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July 26, 2023

VIA ELECTRONIC FILING

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

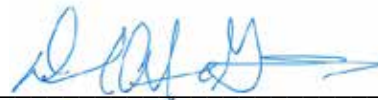
Re: Lauren Zonca v. Metropolitan Edison Company
Docket No. C-2023-3041619

Dear Secretary Chiavetta:

Enclosed please find the Preliminary Objections of Metropolitan Edison Company to the Formal Complaint of Lauren Zonca, Complainant, to be filed in the above-referenced matter. A copy of the document has also been served upon the Complainant, as indicated by the Certificate of Service.

If you have any questions, please contact me.

Sincerely,



Daniel A. Garcia

DAG/mlr

Enclosures

cc: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lauren Zonca,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2023-3041619
	:	
Metropolitan Edison Company,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY ANSWER THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL FOR METROPOLITAN EDISON COMPANY.

Respectfully submitted,



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Date: July 26, 2023

Attorneys for Metropolitan Edison Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lauren Zonca,	:	
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Complainant,	:	
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v.	:	Docket No. C-2023-3041619
	:	
Metropolitan Edison Company,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS OF
METROPOLITAN EDISON COMPANY TO THE
COMPLAINT OF LAUREN ZONCA**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes Metropolitan Edison Company (“Met-Ed” or the “Company”) and hereby files these Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Commission dismiss the above-captioned Formal Complaint (“Complaint”) filed by Lauren Zonca (“Complainant”) in its entirety and with prejudice.

The instant Complaint challenges Met-Ed’s alleged planned installation of a smart meter at the Complainant’s address at 15 Sherman Road, Ottsville, PA 19842 (“Service Address”). As relief, the Complainant requests that Met-Ed “do not install a smart meter and that [Met-Ed does] not shut off [the Complainant’s] power.” This is the Second Formal Complaint filed by the Complainant against Met-Ed disputing installation of a smart meter at the Service Address.

As explained herein, the Commission should summarily dismiss the Complaint because the Complainant's *First Complaint* remains pending before the Commission. Additionally, in the event that the Company's Preliminary Objection based on pendency of a prior proceeding is denied, the Complaint should also be summarily dismissed because the Complainant's requested relief cannot be granted as customers of Met-Ed are not permitted to opt-out of or rescind smart meter installation.

In support thereof, Met-Ed states as follows:

I. BACKGROUND

1. Met-Ed is a "public utility" and an "electric distribution company" as those terms are defined under the Public Utility Code, 66 Pa.C.S. §§ 102 and 2803, subject to the regulatory jurisdiction of the Commission.

2. On July 6, 2023, Met-Ed was served with the above-captioned Complaint, which challenges the Company's alleged planned installation of a smart meter at the Service Address.

3. Previously, on February 19, 2019, the Complainant filed a formal complaint also disputing the installation of a smart meter at the Service Address at Docket No. C-2019-3007961 ("*First Complaint*").

4. On September 10, 2020, Administrative Law Judge Jeffrey A. Watson (hereinafter, "ALJ") issued a Recommended Decision dismissing the *First Complaint* with prejudice. *See Zonca v. Metropolitan Edison Company*, Docket No. C-2019-3007961 (Recommended Decision issued Sept. 10, 2020) ("*First Complaint RD*").

5. The *First Complaint* has not been finally adjudicated by the Commission as it is subject to the Commission's November 4, 2020 Stay Order. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered November 4, 2020).

6. Met-Ed herein files these Preliminary Objections to the Complaint. For the reasons explained below, Met-Ed respectfully requests that the Commission summarily dismiss the Complaint because the Complainant's *First Complaint* disputing the planned installation of a smart meter remains pending before the Commission. Additionally, the Complaint's requested relief cannot be granted by the Commission and, therefore, is legally insufficient.

II. STANDARD OF REVIEW

7. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a) (emphasis added).

8. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth.

2007). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

9. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

III. PRELIMINARY OBJECTION

A. PRELIMINARY OBJECTION NO. 1 – THE COMPLAINT IS BARRED DUE TO THE PENDENCY OF THE FIRST COMPLAINT PROCEEDING BEFORE THE COMMISSION.

10. Met-Ed incorporates by reference Paragraphs 1 through 9 as if fully set forth herein.

11. The *First Complaint* remains pending before the Commission and, therefore, the Complainant cannot raise the same claim(s) and issue(s) raised in the *First Complaint*.

12. To support a claim of pendency of a prior proceeding, the moving party must allege and prove that in both actions, "the same parties are involved, the same rights asserted, and the same relief sought." *See Alia Slayton v. PECO Energy Co.*, Docket No. F-2010-2181788 (Recommended Decision issued Oct. 20, 2010) *adopted without further Commission action* (Final Order Entered Dec. 15, 2010); *See also Procacina v. Susen*, 447 A.2d 1023, 1025 (Pa. Super 1982); *Commonwealth ex rel. Lindsley v. Robinson*, 372 A.2d 1258 (Pa. Cmwlth. 1977)

13. The *First Complaint* objected to the installation of a smart meter at the Service Address. As relief in the *First Complaint*, the Complainant requested that she permitted to opt-out of the smart meter's installation. *See First Complaint RD*, at 1.

14. The instant Complaint requests that Met-Ed forgo installation of s smart meter at the Service Address and requests that Met-Ed not terminate the Complainant's electric service for refusal of the smart meter's installation. (Complaint ¶ 5).

15. Both the *First Complaint* and the instant Complaint involve the same parties (*i.e.*, Met-Ed and the Complainant).

16. Both the *First Complaint* and the instant Complaint involve the same alleged rights asserted (*i.e.*, the Complainant's alleged right to opt-out of smart-meter installation at the Service Address).

17. Lastly, both the *First Complaint* and the instant Complaint involve the same requested relief (*i.e.*, a requested opt-out of smart meter installation at the Service Address).

18. Therefore, because the *First Complaint* remains pending before the Commission and is subject to the November 4, 2020 Stay Order, the instant Complaint is barred on account of pendency of a prior proceeding. 52 Pa. Code § 5.101(a)(6).

19. Indeed, to allow the instant Complaint to proceed could create a situation in which Met-Ed is required to separately litigate two parallel complaints involving the installation of a smart-meter at the Complainant's Service Address, which could result in inconsistent findings and rulings by the Commission.

20. Moreover, Met-Ed will not pursue any termination procedures with the Complainant related to the Complainant's refusal of a smart meter until the instant Complaint and the *First Complaint* are fully and finally resolved by the Commission.

B. PRELIMINARY OBJECTION NO. 2 – THE COMPLAINT'S REQUESTED RELIEF CANNOT BE GRANTED BY THE COMMISSION AND, THEREFORE, IS LEGALLY INSUFFICIENT.

21. Met-Ed incorporates by reference Paragraphs 1 through 20 as if fully set forth herein.

22. The Complaint's requested relief cannot be granted by the Commission because Met-Ed customers are not permitted to opt-out of or rescind smart meter installation.

23. Through the Complaint, the Complainant requests that Met-Ed allow her to opt-out of installation of a smart meter at the Service Address.

24. Met-Ed is legally required to install the smart meters by the Public Utility Code, the Commission's orders, and the Company's Commission-approved Smart Meter Deployment Plan. *See* 66 Pa.C.S. § 2807(f); *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Order June 9, 2010).

25. On June 24, 2009, the Commission issued its Smart Meter Implementation Order, which set forth requirements for the smart meter plans and procedures for the submission, review, and approval of the smart meter plans. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

26. On December 31, 2012, Met-Ed, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, "the Companies") filed their Joint Petition for Approval of their Smart Meter Deployment Plan in compliance with the *Smart Meter Implementation Order*, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission's Implementation Order; (2) approve the Companies' proposed procurement and deployment of approximately 2.1 million smart meters, over 98.5% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters.¹

¹ *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, M-2013-2341994 (Petition filed December 31, 2012).

27. On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which, *inter alia*, accelerated the smart meter deployment schedule laid out in their original Deployment Plan. Under the Revised Deployment Plan, the Companies proposed to deploy 170,000 smart meters by the end of 2015.² The Commission entered its Opinion and Order approving the Revised Deployment Plan on June 25, 2014. *See 2014 Smart Meter Order*.

28. Nothing in the Public Utility Code, the Commission’s orders and regulations, or Met-Ed’s Smart Meter Deployment Plan states that a customer can opt-out of, or rescind, a smart meter installation.

29. Indeed, on August 16, 2022, the Supreme Court of Pennsylvania issued its Opinion affirming in part and reversing in part the Commonwealth Court’s decision in *Povacz*.³ Specifically, the Supreme Court in *Povacz* held that: (1) Act 129 mandates the systemwide installation of smart meters; (2) the PUC applied the correct burden of proof standard in the smart meter complaint cases arising under Section 1501 of the Public Utility Code; (3) an electric distribution company (“EDC”) cannot be required to provide an accommodation to a customer absent a Section 1501 violation; and (4) even if a smart meter complainant meets their burden of proof, the complainant is only “entitled to an accommodation to the extent allowed by Act 129 and a utility’s tariff.”⁴

30. Therefore, Met-Ed must install the smart meter at the Complainant’s Service Address.

² *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, M-2013-2341994, p. 8 (Order entered June 25, 2014) (“*2014 Smart Meter Order*”).

³ *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020).

⁴ *See Povacz v. Pa. PUC*, 280 A.3d 975, 1012-1014 (Pa. 2022).

31. Further, even if the Complainant established that installation and retainment of a smart meter would violate Section 1501 of the Public Utility Code, the Complainant could only receive an accommodation that is permitted under Act 129 and Met-Ed's Commission-approved tariff. Here, Met-Ed's Commission-approved tariff allows a customer, such as the Complainant, to request that the meter be relocated to a mutually-agreeable location, subject to the customer bearing the estimated expenses of relocating the Company-owned facilities, including the meter, to that new location. *See* Met-Ed Tariff Rule 4, Electric Pa. P.U.C. No. 52, Original Page 33.

32. As such, the Complainant's requested relief, *i.e.*, being permitted to opt-out of the installation of a smart meter at their Service Address, is inconsistent with the Public Utility Code, the Commission's orders and regulations, Met-Ed's Smart Meter Deployment Plan, and Met-Ed's Commission-approved tariff and, therefore, cannot be granted by the Commission.

33. For these reasons, the Complaint should be dismissed because the Commission cannot grant the requested relief therein.

IV. CONCLUSION

WHEREFORE, Metropolitan Edison Company respectfully requests that the above-captioned Formal Complaint filed by Lauren Zonca at Docket No. C-2023-3041619 be dismissed in its entirety pursuant 52 Pa. Code §§ 5.101(a)(4) and (6).

Respectfully submitted,



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Date: July 26, 2023

Attorneys for Metropolitan Edison Company

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LAUREN ZONCA
Complainant

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METROPOLITAN EDISON COMPANY
Respondent


Docket No. C-2023-3041619

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.

7/26/23

Date



John C. Ahr

