has never been in a hearing nor represented herself in one before. Her litigation skills when compared to 3 highly skilled litigators who have been through dozens of smart meter hearings were lacking and prohibited even the most basic evidence from her own doctors on her health issues from being adequately heard and examined. Administrative hearings should be for earnestly hearing the evidence that the Complainant has brought forward and not a forum for legal technicalities that silence clear facts.

Had the Complainant known that most physical evidence would be denied, she could have chosen 3 or 4 witnesses who could have presented solid evidence at the hearing on her behalf.

2. The Complainant testified under oath that significant EMF exposure from wireless devices has negatively affected her quality of life and health. (TR 65:10-75:5) Her doctor has advised her to avoid EMF to regain and maintain her health. As suggested by her doctor, the Complainant stated she has noticed improvement shutting down all wireless devices and avoiding most EMF in her home for 12 hours every day and continues this practice today. (TR 73:6-22)

Smart meters emit radio frequencies technically equivalent to those from other wireless devices she has been exposed to over the last 15 years. Through her complaint she asked Met-Ed for an accommodation to exempt her from a smart meter, so that she can continue live a normal life. (TR 129:19). Met-Ed has stated that the meter they install is unable to turn off wireless frequencies during certain hours of the day. (TR 129:6-12) Turning it off would be required for her to maintain her protocol for healing.

While the Respondent appears to claim the smart meter uses new technology and is unique, they clearly understand that EMF from one device is equivalent to EMF from another device. The only difference is the duration, frequency and strength of the exposure. They requested extensive details on cell phone, computer, wi-fi and home phone types and usage of the Complainant, during discovery. If the emissions from a smart meter were in some way unique, there would be absolutely no reason for this request. Their claim that the Complainant has no direct personal experience with a smart meter is a misdirected fallacy and irrelevant.

3. Met-Ed failed to meet their Burden of Proof for safety. Met-Ed asserts that the devices are completely safe but has not met their burden to show that their smart meter is actually safe and will not have a negative impact on the Complainant's health or home.

In the PA PUC's Public Meeting held April 15, 2010 (PD3 page 13 of 61) (the joint petition of Met-Ed and other EDCs), the discussion on page 9 states the following, indicating the burden of proof is on Met-Ed to show that they are safe by a preponderance of evidence:

"In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600 (Pa. Comwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. PUC, 489 Pa. 109, 413 A.2d 1037 (1980)."

Public Utilities Title 66 Part I. Public Utility Code Subpart A. Chapter 3 Subchapter A instructs on the burden of proof in section 315 c Adequacy of services and facilities.

"In any proceeding upon the motion of the commission, involving the service or facilities of any public utility, the burden of proof to show that the service and facilities involved are adequate, efficient, safe, and reasonable shall be upon the public utility."

The Respondent offered the following as "extensive testimony" (Met-Ed Main Brief Pg 13) to support their claim of safety:

- a. They state they comply with guidelines by the North American Energy Standards Board. The board states the following about what they do: "The North American Energy Standards Board (NAESB) serves as an industry forum for the development and promotion of standards which will lead to a seamless marketplace for wholesale and retail natural gas and electricity, as recognized by its customers, business community, participants, and regulatory entities." (TR 353:24-354:2)
- b. They state they comply with guidelines by the National Institute of Standards and Technology, which is involved with components like communications, cyber security and infrastructure measurement. (TR 353:24-354:2) The institute describes itself as the following:

"The National Institute of Standards and Technology (NIST) was founded in 1901 and is now part of the U.S. Department of Commerce. NIST is one of the nation's oldest physical science laboratories. Congress established the agency to remove a major challenge to U.S. industrial competitiveness at the time—a second-rate measurement infrastructure that lagged behind the capabilities of the United Kingdom, Germany, and other economic rivals.

From the smart electric power grid and electronic health records to atomic clocks, advanced nanomaterials, and computer chips, innumerable products and services rely in some way on technology, measurement, and standards provided by the National Institute of Standards and Technology.

Today, NIST measurements support the smallest of technologies to the largest and most complex of human-made creations—from nanoscale devices so tiny that tens of thousands can fit on the end of a single human hair up to earthquake-resistant skyscrapers and global communication networks."
- c. They state that the smart meter they are using complies with the safety standards of the Federal Communications Commission. (TR 354:14-18)
- d. They state that the smart meter they are using complies with the safety standards of the American National Standards Institute. (TR 354:18-22)
- e. They state that the smart meter they are using are certified by Underwriters Laboratory. (TR 355:6-10)

While complying with the above standards provides a certain degree of property safety, none of them address fully the biological impact to human health when exposed to non-thermal radio frequencies and EMF. The cross examination of expert witness John Ahr exposed a few of the unsafe conditions for smart meters when located in the field or on the Complainant's property.

- a. When asked if the meters would communicate back to the company if they hit an unsafe internal temperature that might signal a malfunction, smart meter expert witness John Ahr answered that they do not. (TR 364:15-366:3)
- b. When asked if the company regularly performs stress or load testing on the meters, to ensure they perform properly in adverse or potentially dangerous network conditions in the field. The Complainant had to give him an example of a storm where the power to all meters is shut off and all the meters attempt to re-connect at the

same time when power returns. He indicated that conditions like that were “tested” in live production environments and therefore not simulated in a test environment to avoid issues. (TR 369:13-371:11)

- c. When John Ahr was asked if the company performs periodic testing for safe EMF levels and radio frequency levels on individual meters in the field, the answer was no. (TR 372:9-12)
- d. John Ahr stated there was no testing of smart meters in the field. (TR 372:13-15)
- e. When asked about frequency of inspections of smart meters in the field, John Ahr stated that “We do not have field inspection of the meters” (TR 372:16-19)

Having meters attached to the Complainants property that do nothing to alert someone when they malfunction, are not tested in the field for potential malfunctions for adverse load conditions, and are never inspected or tested to ensure they are working properly, is not safe and therefore both unreliable and inadequate for the Complainant. Not having inspections is a violation of the Commission’s Code Section 57.194 (c) which states “An EDC shall make periodic inspections of its equipment and facilities in accordance with good practice and in a manner satisfactory to the Commission.”

The Respondent failed to demonstrate any evidence that the smart meter they are installing would not have a negative impact on her health or her home. At hearing, they presented zero evidence supporting the fact that they were safe for human health and very little evidence to support their claim that they are safe for her home. While the Respondent generally discussed safety of the meter, they presented no evidence to justify such belief. The Respondent’s general speculation regarding certification safety is not sufficient to find that smart meters being deployed by Met-Ed do not present health risks for its customers or will not malfunction in the field.

John Ahr (subject matter expert for smart meters at Metropolitan Edison) testified under cross examination that the company did not do any health research to understand if evidence exists that radio frequencies or electromagnetic frequencies cause harm to human health. (TR 383:13-22). They did not devote any money to reviewing health research during the deployment plan execution (5 years) (TR 385:6-15) and he stated the company has no one looking at the scientific research on an ongoing basis to see if a study proves the smart meter causes harm. (TR 383:24-384:6)

**Conclusion: Complainant established sufficient proof that a smart meter on her home is unreasonable and inadequate service.**

The Complainant submitted an abundance of reliable information to support her claims and had reasonable expectations she could present her information at the hearing. She was prevented from presenting the majority of her information by legal technicalities argued by the Respondent.

According to Public Utilities Title 66 Part I. Public Utility Code Subpart A. Chapter 3 Subchapter A Section 315c, it states: “Adequacy of services and facilities.-- In any proceeding upon the motion of the commission, involving the service or facilities of any public utility, the burden of proof to show that the service and facilities involved are adequate, efficient, safe, and reasonable shall be upon the public utility.”

Met-Ed has the burden of proof to show the smart meter is safe, reasonable and adequate. They have failed to show any evidence that emissions from smart meters are any different or safer than those from wireless devices like cell phones, wireless access points, computers, tablets, smart TVs etc., yet without merit claim that the Complainant has no personal knowledge or experience of relevance with regard to a smart meter.

The Complainant testified under oath extensively about the health impacts and conditions she experiences which her doctors and studies point to EMF and radio frequencies as a cause or catalyst for them. The frequencies she has experienced for years are no different and have not changed with the smart meter Met-Ed is deploying. The Complainant does indeed have direct, personal knowledge, and experience of relevance in this matter.

Met-Ed has not fulfilled their Burden of Proof to show that Smart Meters are safe and will, therefore, not have a negative impact on the Complainant’s health. Met-Ed states “Met-Ed presented extensive expert testimony in support of its position that its smart meter deployment is safe, reasonable and adequate.” The Respondent has in fact failed to present any credible or relevant evidence to support the smart meter deployment or smart meters themselves are safe, reasonable, and adequate. They have done nothing to prove the devices are safe for the Complainant’s health and provided minimal information to prove that they are safe for her home. They not performing due diligence to monitor scientific research on the safety of smart meters, to protect the health of their customers and the environment.

### C. Cindy Kelly's Testimony is Admissible, Reliable and Reasonably Probative

1. The Complainant meets all the requirements to offer admissible, reliable and probative evidence in this case. She has formal education, 35 years in a technical career with practical related experience and direct sensory experience. (Gibson at 948) The Complainant testified under oath that her experience comprises "35 years in designing and deploying information systems and devices worldwide." (TR 31:14-15). She stated that she speaks from experience concerning the harm emissions from wireless devices like the smart meter have caused her and does not need to wait to be harmed by the meter. Other devices have negatively impacted her health and quality of life. There is zero difference in the EMF and Radiofrequencies between the smart meter and devices she has been in contact with. (TR 31:16-22) She stated that as a computer engineer, she was one of the first to use wireless devices and regularly spent 60+ hours per week exposed to wireless frequencies over the past 20 years. (TR 66:8-67:3) The effects on her health were detailed within the confidential part of the hearing.
2. According to Pennsylvania Rule of Evidence 701, the Complainant as a lay witness is able to give opinion testimony that is (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Met-Ed's reliance on Gibson (Gibson v. W CA.B., 861 A.2d 938, 947 (Pa. 2004)) as precedent that the Complainant cannot offer evidence in this administrative setting is unfounded. First, the statements disallowed in Gibson involved a party who had no first-hand knowledge of a decedent's situation. Here, there is no decedent, and the Complainant is offering her direct testimony on what she perceived. (Rule 701 a)

The Complainant's testimony is not on "specialized topics," as Met-Ed claims, but rather on the relevant topics to the smart meters claim: her own health, her own treatment, and her own symptoms, experiences and responses to radiofrequency exposure and treatment. The Complainant's testimony cannot be disregarded, and must be considered reliable, probative and admissible, given both her first-hand knowledge and her relevant specialized knowledge.

## 6 PROPOSED CONCLUSION AND ORDERING

By insisting they are obligated to install a smart meter on the Complainant's service location, as a condition of service, the Respondent is in violation of Title 66 Public Utility Code Chapter 28, Section 2807(F)(2), which reflects the wording of Act 129 as passed by the legislature, requiring a customer request. The insistence of absolute obligation by Act 129 to deploy to 100% of the customers in their service area to remain in compliance is completely false. (Met-Ed Main Brief pg5) They have not shown that there is any legal consequence for accommodating a customer by exempting a service location from their smart meter deployment program, because there isn't any.

The Company is also in violation of Title 66 Chapter 15, Subchapter A, Section 1501 by not furnishing adequate safe and reasonable service with their smart meter and by not offering changes, alterations or substitutions to their service and facilities for the accommodation of the health conditions of the Complainant. They have provided zero evidence that the smart meter they intend to install will not cause adverse health conditions or that they are safe for humans. They have also testified that they fail to monitor recent medical studies for harm to humans by smart meters emissions. They have failed to make any changes, alterations, substitutions, extensions or improvements in or to their service and facility. That accommodation is clearly possible by large utilities is demonstrated by the many other states that do provide alternative communication methods or opt outs. Other states have found it clearly feasible to do so and at a reasonable fee, or even free for those with medical exception.

The Complainant respectfully requests that the Commission compel Met-Ed to abide by the requirements of Section 1501 and 1502 of the Public Utility Code and Section 57.194 of the Commission's regulations to provide and furnish adequate, efficient, safe, and reasonable service to Complainant by allowing her to retain electric service with a utility meter that does not emit non-ionizing radiation and one that has been proven to provide safe and reliable service.

Complainant respectfully requests that the Commission grant Complainant's requested relief from the installation of a device the Complainant never requested or agreed to pay for, per § 2807 (f) (2) (i) of Act 129; that is in violation of §1501 of the Public Utility Code; and that violates a number of rights, privileges, and protections and human rights from harm that are afforded to Complainant as a resident of Pennsylvania; and a citizen of the United States, and grant a summary judgment in Complainant's favor, and against the Defendant.



Cindy J. Kelly

Dated August 3, 2020