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October 1, 2020

VIA E-FILING

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

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

Dear Secretary Chiavetta:

Enclosed for filing in the above-referenced matter are Metropolitan Edison Company's ("Met-Ed" or the "Company") Replies to the Exceptions of Kim Martin. This document has been served on all parties as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Tori L. Giesler

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Enclosures

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KIM MARTIN

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2017-2631482

**REPLIES OF METROPOLITAN EDISON COMPANY TO THE
EXCEPTIONS OF KIM MARTIN**

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. REPLIES TO EXCEPTIONS	2
A. REPLY TO EXCEPTION NO. 1 – THE ALJ CORRECTLY REJECTED THE COMPLAINANT’S ARGUMENT THAT SHE SHOULD BE ABLE TO “OPT OUT” OF HAVING THE SMART METER INSTALLED	2
B. REPLIES TO EXCEPTIONS NOS. 2 AND 3 – THE ALJ PROPERLY RELIED ON MET-ED’S EVIDENCE IN FINDING THAT THE COMPLAINANT FAILED TO MEET HER BURDEN OF PROOF	4
III. CONCLUSION.....	7

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 Kim Martin (“Complainant”). On September 1, 2020, the Pennsylvania Public Utility Commission (“Commission”) issued Administrative Law Judge Jeffrey A. Watson’s (“ALJ”) Initial Decision (“ID”), 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 meet her burden of proof that: (1) installing the smart meter would be unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501; or (2) the Company has violated any Commission regulation, Commission order, or provision of the Public Utility Code. (ID, pp. 1, 10-16.) The ALJ also properly determined that there is no provision to “opt-out” of a smart meter installation under Pennsylvania law and rejected the Complainant’s other legal arguments. (ID, pp. 10-11, 15.)

On September 21, 2020, Met-Ed was served with the Complainant’s Exceptions to the ID.¹

As explained herein, the Complainant’s Exceptions are without merit and should be denied. Accordingly, the Company respectfully requests that the Commission deny the Exceptions and adopt the well-reasoned ID without modification.

¹ Met-Ed notes that the Commission’s Secretary’s Bureau served the Complainant’s Exceptions on the Company on September 21, 2020, due to the lack of a Certificate of Service attached to the Complainant’s Exceptions. Although the Complainant’s Exceptions were dated September 18, 2020, the Exceptions were not due until September 21, 2020, *i.e.*, 20 days after the ID was issued on September 1, 2020. Therefore, the Company’s Replies to the Exceptions are timely filed because they are due 10 days after the September 21, 2020 due date for the Complainant’s Exceptions. *See* Secretarial Letter Serving the Initial Decision; 52 Pa. Code § 5.535(a).

II. REPLIES TO EXCEPTIONS

A. **REPLY TO EXCEPTION NO. 1 – THE ALJ CORRECTLY REJECTED THE COMPLAINANT’S ARGUMENT THAT SHE SHOULD BE ABLE TO “OPT OUT” OF HAVING THE SMART METER INSTALLED**

In her Exceptions, the Complainant contends that the ALJ erred in holding that there is no “opt-out” of smart meter installations under Act 129 of 2008 (“Act 129”). (Exceptions, p. 4.) According to the Complainant, there is “no basis on which the PUC can justify its mandate of universal forced deployment of Smart Meters.” (Exceptions, p. 4.) The Complainant’s argument is without merit.

The ALJ properly found that nothing in the Public Utility Code, the Commission’s regulations, or the Commission’s orders “allows a customer to ‘opt-out’ of a smart meter installation.” (ID, p. 11.) Under Act 129, Met-Ed has an absolute obligation to install smart meters at all of its customers’ service locations. Section 2807(f) of the Public Utility Code prescribes that electric distribution companies (“EDCs”), like Met-Ed, must file smart meter plans and “**shall** furnish smart meter technology” in any of the following situations: (1) “[u]pon request from a customer that agrees to pay the cost of the smart meter at the time of the request”; (2) “[i]n new building construction”; and (3) “[i]n accordance with a depreciation schedule not to exceed 15 years.” 66 Pa.C.S. § 2807(f)(1)-(2) (emphasis added).² In interpreting the smart meter provisions of Act 129, the Commission declared that EDCs must “deploy smart meters system-wide” because of the requirement that smart meters be deployed “in accordance with a

² Importantly, Pennsylvania courts have long held that the word “shall” means “must.” *See Whiteford v. Dep’t of Transp.*, 728 A.2d 1127, 1131 (Pa. Cmwith. 2001) (“[T]he word ‘shall’ denotes a mandatory, not discretionary instruction.”) (citations omitted); *C.B. v. J.B.*, 65 A.3d 946, 952 (Pa. Super. 2013) (finding that “[t]he use of ‘shall’ means . . . must” and that to hold otherwise “would be to flout the legislative will”); *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1233 (Pa. 2004) (“[W]e are not compelled to pretend that ‘shall’ means ‘may’ under Section 3146.6(a).”); *Griesmer v. Hill*, 36 Pa. Super. 69 (Pa. Super. 1908) (“This provision is mandatory, and not directory merely. It means what it says. The word ‘shall’ means ‘shall’ [The defendant] not only may but ‘must.’”). Therefore, the PUC has no discretion to delay when the rates go into effect.

depreciation schedule not to exceed 15 years.”³ The Commission also “recognize[d] that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment.”⁴ Therefore, Met-Ed must install the new smart meters for every customer in its service territory, including the Complainant.

In addition, nothing in Act 129 permits a customer to “opt-out” of a smart meter installation. The Commission has found in several other cases that Act 129 contains no such opt-out language.⁵ 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.”⁶ Only the General Assembly can amend Act 129 to add an opt-out provision. Notably, although bills have been proposed in the General Assembly to add such an opt-out (see, e.g., House Bill 1564 of 2017-2018 Session), they have never been enacted. Thus, a customer cannot opt-out of the AMI meter installation under Act 129.

Moreover, Met-Ed must comply with the relevant Commission orders directing the Company to deploy the new smart meters. Nothing in Act 129 or the Commission’s related orders permit customers to “opt-out” from smart meter installation. In fact, Met-Ed’s Smart Meter Deployment Plan, approved by the Commission, explicitly states that no opt-out option is

³ *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655, p. 14 (Order entered June 24, 2009) (“*Smart Meter Implementation Order*”).

⁴ *Id.*, pp. 9, 14; see also *Springirth v. Nat’l Fuel Gas Distrib. Corp.*, 1991 Pa. PUC LEXIS 44, at *1-3, 6, 16-17 (Order entered Apr. 12, 1991) (dismissing complaint of customer seeking to make installation of automated meter reading devices optional, noting that the Commission previously found in another case that “[t]he customer should not be given the option of refusing installation of equipment” because “[t]o permit customer discretion in this area would be inefficient and uneconomical”) (quoting *Stenker v. The York Water Co.*, Docket No. C-871318 (Order entered July 27, 1987)).

⁵ See, e.g., *Starr v. PECO Energy Co.*, Docket No. C-2015-2516061, p. 11 (Order Entered Sept. 1, 2016) (footnote omitted).

⁶ *Id.*; see *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at *11-13 (Order entered May 3, 2018); *Povacz v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 102, at *156-59 (Order entered Mar. 28, 2019), *appeal pending*, 492 C.D. 2019; *Sunstein Murphy v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 159, at *157-59; *Randall & Albrecht v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 160, at *145-48 (Order entered May 9, 2019), *appeal pending*, 607 C.D. 2019.

available.⁷ Therefore, the Company's Commission-approved Smart Meter Deployment Plan mandates that all of Met-Ed's meters must be replaced with smart meters.

Based on the foregoing, the ALJ correctly denied the Complainant's argument that she should be able to "opt-out" of the smart meter's installation. Thus, the Complainant's Exception No. 1 should be denied.

B. REPLIES TO EXCEPTIONS NOS. 2 AND 3 – THE ALJ PROPERLY RELIED ON MET-ED'S EVIDENCE IN FINDING THAT THE COMPLAINANT FAILED TO MEET HER BURDEN OF PROOF

The Complainant disputes the ALJ's decision to accept and rely on the evidenced presented by Met-Ed, including the testimony of John C. Ahr. (Exceptions, pp. 5-6.) According to the Complainant, Mr. Ahr lacked the qualifications to testify as an "expert on the safety of the smart meter." (Exceptions, p. 5.) Therefore, the Complainant avers that the ALJ should have stricken Mr. Ahr's testimony during the evidentiary hearing. (Exceptions, p. 5.) Moreover, the Complainant contends that the ALJ "erred in concluding that [Met-Ed] proved the safety of Smart Meters as required." (Exceptions, p. 6.) The Complainant's arguments are completely unfounded.

As a preliminary matter, the Complainant fails to recognize that she has the burden of proof in this proceeding, not Met-Ed.⁸ Therefore, Met-Ed was under no obligation to "prove[] the safety of Smart Meters," as alleged by the Complainant. (Exceptions, p. 6.) Rather, the Complainant had the burden to prove that the installation of Met-Ed's smart meter would violate Section 1501 of the Public Utility Code.⁹

Here, the critical error with the Complainant's Exceptions Nos. 2 and 3 is that she fails to challenge the ALJ's rejection of her evidence and finding that she failed to sustain her burden of

⁷Met-Ed Exhibit JCA-1, p. 6.

⁸ See 66 Pa.C.S. § 332(a) (explaining that the "proponent of a rule or order" has the burden of proof).

⁹ See 66 Pa.C.S. § 1501.

proof.¹⁰ (*See* Exceptions, pp. 5-6.) Instead, the Complainant’s Exceptions Nos. 2 and 3 solely focus on the evidence presented by Met-Ed. Thus, even if her Exceptions Nos. 2 and 3 were granted, the ALJ’s dismissal of her Complaint would stand due to her failure to sustain her burden of proof. (ID, pp. 12-13.) On that ground alone, the Complainant’s Exceptions should be dismissed.

In addition, the Complainant’s criticisms of Met-Ed’s evidence are without merit. First, the ALJ correctly accepted and relied on Mr. Ahr’s testimony that Met-Ed’s smart meters are safe. (ID, p. 12.) Mr. Ahr has a degree in electrical engineering and has worked for Met-Ed since 1984 in various positions, including: (1) Director of System Operations; (2) Director of Energy Procurement; (3) Director of Meter Reading and Collections; (4) Manager, Regulatory Compliance for Smart Meters; and (5) his current position of Advisor in Regulatory Compliance for Smart Meters. (Tr. 109-10.) Mr. Ahr testified that the smart meters selected and used by Met-Ed comply with the standards established by the Federal Communications Commission (“FCC”), the American National Standards Institute (“ANSI”), and Underwriters Laboratories (“UL”). (ID, p. 12.) Furthermore, the meter manufacturer, Itron, Inc., enlisted certified personnel to perform the required testing. (Tr. 109-10.) Mr. Ahr explained that these individuals “can detect any product anomalies, if any, during all the ANSI testing,” which the meters passed. (Tr. 123.) The Complainant, who has absolutely no technical qualifications or experience in this area,¹¹ failed to present evidence that was more persuasive than Mr. Ahr’s testimony.

Second, contrary to the Complainant’s claims, Mr. Ahr was not presented as an expert witness on the safety of smart meters. (Tr. 101, 140.) Given that the Complainant readily admitted that she was not an expert, and she presented absolutely no evidence in support of her

¹⁰ Even assuming *arguendo* that she did, the ALJ properly rejected her evidence and held that she failed to prove that the installation of the smart meter would violate Section 1501 of the Public Utility Code. (ID, p. 12.)

¹¹ The Complainant herself admitted that she is “not an expert.” (Tr. 61.)

claims, aside from expressing her concerns about the alleged adverse health effects she experiences when exposed to RF fields from other devices, Met-Ed did not need to present an expert witness to rebut her claims. (Tr. 17-18.) In fact, as the ID found, the Complainant's "unsubstantiated personal feelings, opinions, and beliefs" about the smart meter "do not constitute evidence." (ID, p. 12.) Therefore, Met-Ed witness Ahr's testimony was more than sufficient to rebut the Complainant's unfounded claims.

For these reasons, the ALJ properly determined that the Complainant failed to sustain her burden of proof that installing the smart meter would cause, contribute to, or exacerbate any adverse health effects. (ID, pp. 12-13, 15.) Thus, the Complainant's Exceptions Nos. 2 and 3 should be denied.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in the Initial Decision of Administrative Law Judge Jeffrey A. Watson, the Company respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions filed by Kim Martin and adopt the Initial Decision without modification.

Respectfully submitted,



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CERTIFICATE OF SERVICE


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

Service by email as follows:

Kim Martin
kimmartin4030@gmail.com

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

Dated: October 1, 2020



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