

Law Office of Edward B. Myers

**14613 DeHaven Court
North Potomac, MD 20878
Phone: (301) 294-2190
edwardbmyers@yahoo.com**

October 21, 2020

VIA E-FILING

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

Re: Heidi Fiedler v. Metropolitan Edison Company--Docket No. C-2018-3003642

Dear Secretary Chiavetta:

Attached please find the Answer of Complainant to Motion to Stay the Proceeding in 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.

Sincerely,

/s /Edward B. Myers
Law Office of Edward B. Myers
14613 Dehaven Court
N. Potomac, MD 20878
Phone: 301-294-2190
Email: edwardbmyers@yahoo.com

Date: October 21, 2020

cc: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Heidi Fiedler

v.

Metropolitan Edison Company

:
:
:
:
:
:

C-2018-3003642

**ANSWER OF COMPLAINANT
TO MOTION TO STAY THE PROCEEDING**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

Pursuant to 52 Pa. Code § 5.61, the Complainant in the above-referenced matter (“Complainant” or “Ms. Fiedler”) answers the Motion to Stay the Proceeding (“Motion”), filed by Metropolitan Edison Company (“Met-Ed” or “Company”) on October 16, 2020. For the reasons set forth below, Met-Ed has not shown good cause for Administrative Law Judge Cheskis (“ALJ Cheskis”) to grant the relief sought and the Motion should be denied.

1. Met-Ed contends that a stay is warranted because of uncertainty created by the decision of the Commonwealth Court 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*”). *Povacz* addressed three different complaint proceedings none of which directly involve Ms. Fiedler. The decision, however, affects Ms. Fiedler’s request for relief because the Commonwealth Court ruled, *inter alia*, that Act 129 of 2008 (“Act 129”)¹ does not preclude utility companies in Pennsylvania from accommodating customer’s requests to avoid radiofrequency (“RF”) emissions from smart meters by turning off the RF emissions, relocating the smart meter, or “some other reasonable

¹ Act of Oct. 15, 2008, P.L. 1592, No. 129, 66 PA C.S. § 2807.

accommodation”. Slip Op. at 13. This ruling overturned previous rulings of the Pennsylvania Public Utility Commission (“Commission”).

2. Met-Ed maintains that a stay of the present proceeding is warranted because of uncertainty created by the *Povacz* decision. First, Met-Ed points to the possibility that appeals of *Povacz* will be taken to the Pennsylvania Supreme Court and the Commonwealth Court’s decision could be overturned. Second, the Commission is expected to issue new orders on remand of the three matters addressed in *Povacz* but it is not known what the Commission’s rulings will be. Met-Ed argues:

...[U]ntil 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.

3. Because of these “known unknowns”, Met-Ed requests the ALJ to stay the proceeding such that:

(1) 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; and (2) continue the evidentiary hearing until at least 90 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.

Motion at 6-7 (footnotes omitted).

4. Complainant maintains that the type of uncertainties identified in the Motion are not new to this case. Met-Ed previously opposed holding this proceeding in abeyance because of analogous uncertainties caused by the pendency of the *Povacz* case and ALJ Cheskis ruled that those analogous uncertainties *did not* create “good cause” to hold the case in abeyance.

5. Specifically, the Complainant filed its own request to hold this matter in abeyance on June 30, 2020. The Complainant contended that the case should be held up because of the possibility that the Commonwealth Court would issue an order determining that Act 129 did not preclude utility customers from opting out of smart meter installations. Such a decision would require the ALJ in this proceeding to apply the Commonwealth Court’s reading of the law to the facts of this case. Complainant maintained that this uncertainty warranted holding the case in abeyance.

6. Met-Ed opposed the Complainant’s request and argued that there was no need to hold up the hearing on account of the then-pending decision of the Commonwealth Court. Met-Ed stated:

No reason exists to postpone the hearings in this case due to the *Povacz* appeal pending before the Commonwealth Court. This case has been in litigation for nearly two years and must finally proceed to hearings. Moreover, nothing guarantees that the Court’s decision in *Povacz* will be issued before the Commission issues its Final Order in this case or that the *Povacz* decision will be controlling of some or all of the issues in this case. Therefore, judicial economy demands that this case proceed toward evidentiary hearings and the development of a factual record.

Answer of Metropolitan Edison Company to the Motion to Stay Filed by Heidi Fiedler on June 30, 2020, filed July 14, 2020, at 2.

7. On July 16, 2020, ALJ Cheskis issued an order finding that good cause for holding the proceeding in abeyance because of the pending Commonwealth Court proceeding had not been

shown. While allowing an extension of the scheduled hearing date due to the unavailability of one of the Ms. Fiedler's witnesses, ALJ Cheskis determined:

Holding...[Ms. Fiedler's] complaint in abeyance while the appeal is pending would not help secure the just, speedy or inexpensive determination of this proceeding. Instead, granting Ms. Fiedler's motion would prolong the case further and cause additional expense in a case that has already been ongoing for nearly two years. The Commission frequently addresses legal issues that are in the process of being appealed. The parties must take the law as they find it. The Commission would not be effective or efficient if it had to delay proceedings until cases with similar legal issues were decided on appeal, especially given the opportunity for any further appeal to the Pennsylvania Supreme Court. To the extent that any appellate proceeding concludes during the pendency of this proceeding, the results will be duly considered. The Commission cannot wait, however, until the appellate proceeding is concluded to adjudicate cases with similar issues.

July 16 Order at 3.

8. Complainant submits that the same reasoning used by Met-Ed to oppose Ms. Fiedler's earlier request to hold the proceeding in abeyance now militates against granting the Motion. Met-Ed opposed the earlier request when it may have believed that the Commonwealth Court would uphold its position that an opt-out of smart meters is not permitted by statute. But now that the Commonwealth Court has ruled otherwise, suddenly Met-Ed believes that the same sort of uncertainty warrants holding up the case. Most importantly, ALJ Cheskis denied the earlier request even while acknowledging that the Commonwealth Court might rule and there may be further appeal to the Pennsylvania Supreme Court. The reasoning of ALJ Cheskis, if applied to the current Motion, should have the same result—denial of the Motion.

Moreover, the relief sought by Met-Ed would tie resolution of this proceeding to some indefinite date in the future and link this proceeding to the resolution of other matters to which Ms. Fiedler is not a party and in which she has no direct interest. For an uncertain period in the future, therefore, a grant of the Motion will mean that Ms. Fiedler will have no resolution to her

complaint. This is the same sort of unnecessary delay which ALJ Cheskis previously found unacceptable. It is no less unacceptable now that the Povacz decision has issued than it was previously.

Wherefore, Complainant requests ALJ Cheskis to deny Met-Ed's Motion to Stay the Proceeding.

Respectfully submitted,

/s /Edward B. Myers
Law Office of Edward B. Myers
14613 Dehaven Court
N. Potomac, MD 20878
Phone: 301-294-2190
Email: edwardbmyers@yahoo.com

Date: October 21, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Heidi Fiedler

v.

Metropolitan Edison Company

:
:
:
:
:

C-2018-3003642

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Answer of Complainant to Motion to Stay the Proceeding upon the individuals listed below.

Service by email as follows:

Heidi Fiedler
Heidi25@reagan.com

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

Lauren M. Lepkoski
llepkoski@firstenergycorp.com

Tori L. Giesler
tgiesler@firstenergycorp.com

Curtis S. Renner
crenner@w-r.com

Dated: October 21, 2020