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December 4, 2023

**VIA ELECTRONIC FILING**

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

**Re: Joan Consul v. Metropolitan Edison Company**  
**Docket No. F-2021-3024123**

Dear Secretary Chiavetta:

Enclosed please find the Preliminary Objections of Metropolitan Edison Company in the above referenced matter. This document has been served on the Complainant as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Daniel A. Garcia

DAG/krak

Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JOAN CONSUL**

v.

**METROPOLITAN EDISON COMPANY**

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**DOCKET NO. F-2021-3024123**

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**NOTICE TO PLEAD**

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TO: Joan Consul

Pursuant to 52 Pa. Code § 5.101 you are hereby notified that if you do not file a reply to the enclosed Preliminary Objections of Metropolitan Edison Company within ten (10) days from service of this notice, the facts set forth by Metropolitan Edison Company in the Preliminary Objections may be deemed to be admitted, thereby requiring no other proof. All pleadings, such as a Reply to Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service to counsel for Metropolitan Edison Company, and where applicable, the Administrative Law Judge presiding over the case.

**File with:**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**With a copy to:**

Daniel A. Garcia  
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Greensburg, PA 15601

James Austin Meehan  
Tori L. Giesler  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001

Dated: December 4, 2023



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Daniel A. Garcia, Esquire  
James Austin Meehan, Esquire  
Tori L. Giesler, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JOAN CONSUL**

v.

**METROPOLITAN EDISON COMPANY**

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**DOCKET NO. F-2021-3024123**

**PRELIMINARY OBJECTION TO  
THE FORMAL COMPLAINT OF JOAN CONSUL**

**TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

AND NOW, comes Metropolitan Edison Company (“Met-Ed” or the “Company”) and hereby files this Preliminary Objection, 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 Joan Consul (“Complainant”) in its entirety and with prejudice.

The instant Complaint challenges Met-Ed’s installation of a smart meter at the Complainant’s address at 255 Mountain Mary Road, Boyertown, Pennsylvania 19512 (“Service Location”). As relief, the Complainant requests that the Company not replace the existing meter at her Service Location with a smart meter.

As explained herein, the Commission should summarily dismiss the Complaint 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 February 11, 2021, Met-Ed was served with the above-captioned Complaint, which challenges the Company’s installation of a smart meter at the Service Location.

3. Met-Ed herein files this Preliminary Objection to the Complaint. For the reasons explained below, Met-Ed respectfully requests that the Commission summarily dismiss the Complaint because the Complainant’s requested relief cannot be granted by the Commission and, therefore, is legally insufficient.

## **II. STANDARD OF REVIEW**

4. 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; and
- (7) Standing of a party to participate in the proceeding.

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

5. 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.<sup>1</sup> However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion.<sup>2</sup> Notwithstanding, any doubt must be resolved in favor of the non-moving party.<sup>3</sup>

6. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible.<sup>4</sup> Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery.<sup>5</sup>

### **III. PRELIMINARY OBJECTION**

#### **A. THE RELIEF REQUESTED BY THE COMPLAINANT IN THE COMPLAINT CANNOT BE GRANTED BY THE COMMISSION AND, THEREFORE, IS LEGALLY INSUFFICIENT.**

7. Met-Ed incorporates by reference Paragraphs 1 through 6, above, as if fully set forth herein.

8. The Complainant'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.

9. Through the Complaint, the Complainant requests that Met-Ed not replace her existing meter with a smart meter.

10. In doing so, the Complainant is requesting she be permitted to opt-out of Met-Ed's installation of a smart meter at her Service Location.

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<sup>1</sup> *Stilp v. Cmwth.*, 910 A.2d 775, 781 (Pa. Cmwth. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwth. 2005)).

<sup>2</sup> *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwth. 2007).

<sup>3</sup> *Stilp*, at 781.

<sup>4</sup> *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwth. 1987).

<sup>5</sup> *See Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

11. Met-Ed is legally required to install the smart meters pursuant to the Public Utility Code, the Commission's orders, and the Company's Commission-approved Smart Meter Installation Plan.<sup>6</sup>

12. On June 24, 2009, the Commission issued its Smart Meter Implementation Order ("Implementation Order"), which set forth requirements for the smart meter plans and procedures for the submission, review, and approval of the smart meter plans.<sup>7</sup>

13. 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 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.<sup>8</sup>

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<sup>6</sup> 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); *Petition of West Penn Power Company d/b/a Allegheny Power for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123951 (Order entered June 30, 2011).

<sup>7</sup> See *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

<sup>8</sup> *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).

14. On June 16, 2014, the Companies submitted their Revised 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.<sup>9</sup> The Commission entered its Opinion and Order approving the Revised Deployment Plan on June 25, 2014.<sup>10</sup>

15. 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, the installation of a smart meter.

16. 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 I*.<sup>11</sup> Specifically, the Supreme Court in *Povacz II* 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 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.”<sup>12</sup>

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<sup>9</sup> *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*”).

<sup>10</sup> See *2014 Smart Meter Order*.

<sup>11</sup> *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020) (“*Povacz I*”).

<sup>12</sup> See *Povacz v. Pa. PUC*, 280 A.3d 975, 1012-1014 (Pa. 2022) (“*Povacz II*”).

17. Therefore, Met-Ed must install the smart meter at the Service Location of the Complainant.

18. Further, even if the Complainant established that the installation and retainment of the 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.<sup>13</sup>

19. As such, the Complainant's requested relief in the instant matter, *i.e.*, keeping the "analog" meter currently installed at the Service Location, 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.

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

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<sup>13</sup> See Met-Ed Tariff Rule 4, Electric Pa. P.U.C. No. 52, Original Page 32.

**IV. CONCLUSION**

WHEREFORE, Metropolitan Edison Company respectfully requests that the above-captioned Formal Complaint filed by Joan Consul be dismissed in its entirety pursuant 52 Pa. Code § 5.101(a)(4).

Respectfully submitted,



Dated: December 4, 2023

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Counsel for Metropolitan Edison Company

**BEFORE THE  
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**DOCKET NO. F-2021-3024123**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Preliminary Objections of Metropolitan Edison Company to the Formal Complaint of Joan Consul upon the individual listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by first class and electronic mail as follows:

Joan Consul  
255 Mountain Mary Road  
Boyertown, PA 19512  
Concycle@aol.com

Dated: December 4, 2023



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