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September 30, 2020

VIA ELECTRONIC FILING

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

Re: Liza Mousios and Roy Cumming v. Metropolitan Edison Company
Docket Nos. C-2019-3007989 and C-2019-3007995

Dear Secretary Chiavetta:

Attached please find the Reply Brief on behalf of Metropolitan Edison Company (“Met-Ed” or the “Company”) regarding the above-referenced matter. 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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**LIZA MOUSIOS AND
ROY CUMMING**

v.

METROPOLITAN EDISON COMPANY

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:
:
:
:
:

**DOCKET NO. C-2019-3007989
DOCKET NO. C-2019-3007995**

**REPLY BRIEF
ON BEHALF OF
METROPOLITAN EDISON COMPANY**

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Dated: September 30, 2020

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I. INTRODUCTION

Metropolitan Edison Company (“Met-Ed” or the “Company”) submits this Reply Brief in response to the Main Brief submitted by Liza Mousios and Roy Cumming (the “Complainants”), which was served upon the Company on September 5, 2020,¹ pursuant to the August 10, 2020 Briefing Order issued by the Administrative Law Judge Darlene D. Heep (the “ALJ”). As more fully explained herein and in the Company’s Main Brief, the Formal Complaint should be dismissed with prejudice because the Complainants wholly failed to meet their burden of proof that the installation of a smart meter at her Service Location would constitute unreasonable service in violation of Section 1501 of the Public Utility Code or would otherwise violate the Public Utility Code, a Commission regulation or order.

The Complainants’ Main Brief fails to even address the numerous procedural and evidentiary flaws with the Complainants’ case. These flaws alone—i.e., repeatedly disregarding the procedural orders issued in this proceeding and failing to file any direct testimony or exhibits in this case—warrant dismissal of their Complaints. Indeed, there is no evidentiary record, at all, upon which the ALJ can make any findings or conclusions that support the Complainants’ allegations. Moreover, the Complainants’ Main Brief principally advances a flawed interpretation of Act 129 of 2008, which has been rejected and once again should be rejected by the Commission.

Therefore, and for the reasons more fully explained below and in Met-Ed’s Main Brief, the Formal Complaints of Liza Mousios and Roy Cumming should be dismissed with prejudice.

¹ Although the Complainants served their Main Brief on September 5, 2020, they were also notified by the Secretary of the Pennsylvania Public Utility Commission (“Commission”) by e-mail on September 7, 2020, that “We received three emails entitled ‘mini brief for Liza.’ None are acceptably filed. Please use your e-filing account to submit your filing. Failure to do so could jeopardize your filing deadline.” Counsel for Met-Ed was copied on the September 7, 2020 e-mail. Despite this notification, it does not appear that the Complainants re-filed the Main Brief consistent with the Secretary’s instructions. As of the time of this writing, the Complainants’ Main Brief does not appear on the above-captioned dockets. Therefore, it appears that the Complainants failed to properly file their Main Brief consistent with the Commission’s instructions.

II. PROCEDURAL HISTORY

A detailed history of the proceeding was previously provided in the Met-Ed's Main Brief.

The Complainants served their Main Brief on September 5, 2020.

On September 7, 2020, the Secretary of the Commission notified the Complainants by e-mail that "We received three emails entitled 'mini brief for Liza.' None are acceptably filed. Please use your e-filing account to submit your filing. Failure to do so could jeopardize your filing deadline." Counsel for Met-Ed was copied on the September 7, 2020 e-mail.

Met-Ed filed its Main Brief on September 9, 2020.

Met-Ed is not aware of whether the Complainants properly filed their Main Brief consistent with the Commission's September 7, 2020 instructions. The Complainants' Main Brief does not appear on either of the above-captioned dockets.

Reply Briefs are due September 30, 2020.

III. SUMMARY OF ARGUMENT

The Complainants wholly failed to meet their burden of proof that the installation of a smart meter at their Service Location would constitute unreasonable service in violation of Section 1501 of the Public Utility Code or would otherwise violate the Public Utility Code, a Commission regulation or order.

As noted in the Company's Main Brief, the Complainants have repeatedly disregarded the procedural orders issued in this proceeding, and have failed to submit any evidence upon which the ALJ can reach any findings of fact. Compounding this error, it appears that the Complainants have also failed to properly file their Main Brief, despite receiving instructions to do so by the Secretary of the Commission and being warned that failure to follow these instructions could

jeopardize their filing deadline. These repeated failures to follow the procedural rules of the Commission and prosecute their Complaint warrant dismissal of the Formal Complaint alone.

Nevertheless, Met-Ed submits that the Formal Complainants should also be dismissed as a matter of law. Having submitted no evidence—and ostensibly having failed to properly file their Main Brief—the Complainants’ case boils down to a tortured analysis of the plain language of Act 129.² As noted in the Company’s Main Brief, the Complainants attempt to distract from the express and unambiguous statement that electric distribution companies (“EDCs”) such as Met-Ed that EDCs must file smart meter plans and “**shall** furnish smart meter technology.”³ Each of the arguments advanced by the Complainants in support of their tortured interpretation of Act 129 violate well-established principles of statutory construction, as noted in Met-Ed’s Main Brief.

Moreover, as explained in the Company’s Main Brief, the Complainants’ suggestion that the Commission can retroactively change its interpretation of the *Smart Meter Implementation Order*⁴ in the context of their individual complaint proceedings is without merit.⁵ A change in interpretation of the *Smart Meter Implementation Order* would have statewide consequences that affect the interests of not only Met-Ed, but all other EDCs subject to the requirements of Act 129. As such, the Complainants’ request is without merit.

For these reasons and the reasons more fully explained in Met-Ed’s Main Brief, Met-Ed urges the Commission to dismiss the Formal Complaints with prejudice.

² See generally Complainants MB.

³ 66 Pa.C.S. § 2807(f) .

⁴ See *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) (“*Smart Meter Implementation Order*”).

⁵ See Complainants MB at 14.

IV. ARGUMENT

A. **The Complainants Failed Demonstrate That Met-Ed Violated the Public Utility Code, a Commission Order, or a Commission Regulation.**

The Formal Complaints should both be summarily dismissed due to the Complainants' complete failure to establish a *prima facie* case in this proceeding, as explained in Met-Ed's Main Brief.⁶ Compounding the Complainants' failure to establish a *prima facie* case and/or submit any evidence at all, the Complainants appear to have failed to properly file their Main Brief. Indeed, as noted above, the Complainants were notified of their failure to properly e-file their Main Brief by the Secretary of the Commission and appear to have failed to correct this error. As such, the Complainants' Main Brief appears to have been improperly filed and is not before the ALJ or Commission for consideration. For these reasons, and those more fully explained in Met-Ed's Main Brief, the above-captioned Formal Complaints should be summarily dismissed with prejudice.

B. **The Complainants' Main Brief Raises Legally Flawed Arguments Regarding The Interpretation of Act 129 That Should Be Rejected.**

The three legal arguments raised in the Complainants' Main Brief should be rejected. As explained in Met-Ed's Main Brief, none of these arguments have any merit and the Formal Complaints should be dismissed.⁷

As an initial matter, Met-Ed notes that it fully demonstrated that the installation of a smart meter on the Complainants' residence is required by law.⁸ Act 129 and the Commission's prior interpretations of it mandate the installation of smart meters by electric distribution companies ("EDCs") with at least 100,000 customers.⁹ This mandate is supported by the plain language of

⁶ Met-Ed MB at 11-12.

⁷ Met-Ed MB at 12-19.

⁸ Met-Ed MB at 13-16.

⁹ Met-Ed MB at 13-14.

Act 129 and the Commission’s uniform precedent holding that there is no opt-out under the statute.¹⁰ Consistent with this mandate, Met-Ed’s Smart Meter Deployment Plan (“SMDP”)¹¹ states that no opt-out is available and requires 100% of Met-Ed’s meters to be replaced with smart meters.¹² The Complainants cannot, and do not, contend that Met-Ed can refuse to comply with the terms of its Commission-approved SMDP and the express language of Act 129.

Met-Ed further explained in its Main Brief that the Complainants’ attempts to avoid the requirements of Act 129 and the Company’s Commission-approved SMDP should be rejected.¹³ More specifically, each of the arguments raised by the Complainants was shown to be flawed by Met-Ed.

First, the Complainants’ reliance on the term “depreciation”—either as it is used (a) in Act 129,¹⁴ (b) in other parts of the Public Utility Code,¹⁵ (c) by the Internal Revenue Service,¹⁶ or (d) as defined in Black’s Law Dictionary¹⁷—ignores the plain language of Act 129. Specifically, the Complainants attempt to read the mandatory term “shall,” which is the term that establishes the mandate, out of the statute, and also ignore the mandates included in the *Smart Meter Implementation Order* and the order approving Met-Ed’s SMDP.¹⁸

Second, Met-Ed showed that the Complainants’ attempt to rely upon the comments of a few legislators to undermine the plain language of Act 129 was irrelevant and not determinative.¹⁹

¹⁰ Met-Ed MB at 13-14.

¹¹ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Sec. Letter dated June 20, 2014) (hereinafter, “Smart Meter Deployment Plan” or “SMDP”).

¹² Met-Ed MB at 14-15.

¹³ Met-Ed MB at 16-19.

¹⁴ Complainant MB at 1.

¹⁵ See Complainant MB at 4-5.

¹⁶ See Complainant MB at 3.

¹⁷ See Complainant MB at 3-6.

¹⁸ Met-Ed MB at 16-17.

¹⁹ Met-Ed MB at 17-18.

Indeed, the language of Act 129 is unambiguous and, even if it were ambiguous, “the administrative interpretations of such statute” should be considered and given greater weight than the comments of a few legislators.²⁰

Third, proposed and/or pending bills before the Pennsylvania General assembly are not law.²¹ As such, the Complainants cannot rely upon these bills to advance their interpretation of the currently-effective statute.

Fourth, and finally, the Complainants asserted that the Commission should alter the *Smart Meter Implementation Order* in the context of this individual complaint proceeding.²² Granting this relief would affect the rights and interests of other EDCs that are not parties to this proceeding and, therefore, would violate due process.²³

In conclusion, although the Complainants alleged various health and medical concerns related to RF fields and smart meters, they have offered no evidence to support these allegations. In addition, the legal arguments raised in their improperly submitted Main Brief are meritless. Therefore, and for the reasons more fully explained in Met-Ed’s Main Brief, the Complainants failed to demonstrate that the installation of a smart meter at their residence would constitute unreasonable or inadequate service under Section 1501 of the Public Utility Code,²⁴ and the Formal Complaints should be dismissed with prejudice.

²⁰ Met-Ed MB at 17-18 (citing 1 Pa.C.S. § 1921(c)(8)).

²¹ Met-Ed MB at 18.

²² See Complainants MB at 14.

²³ Met-Ed MB at 18-19.

²⁴ 66 Pa.C.S. § 1501.

V. **CONCLUSION**

WHEREFORE, Metropolitan Edison Company respectfully requests that the Administrative Law Judge Darlene D. Heep recommend that the Pennsylvania Public Utility Commission dismiss the Formal Complaints of Liza Mousios and Roy Cumming with prejudice.

Respectfully submitted,

Dated: September 30, 2020



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LIZA MOUSIOS AND	:	
ROY CUMMING	:	
	:	DOCKET NO. C-2018-3007989
v.	:	DOCKET NO. C-2019-3007995
	:	
METROPOLITAN EDISON COMPANY	:	

CERTIFICATE OF SERVICE


I hereby certify that I have this day served a true copy of the Reply Brief of Metropolitan Edison Company 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:

Liza Mousios and Roy Cumming
cumming@epix.net

Administrative Law Judge Darlene D. Heep
dheep@pa.gov

Dated: September 30, 2020



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