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August 31, 2020

VIA e-File


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

**Re: Charles and Sylvia Bolte v. Metropolitan Edison Company
Docket No. C-2019-3011287**

Dear Secretary Chiavetta,

I am submitting here my "Exceptions to the Initial Decision of Administrative Law Judge Benjamin J. Myers issued on August 11, 2020." I am copying all parties as shown in the Certificate of Service.

Sincerely,


(Signature of Complainant)

Sylvia Bolte

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CHARLES AND SYLVIA BOLTE	:	
	:	
V.	:	DOCKET NO. C-2019-3011287
	:	
METROPOLITAN EDISON COMPANY	:	

**Exceptions of Complainant Sylvia Bolte
to the Initial Decision of
Administrative Law Judge Benjamin J. Myers issued on
August 11, 2020**

PRO SE

Dated: August 31, 2020

Table of Contents

I. Exceptions.....	1
A. Exception No. 1: ALJ Myers erred in ignoring Complainants’ legal argument pertaining to Act 129 of 2008.....	1
B. Exception No. 2: ALJ Myers erred in accepting the testimony of Met-Ed’s witness, Mr. Ahr, as credible given his erroneous assertions about Act 129.....	4
C. Exception No. 3: ALJ Myers erred in accepting the testimony of Met-Ed’s witness as credible and contradicting of Complainants’ arguments in general.....	5
D. Exception No. 4: The ALJ erred by overlooking proper grounds for admitting Complainants’ three exhibits that were peer-reviewed journal articles and dismissing them as hearsay and irrelevant.....	8
E. Exception No. 5: The ALJ Erred in ignoring Complainant’s evidence about her medical background and relegating the advice of her doctor to hearsay.....	12
F. Exception no. 6: ALJ Myers erred in concluding that, having ruled all of her exhibits as hearsay and/or irrelevant, what remained, her written testimony, consisted of only “the Complainants’ beliefs and opinions” which is insufficient to satisfy their burden.....	16
G. Exception no. 7: The ALJ erred in putting Complainants in a no-win situation which demonstrates bias in favor of Respondents.....	19
II. Conclusions.....	21

I. Exceptions

In accordance with Section 5.533 of the Commission's regulations, 52 Pa. Code § 5.533, Sylvia Bolte for Charles and Sylvia Bolte, Complainants, respectfully submits these Exceptions to the Initial Decision of administrative law judge Benjamin J. Myers issued on August 11, 2020. Due to the Covid-19 closure of the PUC offices, Complainants do not have access to view transcripts of certain PUC docket cases pertinent to these Exceptions and request some leeway for not being able to specify exact transcript passages in the arguments below.

A. Exception No. 1: ALJ Myers erred in ignoring Complainants' legal argument pertaining to Act 129 of 2008.

In his Initial Decision, ALJ Myers states, "The complaint will be dismissed for failure to show that the installation of the smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501 or otherwise violates any provision of the Public Utility Code, a Commission order or regulation or a Commission-approved tariff." (I.D. p 1) This carefully crafted provisional statement blatantly excludes the elephant in the room: Act 129 of 2008 – an omission that must be noted and corrected.

As Ms. Bolte pointed out in her written testimony, the PUC's own website states "If you provide information to prove that there has been a problem with your utility or PUC-regulated entity in violation of the law, we can hold the company accountable..." (Bolte, p. 19 no. 35). Above any "provision of the Public Utility Code, a Commission order or regulation or a Commission-approved tariff", Met-Ed must be held accountable for violation of the law, Act 129 of 2008, as it was written, passed, and intended by those who voted for its passage.

In Ms. Bolte's testimony and in her objections to Mr. Ahr's testimony, she has provided the relevant text of Act 129, the Legislative Record pertaining to Act 129, and a detailed analysis to clarify the definition and use of the "depreciation schedule" cited in Section 2807(f)(2)(iii). She has accurately referenced the PA law and the misinterpretation of it in the PUC's Implementation Order of June 2009. The law is clear and clearly states that smart meters are furnished upon request of a customer (who agrees to pay for it) and in new building construction, both of which indicate that the PA General Assembly knew and intended that the smart meters would not be installed on everyone's home.

That Act 129 did not make smart meters a requirement is supported also by (a) the legislative history of HB2200 when early versions of HB2200 that mandated smart meters for all customers received critical comments from numerous state representatives who were opposed to it being so mandated; (b) the explicit comments of Senators Fumo, Tomlinson and Boscola

recorded in the Senate Journal citing the non-mandatory nature of the final version of the bill upon voting to pass it into law; and (c) the July 22, 2020 hearing testimony of former state representative Thomas Yewcic, who held office 1992-2008 and participated in passing HB2200 into law, and testified that it was passed with non-mandatory intent (PUC docket # C-2018-3001276). (*Yewcic v Penelec*) (Tr. 7/22/2020 not yet available for public viewing/access at PUC offices)

The PUC's alleged "interpretation" of Act 129, Section 2807(f)(2)(iii) in their Implementation Order of June 2009 runs contrary to its and Met-Ed's use of "depreciation schedule" in other documents as Ms. Bolte argued in her Objections:

The PUC clearly ... knows how to correctly use "depreciation" in cases other than with regard to Act 129 § 2807(f)(2)(iii). In its Implementation Order of June 2009, on page 12 (where new construction is discussed), the PUC states the following: "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." (Bolte Objections, p. 9, no. 34.)

Further, on page 29 of the Implementation Order where recovery of costs of "deployment and installation" of smart meter technology is discussed, the PUC states "these costs would include both capital and expense items relating to all plan elements, equipment and facilities, as well as an analysis of all 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." Once again – the PUC uses the term "depreciation" correctly as an accounting term as a cost *resulting from* the deployment of smart meters. "Depreciation" is not synonymous with the term "deployment" – rather the terms are separate and distinct. (Bolte Objections, p. 10, no 37.)

...in the words of the PA PUC itself – as recently as December 19, 2019. In its Act 129 Total Resource Cost (TRC) Test for 2021¹⁰, on page 21, the PA PUC discusses effective useful life and stated "While certain technologies may have an expected useful life greater than 15 years, Act 129 is clear about the 15-year limit, and any adjustment to the cost ledger would circumvent the legislative directive." Here – the PA PUC correlates useful life with cost of a technology – providing additional evidence that the meaning of depreciation is fully understood. (Bolte Objections p. 10, no. 39)

...Met-Ed's Smart Meter Deployment Plan, sets a cap on the service period of smart meters, dictating their service life not exceed 15 years. Even Met-Ed's deployment plan agrees (Mr. Ahr's Exhibit JCA-1). The final version of § 2807 passed into law says nothing about replacing electromechanical analog meters and nothing about universal forced deployment of smart meters. No such inferences as these can be made from the statutory language of Act 129, from the "intent" as recorded in the *House and Senate Journals* in the legislative history of HB2200 that became Act 129, nor in the changes to the Bill wording through each Printer's Number, culminating with the final version (PN 4526) passed into law. (Bolte Objections, p. 12, no 45.)

The PUC and Met-Ed thus are clearly capable of understanding and using the correct interpretation of the words "depreciation schedule", but not when they are defending their misinterpretation of legislative intent and the PUC's Implementation Order of June 2009. (Bolte Objections, p. 12, no. 44.)

Thus,

...there is no basis on which Met-Ed can justify its mandate of universal forced deployment of smart meters as per the PUC's Implementation Order of June 2009 and all subsequent PUC formal complaint holdings and Implementation Orders. (Bolte Objections, p. 12, no. 46.)

Consequently, any and all documentation provided by Mr. Ahr to show that Met-Ed was following the Commission's Orders and in compliance with all regulations regarding FCC guidelines, security measures and privacy policies **is irrelevant** to the Complainants' main legal argument which is that the Commission's orders are not in line with the wording and legislative intent of Act 129 which means that Met-Ed is in violation of the law, Act 129 of 2008, by forcibly installing smart meter technology on the homes of all customers in their service territory.

As Ms. Bolte stated in her testimony, "Since I did not request a smart meter and did not agree to pay for one, and my home is not "new construction", according to Act 129, as passed and as intended by those who passed it into law, Met-Ed would be in violation of the law, Act 129, to force me to have a smart meter on my home." (Bolte testimony, p. 19, no. 37)

Inasmuch as the PUC persists in misconstruing the legislative intent and the execution of ACT 129 to suit their purposes, they are equally complicit in violating the Act 129 of 2008. The PUC has within its discretion and jurisdiction to bring its Implementation Order of 2009 in alignment

with the law/ACT 129 and put an end to the need to file smart meter complaints, as well as an end to the subsequent harm to customers of the EDCs.

Lacking the integrity and initiative of the PUC to take such measures, Complainants assert that Met-Ed is in violation of the law as there is no mandate in Act 129 of 2008 that requires Met-Ed to forcibly install a smart meter on the Boltes' home. Complainants have not agreed to, consented or requested participation in the Smart Meter program. As such, Complainants do not opt in to smart meter technology. The law is written in such a way that no "opt out" is necessary. Any and all mention of "opting out" by Met-Ed or the PUC is therefore irrelevant.

B. Exception No. 2: ALJ Myers erred in accepting the testimony of Met-Ed's witness, Mr. Ahr, as credible given his erroneous assertions about Act 129.

In his Initial Decision, ALJ Myers wrote, "Met Ed has presented credible testimony which contradicts the Complainants' arguments." (I.D. p. 12) Complainants aver that Met-Ed's testimony, proffered by their witness, Mr. Ahr, was neither credible nor contradicting of their legal argument regarding Act 129 of 2008. Complainants presented their argument pertaining to Act 129 of 2008 in Ms. Bolte's testimony, pp.14-19, nos. 1-37. Further argument is proffered by Ms. Bolte to address shortcomings in Mr. Ahr's testimony, which failed to contradict anything in Ms. Bolte's testimony, as detailed in Ms. Bolte's objections, pp. 4-12, nos. 13-47.

Mr. Ahr states in his written testimony, "I also serve as the Act 129 and smart meter subject matter expert and represent the smart meter project and FirstEnergy's operating companies on regulatory matter." (Ahr testimony, 2:15-17) He then goes on to make false assertions about Act 129 which have been pointed out in detail in Complainants' Objections, summarized as follows:

Mr. Ahr's statement "Act 129 requires all electric distribution companies ("EDCs") with at least 100,000 customers to install smart meters throughout their service territories" (Ahr testimony, 4:8-9) is false because it omits that Act 129 subjects such installations to the caveat "in accordance with paragraph (2)" which means: only to customers who request a smart meter and agree to pay for it at the time of the request, and in new building construction. Nowhere does it stipulate to all customers in their territory. (Bolte Objections, p.4, no. 14)

Mr. Ahr's statement, "Subpart (i) refers to early adopters of smart meters. This section applies to customers who were eager to obtain a smart meter before the utility's official deployment." (Ahr testimony, 5:3-5) is false and without merit as there is absolutely no basis for this assertion

in Act 129. (Bolte Objections, p. 5, no 15) Mr. Ahr has made up words and language that are nowhere to be found in Act 129, nor in the legislative history of its development and passage into law, and therefore he has significantly undermined his credibility with this statement.

Mr. Ahr again alters the wording of the law when he states, “Subpart (ii) refers to new construction. This section means that all new buildings must have a smart meter installed” (Ahr testimony, 5:6-7) because, again, he conveniently added the word “all” to subpart (ii) which was not there. (Bolte Objections, p. 5, no 16) Thus, Mr. Ahr further undermines his credibility by taking liberty at adding words to the law, Act 129, that are not there.

In response to “which of these prongs within (f) subpart (2) governs Met Ed’s deployment of a smart meter....?” queried by the Met-Ed attorney, Mr. Ahr responds, “Subpart (2)(iii), which applies to all smart meter installations in Met-Ed’s service territory.” (Ahr testimony, 5:10-13). Subpart (2)(iii) states that smart meter technology shall be furnished, “in accordance with a depreciation schedule not to exceed 15 years.” (Ahr testimony, 4:28-29) This assertion is the most egregious because there is no legal, logical, linguistic and/or historical basis for using it to force smart meters on all customers in Met-Ed’s service territory as was detailed in Ms. Bolte’s objections. (Bolte Objections, p. 5 no 19 through p. 12 no 46.)

In toto, Mr. Ahr’s assertions regarding Act 129 are without merit and provide no basis for his credibility as a witness. Even though ALJ Myers completely ignores Act 129 in his Initial Decision except for mentioning that “Respondent’s new matter contends that the Respondent is required to install smart meters for all automatic meter reading customers and that Act 129 of 2008 (Act 129) does not enable the Commission to grant the relief Complainants have requested,” (I.D. p. 2), it remains the elephant in the room that cannot be ignored. Based on the above, there is no merit to ALJ Myers’ statement that Met-Ed’s witness, Mr. Ahr, offered credible testimony – in particular with regard to Act 129.

C. Exception No. 3: ALJ Myers erred in accepting the testimony of Met-Ed’s witness as credible and contradicting of Complainants’ arguments in general.

Beyond the scope of Act 129 presented in Exception no. 2, ALJ Myers erred in asserting, “Met Ed has presented credible testimony which contradicts the Complainants’ arguments.” (I.D. p. 12) ALJ Myers appears to have overlooked the extensive objections Ms. Bolte raised to Mr. Ahr’s testimony which demonstrate Mr. Ahr’s lack of credibility on numerous fronts beyond the scope of Act 129.

Mr. Ahr is a Regulatory Compliance Advisor for FirstEnergy Service Company (Ahr testimony, 1: 9-10) and holds a bachelor's degree in electrical engineering and Master's degree in business administration (Ahr testimony, p. 1:23-24, 2:1). There is nothing in Mr. Ahr's background that qualifies him to address human health or safety nor to assess or evaluate Ms. Bolte's adverse health effects from wireless signals, nor to assess or evaluate the scientific literature presented on the matter.

Furthermore, Mr. Ahr's written testimony fails to address most of the points raised in Ms. Bolte's testimony – which is only appropriate because he is not qualified to do so. Except for demonstrating Met-Ed's compliance with regulatory authorities (for which he is qualified), Mr. Ahr's testimony superficially covers:

- a. "opt-outs" (Ahr testimony, 10:1-29, 11:1-4) which was NOT an issue raised by Complainants (Bolte Objections, p.13 no. 50);
- b. "termination"(Ahr testimony, 11:5-12) which is the cessation of service of electricity for customers who refuse a smart meter (an issue only insofar as it is the threat of which Complainants experienced prior to filing a Formal Complaint but is not substantiated as explained in Bolte Objections, p. 13 no. 51);
- c. "safety" (Ahr testimony, 11:13-22, 12:1-6), in terms of compliance with certifying agencies but not addressing the issues raised by Complainants (Bolte Objections, p. 2 no. 5 – p. 3, no. 10); and
- d. "privacy" (Ahr testimony, 12:7-21, 13:1-23), in terms of alleged company security and privacy measures to protect personal information but failing to address at all the physical privacy invasion of microwaves into the home and bodies at Complainants' residence as per 4th Amendment rights raised by Ms. Bolte (Bolte Objections, p. 2, no. 4).

Judge Myers erred in stating that Mr. Ahr's testimony counteracts Ms. Bolte's arguments because the only matters pertinent to Ms. Bolte's arguments that his testimony addresses are his erroneous presentation of Act 129 and, in a limited and insufficient manner, the 4th Amendment privacy issues (Ahr testimony, 12:7-21, 13:1-23).

In her testimony, Ms. Bolte stated:

One aspect of the Fourth Amendment that was NOT considered or addressed in the Naperville example is the invasion of my home by microwave frequency radiation, and so:

5. I also object to the broadcasting of wireless signals into my home from the smart meters – whether from mine or from neighboring houses – as this invades my body physically and causes me to suffer many physical symptoms as I already stated in the first part of my testimony (Section A).

I therefore cite my rights according to the Fourth Amendment to decline accepting on my home any device that transmits microwave frequency communication signals into or around my home because such signals physically violate my “persons, houses, ...and effects.” (Bolte testimony, p.13)

Mr. Ahr’s testimony regarding privacy (Ahr testimony, 12:7-24, 13:1-23) fails to address Ms. Bolte’s 4th Amendment right to not have her body invaded by microwaves from the transmissions of the smart meters, which she already has experienced as being harmful to her health, as stated in her objections (Bolte Objections, p.2, no. 4).

Mr. Ahr’s credibility remains at issue when ALJ Myers wrote, “In response to the testimony presented by the Complainants, Met Ed’s witness testified to the health safety and privacy risks which Complainants have raised.” (I.D. p. 12). Again, the ALJ erred because Mr. Ahr’s testimony does not fully address the issues raised by the Complainants since he has limited qualifications for addressing health safety – that is, mainly only from a business-oriented regulatory compliance perspective and not in terms of actual medical health - and insufficiently addresses the privacy issues raised by Ms. Bolte regarding the violation of “my ‘persons, houses, ... and effects’” by microwave frequency communication signals from Met-Ed’s smart meters. (Bolte testimony, p.13)

Furthermore, Mr. Ahr is on record with the PUC as stating he has no training in safety in the PUC docket case C-2017-2631482 (*Martin vs. Met-Ed*); (*Tr 1/10/ 2020; transcript not presently available for public viewing at the PUC office*).

As Mr. Ahr’s qualifications and expertise limit him to administrative regulatory compliance matters, his testimony has limited credibility in that realm and fails to contradict or in any way address Ms. Bolte’s health safety issues, particularly on the adverse effects of the wireless device emissions at non-thermal (i.e. without heating) levels, relevant to Met-Ed’s smart meters, as evidenced by the peer-reviewed scientific literature. (Bolte Objections, pp. 1-2, nos. 1-3) As per the above, ALJ Myers errs in asserting that Met-Ed’s testimony is credible and contradicts Complainants’ arguments which undermines his subsequent justification for his Initial Decision against Complainants.

D. Exception No. 4: The ALJ erred by overlooking proper grounds for admitting Complainants' three exhibits that were peer-reviewed journal articles and dismissing them as hearsay and irrelevant.

Without differentiating between the peer-reviewed journal articles and other exhibits, ALJ Myers wrote in his Initial Decision, "The Complainants cited to numerous sources such as articles or letters written by others to corroborate Ms. Bolte's testimony. However, I give these proposed sources little or no weight since they are hearsay. Many of the exhibits which the Complainants submitted were objected to by Met Ed on admissibility grounds relating to relevance and hearsay." (I.D. p. 11)

The ALJ appears to have overlooked Complainant's argument,

In reference to my three peer-reviewed journal article exhibits (Exhibits 2, 3 and 20), if there remains any further objections to admitting these into the record: all are Supreme Court-admissible, particularly under the Daubert Rule, and stand as substantiating expert evidence in this court. Mr. Ahr, who is a regulatory compliance adviser for First Energy, acknowledges in his testimony (page 11, lines 17-19), that Met-Ed's smart meters comply with all "safety requirements and standards established by agencies such as the Federal Communication Commission", admitting that Met-Ed is ducking behind the FCC's guidelines and federal jurisdiction in this case, which admits the jurisdiction of Daubert. (Bolte Objections, p. 16, no. 63)

This esteemed Court lacks authority to decline to admit evidence based on the party submitting it. As the Court well knows and no doubt agrees, no differentiation of persons or discrimination among them is lawful - or constitutional. Moreover, this matter falls under Supreme Court Daubert Rule jurisdiction, in that Met-Ed stands its argument firmly upon FCC rules and guidelines, i.e., federal matters. Where federal matters pertain in our Commonwealth's courts, Daubert applies rather than Frye. The Daubert Rule considers the worthiness of admissibility of evidence solely based on its *relevance* and *reliability*, without regard for the person submitting it. Nor can the Court waive the US Constitution's Fourteenth Amendment. As such, Complainants' peer-reviewed studies must be admitted when submitted as evidence, and cannot be arbitrarily or capriciously refused, as they were by Judge Myers.

All three peer-reviewed journal articles are relevant on the basis of demonstrating adverse health effects from wireless devices at non-thermal levels, which means there is not enough radiation to cause heating of tissue in the body which is the basis for the FCC's guidelines on which Met-Ed is relying. Met-Ed's smart meters are not in some unique category of wireless devices, and since no testing of health effects from Met-Ed's smart meters has EVER been

conducted, they have no basis for holding peer-reviewed journal articles to such an unreasonable standard and have no basis to object to these scientific articles for failing to specifically test effects from Met-Ed's smart meters. In fact, if Met-Ed wishes to impose such a criterion for acceptance, then they should be held to the same standard which means they cannot rely on the FCC guidelines or others to establish the claim of "no harm to human health" because neither the FCC nor any other agency on which they rely to claim "safety" have specifically conducted human health studies with Met-Ed's smart meters. Therefore Met-Ed's objections that these articles do "not deal with the RF fields from smart meters being used by Met-Ed" are without merit. (Met-Ed Objections, pp. 4-5, no. 17)

Met-Ed next appears to be imposing yet another unreasonable objection criterion to the peer-reviewed studies, namely one of "authenticity." Complainants gain some insight regarding into Met-Ed's meaning of this term by their (Met-Ed's) objection no. 20:

Many of the exhibits quote, cite or reference statements that were not written by the Complainant. Moreover, ***the Complainant did not call any individuals, such as the authors of these various materials, to testify at the hearing and authenticate the statements therein.*** Therefore, these are out of court statements being offered for the truth of the matters asserted. (Met-Ed Objections, p. 6, no. 20) (emphasis added)

Requiring a scientist to be present to defend his peer-reviewed, journal published scientific study is without merit. It's already been peer-reviewed and its conclusions accepted. Met-Ed has a fatally flawed argument. For instance, in a murder trial if the slain man wrote a note just before dying stating who murdered him would that evidence be thrown out of court because the dead victim could not be present for cross-examination? Furthermore, the peer-review process serves as authentication and validation of these articles.

Complainants' Exhibit 2, Pall's study titled "*Microwave frequency electromagnetic fields (EMFs) produce widespread neuropsychiatric effects including depression*", is neither hearsay nor irrelevant and must be accepted and admitted as evidence. Complainants' Exhibit 2 was study number 125 in a List of 155 Reviews by Dr. Martin Pall that was accepted and admitted into the record as evidence in PUC docket case # C-2017-2620702 (*Myers v PPL*) (Tr. 4/2/18 at 19:5-6). Complainants understand that if a scientific study was admitted as evidence by the PUC in a prior hearing it can be cited as evidence again. The burden is then on Met Ed to refute the author's conclusion, and Met-Ed's counsel and witness are not qualified to do so. Consequently, if Met Ed does not refute the study, the study's conclusions should stand.

The Pall article of Ms. Bolte's exhibit 2 is highly relevant to Ms. Bolte's complaint because it addresses adverse health effects at non-thermal (no heating of tissue as per FCC guidelines) levels and, in table 3, summarizes the symptoms documented from exposure to smart meters, as well as to other wireless devices, which generates a profile of symptoms that can be compared with those Ms. Bolte has experienced as documented in her health chronology. (Bolte testimony, pp. 1-3, nos. 1-16; p. 6, no. 19)

Complainants' Exhibit 3, De Luca, et. al. article titled, "*Metabolic and Genetic Screening of Electromagnetic Hypersensitive Subjects as a Feasible Tool for Diagnostics and Intervention*", is neither hearsay nor irrelevant. The clear relevance is evident from the first two sentences of the paper which are understandable in plain English:

The term electromagnetic hypersensitivity or electrosensitivity (EHS) referred to a clinical condition characterized by a complex array of symptoms typically occurring following exposure to electromagnetic fields (EMFs) ***even below recommended reference levels*** and is followed by remission through the complete isolation [1, 2]. The most frequently claimed trigger factors include video display units, radio, televisions, ***electrical installations, extremely low-frequency ranges of electromagnetic fields or radio-frequencies—including the so-called dirty electricity due to poor isolation of electric wires and telephonic lines, wireless devices, and wi-fi***— fluorescent lamps and low-energy lights, appliances with motors, photocopiers, ***microwave transmitters***, and high tension power lines (reviewed in [3, 4]). (emphasis added)

As the smart meters Met-Ed is installing are wireless devices and microwave transmitters, they most certainly fall within the category of devices known to trigger EHS symptoms as experienced by Ms. Bolte, and are not in some unique class that differs from other wireless devices. Furthermore, this journal article notes that symptoms arise at exposure levels "below recommended reference levels" – in other words, below the levels deemed "safe" as per the FCC's guidelines on which Met-Ed relies.

Ms. Bolte explains the further relevance and importance of this article in her case due to the fact that she also has multiple chemical sensitivity (MCS) and is on the Department of Agriculture's chemical sensitivity registry since 2008. (Bolte testimony, p.1, no., 1 and pp. 6-7 regarding Exhibit 3). Ms. Bolte has had to research her condition to help her identify avenues for further diagnosis and treatment that she can share with her neurologist, and while not a medical professional, she has experience beyond that of the average person with regard to this topic of electromagnetic hypersensitivity because of having to try to address her ongoing health condition which is significantly disabling.

As a pro se complainant unfamiliar with the legal process, she was unaware until the present time also of 225 Pa. Code § 702 which states, “A witness who is qualified as an expert by knowledge, skill, **experience**, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson.” (emphasis added) To the extent Ms. Bolte has had to educate herself about her medical condition, take measures to treat her condition within her means, and then educate her neurologist in order to make progress in obtaining proper medical assistance, as well as from her direct experience with this condition (testing her reaction to various exposures for repeatability of symptoms) and networking with others, she claims limited expertise regarding EHS.

To clarify further, a patient who is diagnosed with cancer can find help from expert medical professionals (oncologists) who specialize in this area and have myriad protocols to offer to address the particular cancer. By contrast, there are extremely few medical professionals who are currently aware of, much less expert in, electromagnetic sensitivity (or electromagnetic hypersensitivity (EHS)). The result is that persons suffering from EHS have an extremely difficult time finding qualified medical help, and are thus left mostly on their own to investigate their options and find information helpful to their physicians in hope of identifying avenues for treatment. As a result of having to conduct such investigations out of necessity, such persons, as Ms. Bolte, know a great deal more about her EHS than her doctor, (though her doctor understands scientific jargon in the peer-reviewed literature far better). Equipping her doctor with the right material will allow for greater prospects of relevant testing and viable treatments. Since EHS is now recognized as “becoming a new insidious worldwide plague involving millions of people” (Bolte testimony, p. 7), it is likely that eventually there will be many medical professionals specializing in its diagnosis and treatment. However, in the meantime, Ms. Bolte has to conduct her own research and has become knowledgeable about it above that of the average person. While in no way claiming to be a scientist or medical expert, her *experience* gives her limited expertise about EHS to a sufficient degree that her citing simple relevant facts out of peer-reviewed journal articles must not be discounted but should be given some weight.

Complainants’ Exhibit 20, Belpomme and Irigaray’s article titled “*Electrohypersensitivity as a Newly Identified and Characterized Neurologic Pathological Disorder: How to Diagnose, Treat, and Prevent It*” is an important publication that is neither hearsay nor irrelevant. Published on March 11, 2020, it offers state-of-the-art understanding of EHS which Ms. Bolte summarizes in her testimony (Bolte testimony, pp. 7-9 regarding Exhibit 20). Belpomme and Irigaray’s article could be a major game-changer for those suffering with EHS as it has substantiated EHS to be a

real neurologic pathological disorder that is a growing global epidemic and confirms “*the detrimental health effects of (1) non-thermal or weak thermal non-ionizing radiation*” (which is of relevance to smart meter radiation). (Bolte testimony, p. 8, quote from pp. 11-12 of Exhibit 20)

Furthermore, the Belpomme and Irigaray article cites clear criteria for clinical diagnosis that includes ruling out all other possible causes of symptoms, as well as an association with multiple chemical sensitivity (MCS). Ms. Bolte states in her testimony,

The main thing is that I have MCS and fit the clinical description they present here, and so I am asking that my illness be recognized and accommodated. Belpomme and Irigaray say that there should be protective measures for EHS and/or MCS patients including “as much as possible EMF and chemical avoidance...” and that “public preventive measures for the most vulnerable people ... should be taken by limiting or even totally avoiding the use of wireless technology in these conditions.” (Bolte testimony pp. 8-9)

By ALJ Myers’ rejection of the peer-reviewed, journal published scientific studies Ms. Bolte cited as exhibits, the ALJ is condemning and disavowing science. Not only is this irrational, but lacking expertise on EHS, MCS and microwave radiation, he is not qualified to dismiss it. Rather than dismissing Ms. Bolte’s scientific studies as hearsay the ALJ should allow the studies’ conclusions to stand if Met Ed is not able to refute them. The burden should be on Met Ed, not Ms. Bolte.

E. Exception No. 5: The ALJ Erred in ignoring Complainant’s evidence about her medical background and relegating the advice of her doctor to hearsay.

ALJ Myers noted in his findings of facts in his Initial Decision, “The Complainant, Ms. Bolte, suffers from a variety of health issues including chemical sensitivity, vertigo and sensitivity to electromagnetic fields. March 31, 2020 Bolte Statement at 1-3.” (I.D. p. 7)

He further states, “In particular, Ms. Bolte argued that the installation of a smart meter at her residence would exacerbate her sensitivity to electromagnetic signals thereby causing her a variety of health issues. In support of this argument, the Complainants submitted various articles and other forms of written materials including letters from Ms. Bolte’s doctor.” (I.D. pp 10-11)

ALJ Myers then rules, “The Complainants cited to numerous sources such as articles or letters written by others to corroborate Ms. Bolte’s testimony. However, I give these proposed sources little or no weight since they are hearsay. ... Even letters supplied to Ms. Bolte fall under this definition.” (I.D., p 11) This ruling by ALJ Myers fails to acknowledge Ms. Bolte’s statement of exception to hearsay in her written objections, p.14, no 58 which stated,

If Repondents object as hearsay to my Exhibit 4, the letter from my neurologist, Dr. O’Boyle, I wish to respond for the record that I have submitted it for what it says rather than for the truth of the matter as an expert witness could testify to, but I submitted it as an intelligent person who has read and comprehended the information presented in it, agree with it, and am showing that this letter exists and that there is a qualified, credentialed medical doctor who cannot presently conduct further evaluation of my condition because of the Covid 19 situation, but who affirms that I meet the probable criteria for electromagnetic sensitivity, recommends that I avoid exposure to the electromagnetic radiation that worsens my health and requests accommodation for my health needs; I therefore request Your Honor take notice that this letter exists and admit it into the record.

Because of the way Ms. Bolte’s hearing was addressed to accommodate her poor health along with the difficulties imposed by the Covid-19 lockdown/shutdowns, the letters from Ms. Bolte’s neurologist bear further explanation which had no prior place in these proceedings to be offered. Ms. Bolte had originally obtained a letter from her neurologist dated December 23, 2019, which she submitted with her exhibits in January 2020. Since that time, Ms. Bolte had been updating her neurologist with information from the science literature, but due to the Covid-19 lockdown and her neurologist’s schedule (it takes many months to get an appointment), was unable to see her neurologist again prior to submission of her written testimony which served as her exhibit deadline and also her prior to the May 8, 2020 deadline of her written objections.

Due to her poor health, Ms. Bolte sought and agreed to forego an oral hearing and instead conduct her hearing via written testimony and written objections, as properly recounted by ALJ Myers. (I.D. pp. 4-6) Ms. Bolte realized her neurologist, whom she had seen several times since 2017, better understood Ms. Bolte’s condition based on the recent science literature, and so she thought it would be helpful to obtain from her an updated letter to submit for these proceedings. By the time Ms. Bolte thought to do this and made the contact and request, and then her neurologist agreed to prepare an updated letter for her, the time was very short to submit it prior to submission of written objections on May 8th, since she realized Met-Ed would need to have time to review and consider it.

In the rush to obtain the updated letter, which was sent as a pdf file to Ms. Bolte via electronic mail in time to try to enter it as soon as possible and prior to the written objections deadline, her neurologist, Dr. O'Boyle, failed to put the date on the letter. This omission was duly noted in Met-Ed's objections, "The letter is not dated, and it is unclear when the letter was prepared. The Complainants' exhibits were due on March 31, 2020. Ms. Bolte does not offer any reason as to why the exhibit could not have been submitted earlier or why the late exhibit should be accepted." (Met-Ed Objections, p. 4)

Ms. Bolte offers the following screen print of the e-mail message from May 6, 2020 from Dr. O'Boyle's office with the attached updated letter from Dr. O'Boyle, as that is the only way Complainant can offer validation of the date of the letter pertaining to Met-Ed's objection:

From: Jennifer K. Whitmore <whitmoreje@wmh.org>
Sent: Wednesday, May 6, 2020 2:52 PM
To: forestnyc@hotmail.com <forestnyc@hotmail.com>
Subject: Fwd: Attached Image

Hi Sylvia, this is the letter from Dr Oboyle. I left you a voicemail also. Please give me a call when you can. thank you

The information contained in this transmission may contain privileged and confidential information, including patient information protected by federal and state privacy laws. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution, or duplication of this communication is strictly prohibited. If you are not the intended recipient, please notify us by telephone immediately at (570) 251-6600 and destroy all copies of the original message.



Ms. Bolte did not know if this updated letter would be accepted into the record by ALJ Myers, given that it was such a late submission, but decided to give it a try and was grateful when he did allow it (on May 7, 2020) and Met-Ed was still able to submit their written objections pertaining to it on May 8, 2020.

Dr. O'Boyle's updated letter regarding Ms. Bolte's medical condition notes that "no other objective cause has been found for her symptoms" and that she meets the "probable criteria for sensitivity to electromagnetic radiation." (Bolte, updated Exhibit 4) These criteria are defined in the Belpomme and Irigaray article (Bolte, Exhibit 20), though Dr. O'Boyle did not

explicitly cite that paper but made a general reference to “the peer reviewed scientific literature.” Ms. Bolte cites these five criteria for the clinical diagnosis of EHS in her testimony:

Clinical arguments for EHS could nevertheless be the following: (1) absence of known pathology accounting for the observed clinical symptoms; (2) characteristic association of symptoms such as those we identified, with the association of headache, tinnitus, hyperacusis [overly sensitive hearing at certain frequencies], dizziness, loss of immediate memory, and attention/concentration deficiency being the most characteristic and reproducible; (3) reproducibility of symptoms under the said influence of EMFs; (4) regression or disappearance of symptoms in the case of said EMF avoidance; (5) finally and most importantly, the association with MCS. (Bolte testimony, p. 8)

As per the chronology of symptoms reported by Ms. Bolte in her Amended Formal Complaint of January 8, 2020, which pre-dated the March 11, 2020 publication of Belpomme and Irigaray (Bolte, Exhibit 20) and which chronology was reiterated in her written testimony of March 31, 2020, this Court is apprised that her reported symptoms fall under criterion 2; her reports of testing her symptoms with repeated exposures to certain EMFs fall under criteria 3 and 4, and the fact that she has MCS meets criteria 5. One does not have to be a scientist or medical doctor to connect the dots here and see that Ms. Bolte’s reported symptoms and experience with repeated exposure to electromagnetic radiation, particularly from wireless devices, meets the state-of-the-art scientific criteria for a person with EHS. Given that Ms. Bolte’s chronology and statements on record with this court as early as January 8, 2020 satisfy criteria 2,3, 4 and 5, the most important contribution Dr. O’Boyle’s letter makes is that “no objective cause has been found for her symptoms,” which satisfies criterion 1. (Bolte, updated Exhibit 4).

Dr. O’Boyle then recommends, “she is advised to avoid unnecessary exposure to electromagnetic radiation that cause or exacerbate her adverse symptoms” and asks that an accommodation be made “on account of Ms. Bolte’s health needs.” (Bolte, updated Exhibit 4)

Met-Ed continues to object on the grounds “Met-Ed did not have an opportunity to cross-examine the purported author of the letter and no foundation for the letter has been established.” (Met-Ed Objections, p. 4) However, Met-Ed had agreed to forego cross-examination so such an objection is without basis since it was not possible by virtue of its own consent. Met-Ed and its witness were not qualified to address content of a medical nature and presented no medical testimony to counter the statement of Ms. Bolte’s neurologist, but merely state, “the letter is speculative with respect to its conclusions as to Ms. Bolte and inappropriately refers to findings from ‘peer reviewed scientific literature’ without specifying which scientific literature is being relied upon.” (Met-Ed Objections, p. 4) As Met-Ed’s counsel

is not qualified to assess the content of this letter from Ms. Bolte's neurologist, their objection is without merit.

With all due respect, the Commission lacks the authority to override the decision of Complainant and her doctor about her health risks from "exposure to electromagnetic radiation that cause or exacerbate her adverse symptoms". (Bolte, updated Exhibit 4) There is no precedent for the Commission to override the judgment of medical professionals. Utility customers who do not pay their bills can submit medical certificates in order to prevent the utility from shutting off their power. See 66 Pa. C.S.A. 1406(f). Neither the utility nor the PUC attempts to second guess the medical judgment of physicians or nurse practitioners who treat non-paying utility customers. The Commission should not permit it here. The Commission is not well suited to make medical decisions for utility customers and should decline the invitation to override the medical judgment of their physicians. The ALJ erred in not accepting the recommendations Ms. Bolte's neurologist and relegating her doctor's letter to hearsay.

F. Exception no. 6: ALJ Myers erred in concluding that, having ruled all of her exhibits as hearsay and/or irrelevant, what remained, her written testimony, consisted of only "the Complainants' beliefs and opinions" which is insufficient to satisfy their burden.

In his Initial Decision, ALJ Myers states, "...the evidence offered by the Complainants which is left to be considered in this matter is comprised almost entirely of Ms. Bolte's testimony. Ms. Bolte's testimony alone, consisting of the Complainants' beliefs and opinions, is insufficient to satisfy their burden." (I.D. p. 11)

In fact, Ms. Bolte's testimony is not merely belief and opinion but contains factual matter that has been overlooked. In particular, her testimony has exhibits 5 and 10-19 to which Met-Ed did not object and which largely form the basis for Ms. Bolte's legal arguments as detailed in Exception no. 1, and her testimony cites a government website (pursuant to 52 PA Code section 5.406 on Public Documents) for the Architectural and Transportation Barriers Compliance Board (Access Board), a Federal agency devoted to the accessibility for people with disabilities:

The information directly from the government website is found here:

<https://www.access-board.gov/research/completed-research/indoor-environmental-quality/recommendations-for-accommodations> and it says:

"People with chemical and/or electromagnetic sensitivities can experience debilitating reactions from exposure to extremely low levels of common chemicals such as

pesticides, cleaning products, fragrances, and remodeling activities, and from electromagnetic fields emitted by computers, cell phones, and other electrical equipment.

“The severity of sensitivities varies among people with chemical and/or electromagnetic sensitivities. Some people can enter certain buildings with minor accommodations while others may be so severely impacted that they are unable to enter these same spaces without debilitating reactions. Furthermore individual tolerances to specific exposures can vary greatly from one individual to the next. Meanwhile some exposures, such as the application of certain pesticides or extensive remodeling, for example, may be devastating to all chemically sensitive people and make a building or facility inaccessible for a substantial period of time.

“According to the Americans with Disabilities Act (ADA) and other disability laws, public and commercial buildings are required to provide reasonable accommodations for those disabled by chemical and/or electromagnetic sensitivities. These accommodations are best achieved on a case-by-case basis.” (Bolte testimony, pp 4-5, no. 17)

The fact that chemical and/or electromagnetic sensitivities are recognized and accommodated by this federal government agency, and that the ADA requires “reasonable accommodations for those disabled by chemical and/or electromagnetic sensitivities” demonstrates that such accommodations are possible and important, and should, in principle and in the spirit of the law, extend to public services that affect the home and neighborhood. Under Section 1501 of the PA Public Utility Code,

*§ 1501. Character of service and facilities. Every public utility shall furnish and maintain **adequate, efficient, safe, and reasonable service and facilities**, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper **for the accommodation, convenience, and safety of its patrons, employees, and the public**, (emphasis added) (Bolte testimony, p. 9, no. 1 and Bolte, Exhibit 5)*

Inasmuch as Ms. Bolte has a medical condition that is recognized under the ADA and is disabled by her chemical/electromagnetic sensitivities, and inasmuch as the federal government recognizes and accommodates persons of this same medical condition, it remains unclear to Complainants how Met-Ed and ALJ Myers continue to deny “safe, and reasonable service” of electricity to customers like Ms. Bolte, and to deny her “...all such... substitutions...to such

service and facilities as shall be necessary or proper for the accommodation...and safety of its patrons ...and the public” as per section 1501 of the Public Utility Code.

Even if Ms. Bolte, by virtue of having had to educate herself and her doctor about her EHS medical condition as per the latest scientific literature, is denied limited scope expert status under PA Rules of Evidence 702, then under 225 PA Code Rule 701:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one 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.

Thus, Ms. Bolte, as a lay witness, has given very rational testimony that clarifies the facts that she has a medical condition that is recognized by the ADA, by a federal agency (Access Board, addressed above), by a landmark peer-reviewed publication in the science literature that is very readable and understandable (Bolte, Exhibit 20), by her neurologist (Bolte, updated Exhibit 4), and by her own health chronology (Bolte testimony, pp. 1-3, nos. 1-16). In his findings of facts, ALJ Myers acknowledges, “The Complainant, Ms. Bolte, suffers from a variety of health issues including chemical sensitivity, vertigo and sensitivity to electromagnetic fields. March 31, 2020 Bolte Statement at 1-3.” (I.D. p. 7, no. 4).

The Access Board acknowledges, “individual tolerances to specific exposures can vary greatly from one individual to the next” (Bolte testimony, pp 4-5, no. 17); the peer-reviewed journal articles all make reference to symptoms arising in those who are electromagnetically sensitive from *non-thermal* exposures to electromagnetic radiation commonly used in wireless devices. (See Exception no. 4, above) Aside from Mr. Ahr’s testimony that addresses Met-Ed’s compliance with FCC guidelines which are for levels much higher than those known to cause harm to people with EHS, Met-Ed offers no testimony to counter Ms. Bolte’s testimony regarding the harm she experiences from wireless communication devices, including Met-Ed’s smart meters that have been installed in her neighborhood. (Bolte testimony, p. 3, no. 15) Met-Ed has no testimony to counter the peer-reviewed scientific literature that similarly describes harm to those with EHS at non-thermal exposure levels from wireless devices which are known to be much lower than those regarded as “safe” according to the FCC’s guidelines (as addressed in Exception no. 4 above; also, Bolte Objections p.3 no. 7).

As such, Ms. Bolte has satisfied her burden of proof that she has a medical condition that is recognized to be exacerbated by electromagnetic radiation at levels of exposure much lower than those regarded as “safe” according to the FCC’s guidelines, and that inasmuch as the ADA recognizes her disability and requires appropriate accommodations, under Section 1501 of the PA Public Utility Code, similar accommodations can and should be made for Ms. Bolte. She should not be subjected to having her body invaded by microwave frequency communication signals from Met-Ed’s smart meter on her home as per her 4th Amendment rights – another part of her testimony that was not countered at all by the testimony of Met-Ed’s witness, Mr. Ahr.

In his Initial Decision, ALJ Myers has stated that his role is to determine “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.” Kreider, *supra* (citing Woodbourne-Heaton, 1992 Pa. PUC Lexis 160, at *12-13).” (I.D. p, 10)

He ultimately concludes:

Based upon the totality of the testimony and evidence presented, the Complainants have failed to provide the substantial evidence necessary to establish a prima facie case or otherwise meet their burden. Even if the Complainants had done so, Met Ed has presented credible testimony which contradicts the Complainants’ arguments. (I.D. p. 12)

Complainants have shown as per the above Exceptions, that Met-Ed has *not* presented credible testimony which contradicts the Complainants’ arguments, nor is Ms. Bolte’s testimony mere “belief and opinions”, but, rather, an unbiased reading of her testimony demonstrates that Met-Ed’s use of a smart meter, a technology which is not in some unique category unlike other wireless communication devices, will be unsafe for Ms. Bolte, who suffers from electromagnetic sensitivity which is an ADA-recognized disability for which accommodation is required. Thus, forcing a smart meter onto the home of Ms. Bolte “will constitute unsafe or unreasonable service in violation of Section 1501.” (I.D. p, 10)

G. Exception no. 7: The ALJ erred in putting Complainants in a no-win situation which demonstrates bias in favor of Respondents.

Ms. Bolte’s complaint and testimony defined four main arguments: One based on her medical history, one based on safety as per Section 1501 of the Public Utility Code, one based on 4th Amendment rights, and one based on the Pennsylvania law, Act 129 of 2008. (Bolte testimony,

p. 1) While 4th Amendment rights may be considered outside of the purview and jurisdiction of the PA PUC and its Court, both Section 1501 and Act 129 are well within its purview and jurisdiction.

Nevertheless, ALJ Myers first set narrowly defined criteria that Complainants had to satisfy or else have their complaint dismissed. Namely:

The complaint will be dismissed for failure to show that the installation of the smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501 or otherwise violates any provision of the Public Utility Code, a Commission order or regulation or a Commission-approved tariff.” (I.D. p 1)

As detailed in Exception no. 1 above, these criteria fail to acknowledge Complainants’ legal arguments regarding Act 129 of 2008.

Second, ALJ Myers rejected as hearsay without offering justification “numerous sources such as articles or letters written by others to corroborate Ms. Bolte’s testimony”, including peer-reviewed journal articles and a letter from Ms. Bolte’s neurologist. His wholesale elimination of Ms. Bolte’s exhibits as hearsay and irrelevant have been addressed in Exceptions nos. 4 and 5 above, though even more could be argued for the remaining exhibits – particularly on the grounds of relevance - that will not be presented due to time constraints. As a pro se complainant, the Commission’s regulations are to be liberally applied to Ms. Bolte’s evidence as per 52 Pa.Code § 1.2(d). ALJ Myers is not granting Ms. Bolte any leeway with regard to her evidence and, in fact, unreasonably alleges irrelevance in total disregard to how Ms. Bolte demonstrated relevance of each of her exhibits in her written testimony. However, stripping Ms. Bolte of all of her exhibits, placed her in the situation that is described next.

Third, ALJ Myers rejected as having any validity, what remained, referring to Ms. Bolte’s testimony as “beliefs and opinions.” As Exception no. 6 reveals additional factual information that was overlooked by the ALJ in Ms. Bolte’s testimony and his disregarding of the value of testimony from witnesses as per the PA Rules of Evidence 225 PA Code Rule 701. If, in fact, all testimony from lay witnesses was deemed “beliefs and opinions,” there would be no point in having them offer testimony at all! Nevertheless, by denying Ms. Bolte both her exhibits and testimony as carrying any weight, he shows extreme bias against her while setting up the final part of his no-win situation, described next.

Fourth, he claimed Met-Ed’s testimony as “credible testimony which contradicts the Complainants’ arguments”. Exceptions nos. 2, 3, and 6 detail the lack of credibility and the

failure of this testimony to contradict Complainants' arguments. Given the degree to which the ALJ overlooked these blatant deficits in Met-Ed's testimony, clear favoring of the Respondent over the Complainants is evident.

Taken together, it is inevitable that ALJ Myers' Initial Decision dismisses the complaint in favor of Met-Ed, claiming that Complainants have not satisfied their burden of proof, as it was set up as a no-win situation to begin with. These Exceptions point out the grave omissions of the ALJ in preparing his Initial Decision.

As shown in Appendix 1 of Ms. Bolte's Objections, there have been over 200 smart meter Formal Complaints alleging harm or potential harm from smart meters being deployed in Pennsylvania, none of which, no matter how many experts were brought in to testify nor how many medical documents were produced as proof, have been granted relief.


The PUC Court and Commission pretend to allow citizens to be heard, but subvert the law, as written and intended, to their liking – or perhaps to the liking of the industry it is supposed to regulate – and then place the burden of proof on citizens to defend themselves and the law.

As pro se, Ms. Bolte is not familiar with legal protocols, but seeing the deck stacked against her, hereby requests that the PUC Court preserve the entire record for appeal.

II. Conclusions

For the reasons set forth above, Complainant Sylvia Bolte respectfully requests that the Commission grant any or all of these Exceptions and issue a Final Order that rejects the ALJ's Initial Decision of August 11, 2020, and orders Met-Ed to grant Complainants' request to retain the analog meter presently on her home without loss of service and to refrain from installing a smart meter or any wireless transmitting device on their house or property.

Respectfully submitted,


(Signature of Complainant)

Sylvia Bolte
108 Pinebrook Road
Milford, PA 18337
Pro Se Complainant

August 31, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CHARLES AND SYLVIA BOLTE	:	
	:	
V.	:	DOCKET NO. C-2019-3011287
	:	
METROPOLITAN EDISON COMPANY	:	

CERTIFICATE OF SERVICE


I hereby certify that I have this day served a true copy of my “Exceptions to the Initial Decision of Administrative Law Judge Benjamin J. Myers issued on August 11, 2020” upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Because the PUC is shut down at the moment, service by electronic mail, as follows:

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Pennsylvania Public Utility Commission
Office of Administrative Law Judge
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Dated: August 31, 2020


Sylvia Bolte
(Signature of Complainant)

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