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October 16, 2020

VIA E-FILING

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

Re: Gilbert Martinez v. Metropolitan Edison Company
Docket No. C-2019-3013798

Dear Secretary Chiavetta:

Attached please find the Motion to Stay the Proceeding filed on behalf of Metropolitan Edison Company (“Met-Ed” or the “Company”) regarding the above-referenced matter. This document has been served on the all parties as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Tori L. Giesler

Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gilbert Martinez	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2019-3013798
	:	
Metropolitan Edison Company,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), YOU MAY FILE AN ANSWER TO THE ENCLOSED MOTION. YOUR REPLY SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR ANSWER SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.



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Counsel for Metropolitan Edison Company

Date: October 16, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gilbert Martinez	:	
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MOTION TO STAY THE PROCEEDING

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

Metropolitan Edison Company (“Met-Ed” or the “Company”) hereby files this Motion to Stay the Proceeding pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code §§ 1.15(a)(1) and 5.103 and respectfully requests that Administrative Law Judge Elizabeth H. Barnes (the “ALJ”) stay the instant proceeding and extend all applicable deadlines. Good cause for the requested stay exists due to the Commonwealth Court of Pennsylvania’s recent decision in *Povacz v. Pa. PUC*, Docket Nos. 492 C.D. 2019, *et al.* 606 C.D. 2019, and 607 C.D. 2019 (Slip. Op. dated Oct. 8, 2020) (“*Povacz*”).¹

In *Povacz*, the Commonwealth Court squarely addressed whether the Commission properly interpreted Act 129 of 2008 (“Act 129”) as mandating the installation of smart meters for all customers served by the electric distribution companies (“EDCs”) subject to Act 129, such as the

¹ The Opinion issued by the Commonwealth Court in *Povacz* considered three consolidated appeals from orders of the Commission regarding certain smart meter complaints: *Povacz v. PECO Energy Co.*, Docket No. C-2015-2475023, 2019 Pa. PUC LEXIS 102 (Order entered Mar. 28, 2019), *Sunstein Murphy v. PECO Energy Co.*, C-2015-2475726, 2019 Pa. PUC LEXIS 159 (Order entered May 9, 2019), and *Randall & Albrecht v. PECO Energy Co.*, Docket No. C-2016-2537666, 2019 Pa. PUC LEXIS 160 (Order entered May 9, 2019).

Company. The Commonwealth Court held that the Commission's interpretation was incorrect and found that the Commission possesses the authority to grant "reasonable" and "appropriate" accommodations to customers' smart meter installations "without proof of harm." *Povacz*, pp. 17, 21-22. However, the Commonwealth Court remanded the matter to the Commission to determine what, if any, accommodations should be granted. *Id.*, p. 22.

The 30-day appeal period for this decision has not expired, and it is unknown at this time whether any of the parties to *Povacz* will file a petition for allowance of appeal with the Supreme Court of Pennsylvania. Regardless of whether the Supreme Court declines to review the case or grants discretionary review and upholds the *Povacz* decision, substantial uncertainty exists regarding how the Commission will dispose of each of the applicable complaints on remand.

The Company submits that until further guidance from the Pennsylvania Supreme Court, the Commission, or both is provided, it would be imprudent and ineffective to spend the time and resources to continue litigating this case, which will likely be substantially affected by the ultimate outcome of the *Povacz* proceeding. Indeed, until further guidance from the Supreme Court or the Commission is received, it is unclear what evidence or issues the parties will need to address in this proceeding to fully dispose of all issues raised in the Complaint.

Thus, the Company respectfully requests that the instant proceeding be stayed and that all deadlines in this matter be extended until 60 days after (a) the Supreme Court of Pennsylvania issues a final order reversing the Commonwealth Court's order in *Povacz* or (b) the Commission issues final orders on remand in each of the dockets underlying *Povacz*,² whichever occurs first.

In support thereof, the Company states as follows:

² See footnote 1, *supra*.

I. BACKGROUND

1. On October 25, 2019, Met-Ed was served with the Formal Complaint filed by Gilbert Martinez (“Complainant”), in which the Complainant *inter alia* challenged the installation of a smart meter at the Complainant’s service location.

2. The parties to this proceeding have made various filings and submissions in accordance with the Commission’s regulations and the ALJ’s interim orders.

3. The evidentiary hearing was held on September 17, 2020.

4. The parties are currently awaiting an Initial Decision to be issued by the ALJ.

5. On October 8, 2020, the Commonwealth Court of Pennsylvania issued its order in *Povacz*.

6. In anticipation of the filing of this and other Motions, the Company submitted a letter to the Chief Administrative Law Judge Charles E. Rainey, Jr. setting forth other pending smart meter complaint proceedings, in which the Company is requesting a stay similar to the one set forth in this Motion. A true and correct copy of this letter is attached hereto as **Appendix A**.

II. MOTION

7. Pursuant to 52 Pa. Code § 1.15(a)(1):

[W]henver under this title or by order of the Commission, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended.

52 Pa. Code § 1.15(a)(1).

8. Section 1.15 of the Commission’s regulations does not define the “good cause” requirement.

9. However, the Commission has previously recognized the Pennsylvania Supreme

Court's definition of good cause as "conduct which is reasonable under all of the circumstances, thereby justifying the [c]laimant's actions." See *In re Application of Penn Access Corporation and Digital Direct of Pittsburgh, Inc.*, Docket No. A-310006, 1992 Pa. PUC LEXIS 56, at *9 (1992) (citing *Frumento v. Unemployment Comp. Bd. of Review*, 466 Pa. 81, 351 A.2d 631 (Pa. 1976)).

10. Good cause exists for granting the requested stay of the instant proceeding and extending all applicable deadlines.

11. The rights and obligations of the parties to this proceeding to address specific issues and present specific evidence will be affected by the ultimate disposition of the Commonwealth Court's order in *Povacz*.

12. As explained previously, the Commonwealth Court's decision in *Povacz* squarely addressed whether the Commission properly interpreted Act 129 as mandating the installation of smart meters for all customers served by the EDCs subject to Act 129, such as the Company. The Commonwealth Court held that the Commission's interpretation was incorrect and found that the Commission possesses the authority to grant "reasonable" and "appropriate" accommodations to customers' smart meter installations "without proof of harm." *Povacz*, pp. 17, 21-22. However, the Commonwealth Court remanded the matter to the Commission to determine what, if any, accommodations should be granted. *Id.*, p. 22.

13. Importantly, at this time, the Commonwealth Court's order in *Povacz* remains subject to appeal. See Pa.R.A.P. 1113(a) (stating that a petition for allowance of appeal is due within 30 days after the Commonwealth Court's order is entered).

14. It is unknown whether any of the parties to that proceeding will appeal the order. Further, the Pennsylvania Supreme Court's review of the *Povacz* decision "is not a matter of right,

but of sound judicial discretion.” Pa.R.A.P. 1114(a). Therefore, even if an appeal of the *Povacz* decision is sought, there is no guarantee that the Supreme Court will exercise its discretion to review the Commonwealth Court’s order.

15. In addition, the Commonwealth Court’s order in *Povacz* directs the consolidated proceedings to be remanded to the Commission for further consideration of several issues. On remand, the Commission will address what “reasonable” and “appropriate” accommodations, if any, should be granted to the customers. Such guidance from the Commission would be invaluable to the instant proceeding.

16. Indeed, due to the *Povacz* decision, it is currently unknown what issues and evidence will need to be addressed in this proceeding in order to dispose of all issues consistent with *Povacz*. Therefore, if the case were to proceed at this time, a substantial risk exists that the Commission would ultimately remand the case to develop the record further.

17. Furthermore, the guidance provided by the Supreme Court or the Commission on remand may even obviate the need for this entire proceeding.

18. Or, alternatively, it may necessitate larger proceedings by the Company and other Pennsylvania EDCs to modify and revise their existing smart meter deployment plans and tariffs. To the extent that such larger proceedings may be required, the Company submits that resolving any issues raised by the *Povacz* decision in the context of those proceedings, prior to the resolution of this individual Complaint proceeding, may also obviate the need for this entire proceeding.

19. As such, it would be a waste of the parties’ and the Commission’s time and resources to continue litigating the instant proceeding until additional guidance from the Supreme Court and the Commission is obtained regarding the *Povacz* order.

20. In addition, the Company’s request to extend all applicable deadlines for this

proceeding will protect the due process rights of the parties. Even if the case is not mooted by the Supreme Court's decision or the Commission's order on remand, the Complainant still will have an opportunity to litigate the issues before the Commission.

21. In sum, the Company's Motion to Stay should be granted because it will obtain the most efficient and prompt resolution of this proceeding in light of the *Povacz* decision, while also efficiently balancing the parties' and the Commission's time and resources.

22. Thus, the Company respectfully requests that the instant proceeding be stayed and that all deadlines in this matter be extended until 60 days after (a) the Supreme Court of Pennsylvania issues a final order reversing the Commonwealth Court's order in *Povacz* or (b) the Commission issues final orders on remand in each of the dockets underlying *Povacz*,³ whichever occurs first.

³ See footnote 1, *supra*.

III. CONCLUSION

WHEREFORE, Metropolitan Edison Company respectfully requests that Administrative Law Judge Elizabeth H. Barnes grant this Motion, such that all deadlines in this matter are extended until 60 days after (a) the Supreme Court of Pennsylvania issues a final order reversing the Commonwealth Court's order in *Povacz* or (b) the Commission issues final orders on remand in each of the dockets underlying *Povacz*, whichever occurs first.

Respectfully submitted,



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Counsel for Metropolitan Edison Company

Date: October 16, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GILBERT M. MARTINEZ	:	
Complainant	:	
	:	
v.	:	Docket No. C-2019-3013798
	:	
METROPOLITAN EDISON COMPANY	:	
Respondent	:	

VERIFICATION

I, John C. Ahr, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect Metropolitan Edison Company to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

October 16, 2020
Date



Tori L. Giesler, Esq.
(610) 921-6203
(330) 315-9263 (Fax)

October 15, 2020

VIA ELECTRONIC MAIL

Judge Charles E. Rainey, Jr.
crainey@pa.gov

Re: FirstEnergy Companies - Smart Meter Complaints

Dear Honorable Chief Administrative Law Judge Charles E. Rainey, Jr.:

Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”), hereinafter collectively the “Companies,” hereby submit to you this letter indicating that today, and in the coming days, the Companies will be filing substantially similar Motions to Stay the Proceedings in the smart meter complaint cases filed against the Companies that have upcoming deadlines, have been scheduled for hearings, or otherwise are impacted by recent appellate activity as referenced below and described in more detail within those Motions.

Each of these proceedings involves a formal complaint challenging the installation of a smart meter at specific service locations throughout the Companies’ respective service territories. As explained in each Motion to be filed, good cause exists for the Companies’ requests under 52 Pa. Code §§ 1.15(a) and 1.15(b), in light of the Commonwealth Court’s recent opinion and order in *Povacz, et al. v. Pa. PUC*, Docket Nos. 492 C.D. 2019, et al. (Slip. Op. dated Oct. 8, 2020).

The Companies are submitting this letter to Your Honor in order to: (1) fully notify the Pennsylvania Public Utility Commission’s Office of Administrative Law Judge of the filing of Motions to Stay the Proceeding in each of the cases identified above; and (2) avoid any confusion that may result from the filing of these Motions across a substantial number of proceedings.

A copy of this letter will be attached to each Motion in order to notify the presiding officers and the parties in these proceedings about this letter’s submission and to avoid any ex parte communication concerns.

Please direct any questions regarding this letter to the undersigned counsel.

Very truly yours,



Tori L. Giesler

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Gilbert Martinez :
 :
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 :
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 :
 Metropolitan Edison Company, :
 :
 Respondent. :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Motion to Stay the Proceeding 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:

Gilbert Martinez
Gilmarcus09@gmail.com

Administrative Law Judge Elizabeth H. Barnes
ebarnes@pa.gov

Dated: October 16, 2020



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