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September 8, 2020

VIA ELECTRONIC FILING

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

Re: Judith Hendin v. Metropolitan Edison Company
Docket No. C-2018-3003324

Dear Secretary Chiavetta:

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

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

Very truly yours,



Tori L. Giesler

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Judith Hendin

v.

Metropolitan Edison Company

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Docket No. C-2018-3003324

**REPLIES OF METROPOLITAN EDISON COMPANY TO THE
EXCEPTIONS OF JUDITH HENDIN**

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I. INTRODUCTION

Metropolitan Edison Company (“Met-Ed” or the “Company”), pursuant to 52 Pa. Code § 5.535, hereby respectfully submits these Replies to the Exceptions of Judith Hendin (“Complainant”). On August 7, 2020, Deputy Chief Administrative Law Judge Joel H. Cheskis (the “ALJ”) issued an Initial Decision (“I.D.”), which dismissed the Complainant’s Formal Complaint challenging the Company’s planned installation of a smart meter at the Complainant’s service location. The ALJ correctly held that the Complainant failed to demonstrate by a preponderance of evidence that Met-Ed provided unsafe or unreasonable service under 66 Pa.C.S. § 1501, or otherwise violated the Public Utility Code, a Commission order or regulation, or the Company’s Commission-approved tariff. *See* I.D. at 40-41. As such, the ALJ properly concluded that the Complainant failed to provide the substantial evidence required to meet her burden and dismissed the Complaint.

On August 27, the Complainant filed her Exceptions to the I.D.¹ Per the Secretarial Letter serving the I.D. on August 7, 2020, Complainant’s Exceptions were due on August 27, 2020, and any Replies to Exceptions would be due ten days after the due date for Exceptions.²

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

¹ Although the Complainant filed her Exceptions on August 27, 2020, she did not serve Met-Ed with a copy of the Exceptions until the following day, August 28, 2020. The Secretarial Letter serving the I.D. clearly stated: “It is your responsibility to serve all the parties with your Exceptions and Replies to Exceptions. Failure to do so may render your filing unacceptable.” Docket No. C-2018-3003324 (Secretarial Letter dated Aug. 7, 2020) (emphasis in original). The Complainant’s failure to timely serve her Exceptions upon Met-Ed warrants denial of them alone. Nevertheless, Met-Ed responds to the Exceptions herein.

² Ten days after August 27, 2020, is September 7, 2020, which is Labor Day. As such, the Company’s Replies to Exceptions are due the following day, on September 8, 2020.

II. REPLIES TO EXCEPTIONS

A. THE COMPLAINANTS EXCEPTIONS DO NOT COMPLY WITH THE COMMISSION'S REGULATIONS.

At the outset, Met-Ed notes that the Complainant's Exceptions do not comply with two key aspects of the Commission's regulations. First, the Complainant's Exceptions violate the Commission's requirement that documents filed with the Commission must use "double-leaded text and single-leaded, indented quotations." 52 Pa. Code § 1.32(a)(2). Here, the Complainant's Exceptions utilize single-spaced, i.e., singled-leaded, text throughout in an apparent attempt to squeeze additional exceptions and argument into the 40-page limit applicable to exceptions. *See* 52. Pa. Code § 5.533(c). Second, and relatedly, the Exceptions make numerous claims and assertions without specific citations to the record, the parties' briefs or the ALJ's I.D. *See, e.g.*, Exceptions at 1 (claiming, without citation, "In the 70 pages of questions Ms. Hendin had prepared for Dr. Israel, every one of these exhibits was going to be discussed in cross-examination."). In this regard, it appears that the Complainant repeatedly attempts to rely on extra-record evidence or arguments that were not raised properly before the Commission; these attempts should be rejected. Due to the Complainant's failure to file Exceptions that comply with the Commission's regulations, Met-Ed submits it is appropriate to reject these Exceptions outright. Nevertheless, Met-Ed responds to the specific exceptions raised below.

B. THE ALJ CORRECTLY DISMISSED THE COMPLAINT DUE TO THE COMPLAINANT'S FAILURE CARRY HER BURDEN OF PROOF.

None of the arguments advanced in the Complainant's Exceptions demonstrate that the ALJ erred in concluding she failed to carry her burden. Importantly, the ALJ correctly rejected the Complainant's attempt to alter her burden of proof (I.D. at 24-27) and correctly concluded that her claims did not demonstrate by a preponderance of the evidence that Met-Ed had violated a provision of the Public Utility Code, or an applicable Commission regulation or order. *See* I.D at

46-47. The ALJ appropriately weighed the evidence presented by the parties and correctly rejected each of the Complainant's claims. Indeed, (a) Act 129 does not permit the Commission to grant the relief sought by the Complainant (i.e., an opt-out of the installation of the smart meter), (b) the Complainant did not demonstrate that she would suffer adverse health effects from the installation of a smart meter, (c) the Complainant did not demonstrate that Met-Ed should be required to move the smart meter to another location at the Company's expense, and (d) the Complainant did not demonstrate the installation of a smart meter violates her due process rights or rights under the Pennsylvania or United States constitutions. Therefore, and for the reasons more fully explained in the Company's Main Brief and Reply Brief, the Complainant's Exceptions should be denied.

C. REPLIES TO EXCEPTION NOS. 11, 14, 17, 18, 22, 25 – THE ALJ CORRECTLY CONCLUDED THAT THE COMPLAINANT IS NOT ENTITLED TO AN OPT-OUT FROM THE INSTALLATION OF A SMART METER ON HER RESIDENCE.

The ALJ correctly rejected the Complainant's arguments that the installation of a smart meter on her residence is not mandated or that the Complainant can opt-out of the installation of a smart meter. I.D. at 27-29. As noted by the I.D. and explained in Met-Ed's Briefs, the Commission has interpreted Act 129 to mandate an electric distribution company ("EDC"), such as Met-Ed, to install smart meters on all service locations within its territory. I.D. at 28 ("The Commission has interpreted the use of the word 'shall' in the statute to indicate the General Assembly's direction that all customers within an EDC's service territory will receive a smart meter."); *see also* Met-Ed MB at Section IV.A.1. (explaining that the installation of a smart meter is required by law); *see also* Met-Ed RB at Section IV.C. The I.D. also explains that the Commission has repeatedly affirmed this interpretation in numerous other smart meter complaint proceedings (I.D. at 28), and

Met-Ed notes that the Commission's precedent is, in fact, uniform in this interpretation.³ Moreover, the I.D. appropriately credited the testimony of Met-Ed witness Mr. Ahr, which explained that Met-Ed's Commission-approved Smart Meter Deployment Plan ("SMDP") calls for 98.5% of the Company's smart meter installation to be completed by 2019, with the remaining 1.5% of meters being installed by the end of 2022. I.D. at 28; Met-Ed St. No. 1R at 10-11. Importantly, if Met-Ed does not achieve this 100% installation target, it will have violated its obligations under Act 129. *See* I.D. at 28; *see also* Met-Ed RB at 24-25. Finally, the ALJ also noted that Ms. Hendin's opt-out proposal could not be reasonably implemented and would, instead, create an "exception that swallows the rule." I.D. at 29. Met-Ed agrees that the opt-out proposal advanced by Ms. Hendin would lead to an absurd result, i.e., a statutory provision which mandates EDCs to install smart meters would be rendered a nullity.

The Complainant's Exceptions take umbrage with the ALJ's exhaustive and persuasive analysis regarding the Complainant's request to opt-out of the installation of a smart meter. Specifically, the Complainant asserts that: (1) installation of a smart meter violates Section 1501 of the Code (Exception No. 8 at 12-13); (2) the ALJ did not address her claims that she should be permitted to opt out because the installation of smart meters constitutes "mass experimentation" (Exception No. 14 at 14-15); (3) the ALJ ignored the Complainant's arguments regarding the language and history of Act 129 (Exception No. 17 at 20-24); (4) the ALJ ignored the precedent of other jurisdictions which permit opt-outs (Exception No. 18 at 24-25); and (5) she is entitled to have her current, digital meter replaced with "her original electromechanical analog meter" (Exception No. 25 at 39). Each of these Exceptions is without merit and should be denied.

³ Specifically, in *Starr*, the Commission observed that it has "rejected similar claims that the installation of smart meters is not mandatory or that an opt-out is permissible under Act 129." *See, e.g., Starr v. PECO Energy Co.*, Docket No. C-2015-2516061, p. 11 (Order Entered Sept. 1, 2016).

As explained herein, and throughout Met-Ed's Briefs, the Complainant's assertion that the installation of a smart meter violates Section 1501 of the Code is incorrect and, therefore, cannot serve as a basis to grant the Complainant an opt-out. Met-Ed MB at Section IV.A.1.; Met-Ed RB at Section IV.C.2-3. The Complainant's assertion is fundamentally based on her allegation that "the specific details of...[her] symptoms are definitely determinative" and that "[i]ninstalling a smart meter on Ms. Hendin's residence would constitute unsafe and unreasonable service." Exceptions at 12. However, Ms. Hendin simply did not carry her burden of proof to demonstrate that smart meters are an unsafe utility service that violates the Public Utility Code (Met-Ed RB at Section IV.A.) or that the EMF emissions from Met-Ed's smart meters will adversely affect her health (Met-Ed MB at Sections IV.A.2-4; Met-Ed at Sections IV.B. and IV.D.).

Second, the Complainant's suggestion that she is entitled to an opt-out because the installation of smart meters constitutes "mass experimentation" is meritless. Exceptions at 14-15. Credible and substantial record evidence demonstrates that Met-Ed's smart meters comply with all applicable safety requirements established by the Federal Communications Commission ("FCC"). See Met-Ed RB at 19-20. And, importantly, the only evidence that the Complainant offers to support her assertion that the FCC's guidelines are insufficient were "inadmissible hearsay statements by the American Academy of Environmental Medicine." Met-Ed RB at 19.

Third, the Complainant reiterates her arguments from Briefs regarding the language and legislative history of Act 129. Exceptions at 20-24. However, the ALJ correctly analyzed and rejected these arguments. I.D. at 34-36. As more fully explained in Met-Ed's Briefs, Met-Ed has an absolute obligation to install smart meters at all of its customers' service locations. Met-Ed MB at 11. The Complainant's focus on the term "depreciation" and further tortured interpretation of Act 129 also violate well accepted principles of statutory construction. See Met-Ed RB at

Section IV.C.3. Indeed, the plain language of Act 129 explicitly states that EDCs, like Met-Ed, “shall” install the new AMI meters,⁴ and the word “shall” has been declared by Pennsylvania courts to mean “must.”⁵ And, even if this explicit statement were ambiguous, and it is not, “administrative interpretations of such statute” should be considered and given substantial weight.⁶ Related to the Commission’s interpretations of Act 129, as noted by the ALJ, is that the Commission must render consistent decisions. I.D. at 36-37. The Commission’s uniform interpretation of Act 129 conclusively demonstrates that EDCs are required to install smart meters and are not permitted to allow customers to opt-out of such installation. Met-Ed MB at 13 (“Commission precedent is uniform that the Commission cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to ‘opt-out.’”).

Fourth, contrary to the Complainant’s Exception No. 18, the ALJ correctly declined to rely on the precedent of other jurisdictions which permit opt-outs. Exceptions at 24-25. Indeed, the Commission and Pennsylvania courts have made clear the practices and policies of other jurisdictions have little if any relevance for Pennsylvania. Met-Ed MB at 14 (citing authorities); Met-Ed RB at 5 (citing authorities).

Finally, the Complainant asserts that she is not only entitled to opt-out of the installation of a smart meter, but that she is also entitled to have her current, digital meter replaced with “her original electromechanical analog meter. Exceptions at 39. The Complainant is not entitled to this relief for the same reasons she is not entitled to opt out of the installation of a smart meter; Met-Ed is required to install a smart meter at the Complainant’s residence.

⁴ See 66 Pa.C.S. § 2807(f)(2).

⁵ See Met-Ed RB at 22 (citing authorities).

⁶ 1 Pa.C.S. § 1921(c)(8).

For these reasons, and the reasons more fully explained in Met-Ed's Briefs, the ALJ correctly concluded that the Complainant failed to demonstrate that she is entitled to an opt-out of the installation of a smart meter at her residence. Therefore, her Exceptions should be denied and the Commission should adopt the I.D. without modification.

D. REPLIES TO EXCEPTION NOS. 4-7, 10, 16, 19-21, 23, 24 – THE ALJ CORRECTLY WEIGHED AND CONSIDERED THE EVIDENCE PRESENTED BY THE PARTIES.

The Complainant further takes issue with the ALJ's consideration and evaluation of the evidence presented in this proceeding throughout her Exceptions. The Complainant's Exceptions on this issue can be separated into three categories of Exceptions. First, the Complainant asserts that the ALJ improperly applied the preponderance of the evidence standard, and rejected the use of the precautionary principle in the analysis of the Complaint. Exception Nos. 16, 24. Second, the Complainant asserts that the ALJ did not properly consider or attribute appropriate weight to the evidence she presented. Exception Nos. 4-7, 10. Third, the Complainant claims that the ALJ incorrectly relied upon or attributed too much weight to evidence presented by Met-Ed. Exception Nos. 19-21, 23.

Met-Ed fully addressed the evidence presented in this proceeding in its Main Brief and Reply Brief. Importantly, any finding of fact necessary to support an adjudication of the Commission need only be supported by "substantial evidence." *Met-Ed Indus. Users Group v. Pa. Pub. Util. Comm'n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). However, the "presence of conflicting evidence in the record does not mean that substantial evidence is lacking." *Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

The Complainant's Exceptions fail to demonstrate that any finding of fact reached by the ALJ is not supported by substantial evidence. Rather, and as more fully explained below, the Complainant essentially asks the Commission to re-weigh the evidence, or apply a new standard of proof to the evidence presented. The Commission should decline to take either of these actions and should deny the Complainant's Exceptions in their entirety.

1. The Complainant Failed To Satisfy Her Burden Of Proof Under The Preponderance Of The Evidence Standard Or Otherwise Demonstrate That The ALJ And The Commission Should Utilize the Precautionary Principle.

With respect to Exception No. 16, Ms. Hendin asserts that she has "presented a huge amount of information demonstrating 'by a preponderance of the evidence...that Met-Ed is responsible or accountable for the problem described in the complaint.'" Exceptions at 20 (citing I.D. at 26). However, the Complainant goes on to admit that, of course, the evidence must be weighed. Exceptions at 20.

The Complainant argues that she carried her burden because "she presented her treating physician's medical records which demonstrated that a smart meter caused serious symptoms after exposure, and that these symptoms healed when the meter was removed." Exceptions at 16. However, Complainant's argument that any symptoms she has suffered are attributable to a smart meter hinges on her unsubstantiated belief that the meter used for her gas utility service, is an RF-emitting smart meter. Met-Ed MB at 23; Met-Ed RB at 18-19 (citing the Highly Confidential testimony of Dr. Kracht, the Complainant's treating position). As explained by Met-Ed, the Complainant's assertions that she suffered any symptoms from a gas utility smart meter, and that these symptoms retreated due to its removal, are not based on substantial evidence and should be denied. Met-Ed RB at 18-19.

The Complainant's Exceptions also essentially state that the Complainant presented "more" exhibits than Met-Ed and, therefore, carried her burden of proof. *See* Exceptions at 16. However, Ms. Hendin was not qualified to testify or offer exhibits related to any issues outside of her direct personal knowledge and Met-Ed objected to these admission of these exhibits. *See* Met-Ed MB at 24. Therefore, the Complainant's testimony and exhibits regarding health, medical or scientific opinions carry no evidentiary weight and, where applicable, were properly objected to.

The crux of the Complainant's case appears to be is her reliance on the "BioInitiative Report," which she mistakenly characterizes as a "landmark" for understanding the science surrounding smart meters. Met-Ed RB at 10; *see also* Exceptions at 16-19. However, as explained in Met-Ed's Reply Brief, the report is extra-record evidence, is hearsay, and is an inherently unreliable piece of advocacy. Met-Ed RB at 11. Met-Ed further summarized the evidence surrounding this report as follows:

Dr. Israel – the only expert who addressed the BioInitiative Report – testified that the Complainant's characterization of the report as a "meta-analysis" was incorrect, and, in fact, that the report is not a scientific study but rather "advocacy, almost a newsletter, of opinion pieces." Significantly, in the Myers case previously decided by this Commission, the co-editor of the BioInitiative Report revealed that the document is not at all a consensus scientific review by an expert panel. Indeed, he admitted that the authors of the various chapters in the document were hand-picked based on their known positions about alleged RF health effects.

In the instant case, Dr. Israel explained that, while the BioInitiative Report includes lists of many studies, the Report consists of chapters written by individuals are advocating for a particular viewpoint. Dr. Israel went on to explain that the BioInitiative Report is not a reliable scientific source and, therefore, would not provide a reliable scientific basis upon which to form an expert opinion. The conclusion that the BioInitiative Report is neither objective nor a balanced review of the science has been reached by many national and international groups, including this Commission.

Met-Ed RB at 11 (citations omitted) (emphasis added). Simply stated, the unrebutted expert testimony provided by Met-Ed in this proceeding demonstrates the BioInitiative Report is inherently unreliable, and cannot serve as the basis for an informed decision by the Commission in this proceeding. Therefore, the ALJ correctly declined to rely upon it in the I.D.

Furthermore, the Complainant asserts that the ALJ erred by declining to apply the precautionary principle in this case. However, Met-Ed fully explained why the application of the precautionary principle should be rejected: it would fundamentally and improperly shift the burden of proof in this proceeding. Met-Ed RB at Section III. It bears repeating that the Commission has specifically rejected the application of the precautionary principle in this past because it would require a respondent utility to “prove a negative” and no Pennsylvania court has recognized or adopted this principle. Met-Ed EB at 3-5. The ALJ’s rejection of the application of this standard, and conclusion that the Complainant failed to carry her burden of proof should be affirmed by the Commission without modification.

2. The ALJ Appropriately Evaluated And Weighed The Complainant’s Evidence.

Regarding the second category of Exceptions regarding the I.D.’s evaluation of evidence, the ALJ appropriately and correctly considered and attributed little weight to the Complainant’s evidence. In Exception No. 4, the Complainant asserts that “Dr. Kracht’s medical records showed that Ms. Hendin got sick when a smart meter was placed on her residence previously.” Exceptions at 3. However, as explained above and in Met-Ed’s RB, the Complainant’s argument that any symptoms she has suffered are attributable to a smart meter hinges on her unsubstantiated belief that the meter used for her gas utility service is an RF-emitting smart meter. Met-Ed MB at 23; Met-Ed RB at 18-19 (citing the Highly Confidential testimony of Dr. Kracht, the Complainant’s

treating position). The admissions of her physician on the Highly Confidential record⁷ make clear that there is no scientific or medical basis upon which the ALJ or Commission could conclude that the symptoms alleged by Ms. Hendin were attributable to a smart meter. *See* Met-Ed MB at 23; Met-Ed RB at 18-19. The Complainant herself also simply has no first-hand knowledge of the make and model of this meter,⁸ and does not know if it was, in fact, removed and exchanged.⁹

Ms. Hendin then attempts to argue that a comparison of her symptoms to those listed in Hendin Exhibit X-11 satisfies her burden. Exceptions at 4-5. However, Met-Ed objected to this exhibit as inadmissible hearsay and, therefore, it carries insignificant weight and cannot support the Complainant's burden of proof in this proceeding. *See* Met-Ed MB at 25.

Furthermore, the Complainant asserts that the ALJ omitted certain medical records offered by the Complainant. Exceptions at 5 (“With even greater omission, “Met-Ed witness Dr. Israel testified...that no medical records were provided to verify her conditions...This is an obvious falsity...”). However, the Complainant reads this portion of the I.D. out of context. Page 17 of the I.D. does not set forth any findings or conclusions; rather, it merely summarizes Met-Ed's position. *See* I.D. at 16-17 (summarizing Met-Ed's Main Brief, in a section titled “Positions of the Parties”). As such, Exception No. 4 should be rejected.

The Complainant next asserts in Exception No. 5 that the ALJ gave erred by “Not Giving Great Weight to Dr. Kracht's Medical Records.” Exceptions at 5. Ms. Hendin essentially argues that medical records constitute “incontrovertible facts.” Exceptions at 5. However, Met-Ed highlighted the substantial problems associated with Dr. Kracht's supposed “diagnosis.” Met-Ed

⁷ Although the Complainant appears to waive the Highly Confidential treatment of this testimony, out of an abundance of caution, Met-Ed will not reproduce the Highly Confidential quotations referenced in its Reply Brief. However, these quotations can be found at Met-Ed MB at 23, Met-Ed RB 18-19 and Hearing Transcript pages 115, 117, 118-119, 120.

⁸ Tr. 59-60.

⁹ Tr. 59-60.

MB at 22-23. Importantly, Dr. Kracht relied on “information gathered by my office,” but did not take several critical steps—each of which is highlighted on page 23 of Met-Ed’s Main Brief—that demonstrate his diagnosis is not credible.¹⁰

Moreover, Complainant’s argument ignores the contrary medical analysis presented by Met-Ed. Met-Ed witness Dr. Israel conducted a detailed evaluation of the published scientific studies related to Complainant’s alleged condition and symptoms. Met-Ed MB at 19 (citing Highly Confidential record, Met-Ed St. 3-R at 15). Dr. Israel credibly testified that symptoms claimed to be electromagnetic hypersensitivity (“EHS”) are more accurately described as “Idiopathic Environmental Intolerance” (“IEI”), in which “idiopathic” means “cause unknown,” rather than EHS. Met-Ed MB at 20. Numerous entities there is no reliable scientific evidence that exposure to RF fields causes claimed IEI symptoms. Met-Ed MB at 20-21. Based upon this evidence and the medical record provided by Complainant, Met-Ed witness Dr. Israel testified that “there is no reliable medical basis to conclude that radio frequency fields from Met-Ed’s smart [sic] meters at the Complainant’s house will cause, contribute to, or exacerbate, any medical condition of Ms. Hendin.” Met-Ed St. 3-R at 17-18. Met-Ed fully rebutted any medical claims presented by the Ms. Hendin and, therefore, the testimony of Dr. Kracht simply does not constitute “incontrovertible fact.” Exception No. 5 should be denied.

The Complainant next asserts in Exception No. 6 that the ALJ erred by not addressing the distance of the smart meter from Ms. Hendin’s daily activities. *See* Exceptions at 5-6. This exception is based on the Complainant’s assumption that the RF emissions of Met-Ed’s smart meters are unsafe. However, Met-Ed demonstrated there is no reliable scientific basis in physics, biophysics, bioelectromagnetics, or radio frequency bioelectromagnetics to conclude that the very

¹⁰ *See* footnote 7 *supra*. Met-Ed further notes that these problems are set forth on Hearing Tr. Pages 115-119, which constitute part of the Highly Confidential record in this proceeding.

low levels of radio frequency fields from Met-Ed's Itron meters can or will cause any adverse thermal or non-thermal biological effects in people. *See, e.g.*, Met-Ed MB at 18. Moreover, the Complainant is not an expert in the fields of physics, biophysics, bioelectromagnetics, or radio frequency bioelectromagnetics and presented no expert testimony that contradicts Dr. Davis's findings and conclusions. Met-Ed RB at 33-34. In this regard, the findings and conclusions of Dr. Davis constitute un rebutted evidence, which the ALJ properly considered and relied upon in the I.D.

The Complainant goes on to argue in Exception No. 7 that the ALJ erred by not finding that RF emissions from smart meters differ from other RF emissions. Exceptions at 6-7. Complainant relies in part upon another proceeding before this Commission in support of this assertion. Exceptions at 6 (citing "*Hriadil v. Duquesne Light Company*, Docket No. C-2016-2571726, New Matter, Jan. 24, 2017 at 6-7."). Complainant further attempts to improperly rely upon Hendin Exhibits X-25 and X-33, which were not admitted into the record and all references thereto were stricken. Order Granting in Part and Denying In Part Motion for Admission of Late-Filed Exhibits and Motion to Strike at 13 (dated June 18, 2020). However, this information is simply not part of the record in this proceeding and should be disregarded.

In addition, the Complainant baldly asserts that "Dr. Davis perjured himself." Exceptions at 7. There is no basis for this statement and, instead, it appears to be a continuation of the Complainant's meritless attempts to attack Met-Ed's experts. Met-Ed RB at Section IV.D. Contrary to her assertions, the un rebutted record evidence shows that the two RF emitted devices on Met-Ed's smart meters average RF emissions that are 62,000 and 527,000 times smaller than the FCC's safety standards. Met-Ed MB at 17. And there is nothing unusual about the RF fields

emitted from Met-Ed's meters compared to RF fields emitted by other devices. Met-Ed RB at 34 (citing Met-Ed St. 2-R at 14).

Finally, with regard to Exception No. 10, the Complainant's assertion that the FCC guidelines are inadequate should be rejected. Despite Ms. Hendin's lamentations regarding the evidence and exhibits she presented regarding RF fields, each study and/or statement she relies upon constitutes inadmissible hearsay. Importantly, the Complainant is not an expert in the fields of physics, biophysics, bioelectromagnetics, or radio frequency bioelectromagnetics and presented no expert testimony that contradicts Dr. Davis's findings and conclusions. Met-Ed RB at 33. She simply lacks both the "personal knowledge or specialized training" required to testify regarding RF fields and their effects on human safety and health. *See* Met-Ed MB at 24-25. As such, the ALJ appropriately attributed little weight, or no weight at all, to the Complainant's evidence assertions that the existing FCC standards are inadequate.

For these reasons, and the reasons more fully explained in Met-Ed's Briefs, the ALJ properly concluded that the Complainant's evidence should be attributed minimal weight in this proceeding. Therefore, Complainant's Exception Nos. 4-7 and 10 should be denied.

3. The ALJ Appropriately Evaluated And Weighed Met-Ed's Evidence.

With regard to the third category of exceptions, the Complainant claims that the ALJ incorrectly relied upon or attributed too much weight to evidence presented by Met-Ed. Exception Nos. 19-21, 23. Contrary to the Complainant's claims, the expert testimony presented by Met-Ed's expert witnesses, Dr. Davis and Dr. Israel, was credible and un rebutted.

Complainant first attempts to cite preferential findings of fact made by the ALJ. *See* Exceptions at 25-27 (Exception No. 19). However, the Complainant does not cite any expert testimony or admissible and credible evidence that controverts these facts. Rather, the Complainant continues her attempts to rely on inadmissible hearsay evidence and her own non-

expert testimony regarding these findings and conclusions, which Met-Ed has fully explained should be rejected *See* Met-Ed MB at Section IV.A.4.; Met-Ed RB at Section IV.B. and IV.D. In this regard, the Complainant's Exceptions continue the pattern of over-interpretation and mischaracterization of scientific evidence that occurred in her Briefs.

Next, the Complainant once again attempts to levy meritless attacks against Met-Ed witnesses Dr. Israel and Dr. Davis. Exceptions at 27-31 (Exception Nos. 20 and 21). Met-Ed has previously explained in its Reply Brief that the Complainant's attempts to attack Dr. Israel and Dr. Davis are gratuitous and without scientific merit. Met-Ed RB at Sections IV.B.2, 3 and 5, and Section IV.D. Regardless of any of the meritless attacks that Ms. Hendin levies against Dr. Israel and Dr. Davis, these complaints go to the weight and not the admissibility of their respective testimony. This fact is important because, as repeatedly explained by Met-Ed, Ms. Hendin was not qualified to testify or offer exhibits related to any issues outside of her direct personal knowledge; and, as such, her testimony and exhibits regarding health, medical or scientific opinions carry no evidentiary weight at all. Met-Ed MB at 24-25; Met-Ed RB at 31. Even if the arguments raised in her Exceptions diminished the weight of Dr. Israel's or Dr. Davis's testimony, which they do not, the Complainant did not herself present admissible and credible scientific or medical expert testimony to support her claims.

Finally, the Complainant asserts that the ALJ made incorrect deductions about technology and biology in his evaluation of her claims. Exceptions at 34-35 (Exception No. 23). Essentially, the Complainant takes issue with the ALJ's evaluation of the evidence presented regarding the state of science surrounding smart meters. The Complainant merely repeats the same unfounded conclusions regarding the science surrounding smart meters and their alleged effects on human health raised in her Briefs. *See* Exceptions at 34 (presenting argument regarding the nature and

effects of RF fields from stove clocks to smart meters). Ms. Hendin, however, is not an expert and presented no expert testimony to rebut Met-Ed's witnesses' explanation that the international consensus from credible public health entities is that the scientific research has not shown that the very low levels of RF fields from of smart meters can cause or contribute to adverse health effects. *See* Met-Ed RB at 20. The Complainant's attempts to distract from this credible and un rebutted evidence should be rejected.

4. The ALJ Correctly Held That The Complainant Failed To Satisfy Her Burden Of Proof.

For these reasons, and the reasons more fully explained in Met-Ed's Briefs, the ALJ correctly concluded that the Complainant failed to demonstrate that the installation of a smart meter constitutes a violation of Section 1501 of the Public Utility Code or an applicable Commission regulation or order. Therefore, Complainant's Exception Nos. 4-7, 10, 16, 19-24 should be denied and the Commission should adopt the I.D. without modification.

E. REPLIES TO EXCEPTION NO. 9 – THE ALJ CORRECTLY CONCLUDED THAT THE INSTALLATION OF A SMART METER ON THE COMPLAINANT'S RESIDENCE DOES NOT CONSTITUTE A VIOLATION OF HER RIGHTS UNDER THE PENNSYLVANIA AND/OR FEDERAL CONSITUTIONS.

The Complainant also excepts to the ALJ's evaluation of her constitutional claims. Exceptions at 9-11. She asserts that "[t]he radiation emitted by a smart meter would thus be a violation of bodily integrity," in addition to an invasion of privacy. Exceptions at 9. However, this is a distinction without a difference and Exception No. 9 should be denied.

In order for there for there to be a deprivation of any constitutional rights, two elements must be met: (1) "the deprivation must be caused by the exercise of some right or privilege created by the state"; and (2) "the party charged with the deprivation must be a person who may fairly said to be a state actor." Met-Ed RB at 35 (quoting and citing authorities). Regardless of the nature of

such violation, the Complainant was required to demonstrate that Met-Ed is a state actor. Met-Ed explained that it is not a state actor and, therefore, Met-Ed cannot violate the Complainants' constitutional rights by installing the new smart meter. Met-Ed RB at 35-36.

F. REPLIES TO EXCEPTION NOS. 12-13 – THE ALJ CORRECTLY REJECTED THE COMPLAINANT’S CLAIMS UNDER SECTIONS 56.113 AND 57.28 OF THE COMMISSION’S REGULATIONS.

The Complainant also claimed that the ALJ erred by rejecting her arguments under Sections 56.113 and 57.28. *See* Exceptions at 13-14. However, the Complainant’s Exceptions simply misrepresent the ALJ’s analysis and should both be rejected.

With respect to the Complainant’s Section 56.113 arguments, the ALJ importantly explained that “there is not sufficient evidence to determine that the smart meters are causing the adverse health effects Ms. Hendin avers they are and, therefore, a doctor’s certification is not sufficient.” I.D. at 44. The Complainant ignores this aspect of the ALJ’s analysis and simply attempts to read Section 56.113 out of context. Although Ms. Hendin presented evidence regarding her alleged health effects, that evidence was fully rebutted by Met-Ed. *See* Met-Ed MB at Section IV.A.2.; *see also* Met-Ed RB at Section IV.B. Importantly, Complainant’s own doctor, Dr. Kracht, admitted that “there is no known diagnostic test of electromagnetic sensitivity” and, therefore, he has “not conducted any specific testing [of Ms. Hendin] in this regard.” Met-Ed MB at 22 (citing Kracht St. 1 at 4). It is simply unreasonable for the Complainant to except to the I.D. where the underlying medical condition she alleges justifies the application of Section 56.113 has no basis.

With respect to the Complainant’s arguments under Section 57.28, the Complainant’s Exception is based on the flawed premise that Met-Ed’s smart meters are unsafe or hazardous. Met-Ed fully explained that the Complainant did not show its smart meters are unsafe. Met-Ed MB at Section IV.A.2.; Met-Ed RB at Section IV.B. As such, the ALJ correctly concluded that

“there is not substantial record evidence that demonstrates that the smart meters Met-Ed seeks to install at Ms. Hendin’s home in fact cause danger to the public.” I.D. at 34.

G. REPLIES TO EXCPETION NOS. 2, 15, 24 – THE ALJ DID NOT VIOLATE THE COMPLAINANT’S DUE PROCESS RIGHTS.

At several points in her Exceptions, the Complainant appears to assert that the ALJ, and the Commission, have violated her rights to due process. More specifically, the Complainant claims that: (1) the timing of the ALJ’s exclusion of Complainant’s late-submitted exhibits “Ms. Hendin at a terrible disadvantage because some of her arguments had been constructed based on these exhibits” (Exceptions at 1); (2) the ALJ holding her to the established hearing schedule deprived her of a fair and impartial hearing (Exceptions at 15); and (3) the ALJ’s considering and weighing of the evidence calls into question his integrity (Exceptions at 35-38). None of these arguments possess any merit and the Complainant’s Exceptions on this point should be denied.

First, contrary to the Complainant’s Exception Number 2, the ALJ properly excluded the 19 late-filed exhibits that Ms. Hendin attempted to enter into evidence during the re-scheduled cross-examination of one of Met-Ed’s witnesses. Exceptions at 1. Importantly, the Complainant does not contest that these exhibits were late-submitted and the transcript unequivocally confirms this fact. Indeed, the exhibits referenced were provided to counsel after the December 20, 2019 hearing was adjourned, and only one day prior to the January 24, 2019 hearing date. Tr. 259. These exhibits were not previously produced by the Complainant. Tr. 259. As such, these exhibits appeared to be offer as an attempt to take advantage of the additional time afforded to the Complainant to complete “a few clean-up items” on cross examination. Moreover, the Complainant was afforded, and took advantage, of an opportunity to file a motion to admit these late filed exhibits. Tr. 262; *see also* Exceptions at 1. Met-Ed relatedly filed an Answer and the ALJ issued an order denying the admission of these exhibits. *See* Exceptions at 1. Therefore, and

for the reasons more fully explained in Met-Ed's Answer to the Complainant's Motion and Met-Ed's Motion to Strike Portions of the Complainant's Main Brief, the ALJ properly excluded the Complainant's late-submitted exhibits from the record and declined to rely upon them in the I.D. As such, Exception No. 2 should be denied.

Second, the ALJ properly required the parties to adhere to the agreed upon schedule for hearings. Although Dr. Israel's time was limited on December 20, 2019 due to an unexpected emergency, the ALJ scheduled an additional day of hearings to accommodate the remainder of his cross-examination and any re-direct. Tr. 240. Importantly, however, the ALJ advised both the parties that "Just because we're having another hearing, it doesn't, you know, open up the door for more cross or more redirect." Tr. 240 (emphasis added). In this regard, both parties were clearly advised that they were not to attempt to expand the examination of Dr. Israel. Despite this directive, the Complainant attempted to use the additional hearing date to expand her cross-examination of Dr. Israel, including the introduction of previously undisclosed cross examination exhibits. See Tr 257, 260-261. As such, the ALJ correctly limited the Complainant's cross examination at the January 24, 2020 hearing, and Exception No. 15 should be denied.

Finally, the Complainant's attempts to re-weigh the evidence do not demonstrate that the ALJ acted in a biased manner or demonstrate that the ALJ was not fair and impartial. Exceptions at 35-37 (Exception No. 24). The crux of the Complainant's exceptions is that if the ALJ "cannot say he cannot rule on scientific matters, and then proceed to do so, ruling in favor of the utility." Exceptions at 36. This misrepresents the ALJ's findings and conclusions.¹¹ Rather, the ALJ

¹¹ Although the ALJ indicated that the Commission cannot, and should not, attempt to weigh the merits of competing medical reports or studies, this statement was made in the context of weighing competing medical diagnoses regarding the Complainant's alleged symptoms and recommended treatments for these symptoms. See I.D. at 43-44. It was not made in the context of determining whether the installation of a smart meter on the Complainant's residence will violate the Public Utility Code, or the Commission's regulations or orders.

concluded that the Complainant failed to carry her burden of proof “that Met-Ed’s actions with regard to installing a smart meter violate the Public Utility Code, a Commission order or regulation or a Commission-approved order of the company.” I.D. at 46. In addition, the ALJ properly concluded that “Ms. Hendin has failed to demonstrate by a preponderance of the evidence that the smart meter will cause her adverse health effects.” I.D. at 47. As such, Exception No. 24 should be denied in this regard.

H. REPLIES TO EXCPETION NO. 22 – THE ALJ CORRECTLY DETERMINED THAT THE COMMISSION IS WITHOUT JURISDICTION TO HEAR CERTAIN OF THE COMPLAINANT’S ARGUMENTS.

The Complainant further asserts that the ALJ erred by concluded the Commission was not the proper body before which she could raise her federal claims. Exceptions at 33-34. Complainant attempts to argue, without basis, that the ALJ concluded that the Commission is not able to hear any of the Complainant’s claims. *See* Exception at 34 (“Ms. Hendin, as an individual consumer, must bring her complaint before the Commission as the sole option to prevent installation of a smart meter on her home. Sending Ms. Hendin to find another “jurisdiction” is sending her on a wild goose chase to search out a non-existent tribunal.”).

However, the ALJ specifically referred to page 67 of the Complainant’s Main Brief, and correctly concluded that the Commission lacks jurisdiction to hear the Complainant’s arguments under the Rehabilitation Act of 1973 and the Fair Housing Act Amendments. I.D. at 44-46 (citing *White v. PPL Electric Utilities Corp.*, Docket Number C-2018-3003468, at 19 (Opinion and Order entered May 21, 2020); *see also* Met-Ed RB at 38. As explained in Met-Ed’s Reply Brief, the ALJ correctly explained that the Commission is a “creature of statute” and, therefore, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. I.D. at 45; *see also* Met-Ed RB at 38. As such, while the ALJ and the Commission can properly hear the Complainant’s claims under Section 1501 of the Code, and applicable

Commission regulations and orders, they cannot hear the Complainant's claims brought under federal statutes that the Commission simply lacks jurisdiction to administer. The Complainant's Exception is, therefore, without merit and should be denied.

I. REPLIES TO EXCEPTION NOS. 1, 3, 8, 15, 19 – THE ALJ CORRECTLY ADMINISTERED THE PROCEEDING AND DID NOT AFFORD MET-ED PREFERENTIAL TREATMENT OR OTHERWISE EXHIBIT BIAS AGAINST THE COMPLAINANT.

At several points in her Exceptions, the Complainant asserts that the I.D. demonstrates that the ALJ was biased in his evaluation of the Complainant. *See, e.g.*, Exceptions at 1 (“misrepresents Ms. Hendin’s attitude with Met-Ed”), 2 (“Looking at specifics revealed that the Findings of Fact are blatantly biased”), 7 (“The ALJ gave a biased picture of this when he quoted Met-Ed’s Reply Brief...Ms. Hendin is offended by this misrepresentation.”), 15 (“Ms. Hendin did not receive a fair and impartial hearing because the ALJ did not give the hearing its fair and proper amount of time.”) and 25-27 (claiming that the ALJ’s citations of the record show an impartial evaluation was not conducted).

With respect to Exception No. 1, the I.D. is merely stating what Met-Ed “averred.” I.D. at 1. No findings or conclusions regarding Ms. Hendin’s attitude were made by the ALJ and this Exception serves no basis for modifying the I.D.

With respect to Exception No. 3, the Complainant conducts a tortured analysis of the findings of fact contained within the I.D. to attempt to show that the ALJ was biased in favor of Met-Ed. The Complainant’s comparisons add nothing to this proceeding; however, Met-Ed notes the following two points. First, the lack of citations to any statement made by Ms. Hendin regarding scientific or medical matters is easily explained by the fact that Ms. Hendin utterly lacked the necessary qualifications to testify to scientific, health or medical issues related to smart meters and, as such, her testimony cannot support any such factual findings. Met-Ed MB at 24.

On the other hand, Met-Ed's witnesses possessed the necessary expertise to testify on these points and, as such, can support such factual findings. Met-Ed MB at 17-22. Second, Ms. Hendin's attempt to highlight the number of exhibits she "presented" ignores the fact that these exhibits were properly objected to as hearsay, and/or were not admitted into the record. Any such hearsay exhibits or exhibits that were not ultimately admitted into evidence similarly cannot support any finding of fact. See Met-Ed MB at Section IV.A.4. Therefore, Exception No. 3 should also be denied.

Regarding Exception No. 8, Ms. Hendin's cooperation or lack thereof regarding the potential relocation of the smart meter misses the point. Exceptions at 7-9. Any relocation of the meter is at the customer's expense under the Company's Commission-approved tariff. Met-Ed RB at 35. The Complainant has made clear that she does not seek this relief. Instead, she wants "no smart meter at all." Exceptions at 9. Complainant's attempt to backdoor an argument to obtain an opt-out by arguing there is no ability to relocate the smart meter should be rejected and Exception No. 8 should be denied.

The Complainant's additional assertions of unfairness in Exception Nos. 15 and 19 should be denied for reasons previously addressed in these Replies to Exceptions. See Sections II.D. 3 and G *supra*. The ALJ's administration of these proceedings afforded Complainant due process. And, moreover, the Complainant's attempts to re-weigh the evidence are without merit. Therefore, both of these Exceptions should also be denied.

III. CONCLUSION

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

Respectfully submitted,



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Date: September 8, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Judith Hendin

v.

Metropolitan Edison Company

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: Docket No. C-2018-3003324
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CERTIFICATE OF SERVICE


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

Service by electronic mail, as follows:

Judith Hendin
judith@consciousbody.com

Administrative Law Judge Joel H. Cheskis
jcheskis@pa.gov

Dated: September 8, 2020



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