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December 21, 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: Lauren Zonca v. Metropolitan Edison Company**  
**Docket No. C-2019-3007961**

Dear Secretary Chiavetta:

Enclosed please find the Replies of Metropolitan Edison Company to the Exceptions of Lauren Zonca. 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,



Tori L. Giesler

TG/mlr

cc: Per Certificate of Service  
Office of Special Assistants (via email at [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))  
Administrative Law Judge Jeffrey A. Watson (via email at [jeffwatson@pa.gov](mailto:jeffwatson@pa.gov))

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lauren Zonca,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2019-3007961
	:	
Metropolitan Edison Company,	:	
	:	
Respondent.	:	

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**REPLIES OF METROPOLITAN EDISON COMPANY TO THE  
EXCEPTIONS OF LAUREN ZONCA**

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## **I. INTRODUCTION**

Metropolitan Edison Company (“Met-Ed” or the “Company”), pursuant to 52 Pa. Code § 5.535, hereby respectfully submits these Replies to the Exceptions of Lauren Zonca (“Complainant”). In the September 10, 2020 Initial Decision (“ID”), Administrative Law Judge Jeffrey A. Watson (the “ALJ”) dismissed the Complainant’s Formal Complaint with prejudice, finding that the Complainant failed to carry her burden of proof of establishing that Met-Ed violated the Public Utility Code, or a regulation or order of the Commission in installing a smart meter at the Complainant’s property. (ID at 13, Conclusion of Law No. 16.) Further, the ID found that the Complainant failed to carry her burden of proof to establish that Met-Ed provided unsafe or unreasonable Service in violation of Section 1501 of the Public Utility Code. *See* 66 Pa.C.S. § 1501; (ID at 13, Conclusion of Law No. 17). Moreover, the ALJ properly determined that there is no provision to “opt-out” of a smart meter installation under Pennsylvania law or under the Company’s Smart Meter Deployment Plan.<sup>1</sup> (ID at 4, Finding of Fact No. 14; ID at 12, Conclusion of Law No. 13.)

On November 4, 2020, the Pennsylvania Public Utility Commission (“Commission”) issued an Order at Docket No. M-2009-2092655 imposing a stay in this proceeding, among other smart-meter related proceedings.

On November 21, 2023, the Pennsylvania Public Utility Commission (“Commission”) entered an Order at Docket No. M-2009-2092655 lifting the stays in all active smart meter complaint proceedings, including the instant proceeding. The Commission also issued a notice in

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<sup>1</sup> *See 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).

this proceeding, which informed the parties that Replies to Exceptions would be due within 10 days, *i.e.*, by December 21, 2023.

On December 7, 2023, the Complainant filed Exceptions to the ID.

As explained herein, the Complainant's Exceptions are without merit and should be denied. Accordingly, the Company respectfully requests that the Commission deny the Complainant's Exceptions and adopt the ID without modification.<sup>2</sup>

## **II. REPLIES TO EXCEPTIONS**

### **A. REPLIES TO EXCEPTIONS NOS. 1, 3 AND 4 – THE ALJ CORRECTLY FOUND THAT THE COMPLAINANT FAILED TO SUSTAIN HER BURDEN OF PROOF THAT INSTALLATION OF THE SMART METER VIOLATED THE PUBLIC UTILITY CODE**

The Complainant disputes the ALJ's finding that she failed to meet her burden of proof that installation of the smart meters would violate Section 1501 of the Public Utility Code. (Complainant's Exceptions, pp. 27-29.) According to the Complainant, "it is incontrovertibly the case that the [Federal Communications Commission] safety guidelines for [radio frequency] exposure do NOT account for all possible mechanisms of interaction of [radio frequency ("RF")] with biological structures and systems..." (Complainant's Exceptions, p. 27). This, among other things according to the Complainant, speaks to the "utter unreasonableness of forcing the Complainant to" be exposed to RF. As made clear in the Company's Main Brief and at the February 19, 2020 Evidentiary Hearing, there is no reliable medical or scientific evidence upon which to conclude that chronic, long-term exposure to the radiofrequency radiation and RF fields

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<sup>2</sup> Some of the Complainant's Exceptions overlap, while others contain multiple arguments within the same Exception. Accordingly, Met-Ed responds to the Complainant's Exceptions by subject matter rather than individually by the number of the Exception. Further, the Complainant's Exceptions do not include page numbers. For reference purposes, Met-Ed citations to the Complainant's Exceptions are to the page of the Exceptions package filed by the Complainant within the as-filed PDF document.

produced as a result of the installation of such metering devices would exacerbate or contribute to biological or adverse health effects.

As explained herein, the Complainant's Exceptions on these points are without merit and should be denied.

**1. There Is No Reliable Medical or Scientific Basis to Conclude that the Smart Meter Will Cause, Contribute to, or Exacerbate Any Adverse Health Effects**

As explained further in Section II.A.2, *supra*, the ALJ correctly found that the Company's smart meter network complies with the advanced metering infrastructure guidelines published by the North American Energy Standards Board ("NAESB") and the National Institute of Standards and Technology ("NIST").<sup>3</sup> Further, the ALJ correctly found that Met-Ed's smart meters are compliant with the standards set by the Federal Communications Commission ("FCC") and the American National Standards Institute ("ANSI") and are Underwriter Laboratory ("UL") certified.<sup>4</sup>

In her Exceptions, the Complainant continues to argue that the Company's smart meter at her address presents health and safety concerns violative of Section 1501 of the Public Utility Code. However, nothing in the record demonstrates that the Complainant possesses the requisite technical expertise to competently testify or opine about issues relating to health or safety concerns.<sup>5</sup> Moreover, the Complainant, through her Exceptions, attempts to shoehorn various pieces of extra-record evidence as alleged support for her position. These attempts to introduce additional, extra-record evidence are inappropriate and are addressed at further length in Section II.A.3, *supra*.

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<sup>3</sup> Tr. 45:14-48:8, ID at p. 5, Finding of Fact No. 20.

<sup>4</sup> Tr. 26:5-27:5, ID at p. 6, Finding of Fact No. 21.

<sup>5</sup> Tr. 12-13, 15.

Assuming, *arguendo* that the Complainant was/is qualified to technically discuss alleged health and safety concerns, and established a *prima facie* case on the same, the Complainant's concerns on this point were fully rebutted by Met-Ed at hearing. Indeed, at the Evidentiary Hearing, the Complainant's purported evidence was fully rebutted by Met-Ed through the direct testimony of John C. Ahr, who has a degree in electrical engineering and had worked for Met-Ed since 1984 until his recent retirement in 2023 in various positions, including: (1) Director of System Operations; (2) Director of Energy Procurement; (3) Director of Meter Reading and Collections; (4) Manager, Regulatory Compliance for Smart Meters; and (5) Advisor in Regulatory Compliance for Smart Meters.<sup>6</sup> Mr. Ahr's unrebutted testimony established that Met-Ed's smart meters are safe.<sup>7</sup> As explained by Mr. Ahr, Met-Ed's smart meters comply with all safety requirements and standards established by various entities, including the FCC, ANSI, and UL.<sup>8</sup> Moreover, the meter manufacturer, Itron, Inc., enlisted certified personnel to perform the required testing.<sup>9</sup> Mr. Ahr explained that "these individuals are aware of product behavior and are able to detect product anomalies, if any, during all of the ANSI testing," which the meters passed.<sup>10</sup>

Thus, even if the Complainant was permitted to present her purported evidence that the smart meters would cause, contribute to, or exacerbate adverse health effects, the record demonstrates that there is no reliable medical or scientific evidence to reach that conclusion. Thus, the Complainant's Exception(s) on this point should be denied.

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<sup>6</sup> Tr. 21-22.

<sup>7</sup> Tr. 45-46.

<sup>8</sup> Tr. 45-46.

<sup>9</sup> Tr. 45-46.

<sup>10</sup> Tr. 45-46.

## 2. The Complainant's Data Privacy Concerns Lack Merit

The Commission should likewise reject the Complainant's argument that the smart meters raise data privacy concerns. At the Evidentiary Hearing, Met-Ed witness Ahr thoroughly refuted the Complainant's concerns on the same.<sup>11</sup> Indeed, as explained by Mr. Ahr, Met-Ed follows its Commission-approved Smart Meter Privacy Policy ("Privacy Policy"), which governs how Met-Ed must treat customer information, specifies the types of information transmitted through the Company's smart meters, and outlines the security protections in place to protect against unauthorized access of customer information on the smart meter network.<sup>12</sup>

Under Met-Ed's Privacy Policy, Met-Ed is not permitted to share sensitive customer information with third parties without the customer's informed consent.<sup>13</sup> Similarly, "[n]o names, addresses, Social Security numbers, or similar sensitive account numbers are transmitted through the smart meter network."<sup>14</sup> Indeed, only the customer's total electric usage is transmitted through the customer's smart meter to the Company.<sup>15</sup> Thus, Met-Ed cannot determine what appliance is being used in the customer's home.<sup>16</sup> Furthermore, Met-Ed's smart meter network is cybersecure, employing "a number of security protections to prevent against the unauthorized access of a customer's usage data," such as "encryption, firewalls, password protection and continuous security monitoring."<sup>17</sup> Met-Ed's network also complies with the guidelines published by the NAESB and the NIST.<sup>18</sup>

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<sup>11</sup> Tr. 40-45.

<sup>12</sup> See Met-Ed Exhibit JCA-2; Tr. 43-44.

<sup>13</sup> Tr. 43-44.

<sup>14</sup> Tr. 44.

<sup>15</sup> Tr. 41, 44.

<sup>16</sup> Tr. 41, 44.

<sup>17</sup> Tr. 44.

<sup>18</sup> Tr. 45.

Additionally, the Complainant contends that the Company's installation of the smart meter violated the U.S. Constitution and the Pennsylvania Constitution. The Complainant's argument on this point should be soundly rejected.

Pennsylvania appellate courts have held that EDCs, like Met-Ed, are not state actors in relation to the installation of smart meters. Specifically, in *Povacz v. Pa. PUC*, the Commonwealth Court determined that “[c]onstitutional protections apply against state actors,” and “PECO is not a state actor in relation to its installation of smart meters and provision of electricity to its customers.”<sup>19</sup> This finding was not disturbed by the Supreme Court's *Povacz* decision.<sup>20</sup> Therefore, because PECO and Met-Ed are similarly-situated EDCs, Met-Ed is not a state actor that can violate the Complainant's constitutional rights. Moreover, even if the Company were a state actor, the Seventh Circuit Court of Appeals found that the collection of smart meter data by a city-owned public utility was a reasonable warrantless search.<sup>21</sup> Therefore, Met-Ed cannot violate the Complainant's constitutional rights by installing and retaining the smart meter.

In sum, the Company takes appropriate steps to protect the information and data transmitted by the smart meters. Therefore, the Complainant's data privacy concerns lack merit and her Exception on this point should be denied.

### **3. The Commission Should Reject the Complainant's Attempt to Introduce and Rely on Extra-Record Evidence in Her Exceptions**

In her Exceptions, the Complainant improperly attempts to introduce and rely upon evidence that was not admitted at the hearing and, therefore, is not a part of the record.

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<sup>19</sup> *Povacz v. Pa. PUC*, 241 A.3d 481, 486 n.9 (Pa. Cmwlth. 2020).

<sup>20</sup> *See Povacz v. Pa. PUC*, 280 A.3d 975 (Pa. 2022).

<sup>21</sup> *See Naperville Smart Meter Awareness v. City of Naperville*, 900 F.3d 521, 527-29 (7th Cir. 2018).

Indeed, and as correctly noted by the ID, the “Complainant presented her case through her own testimony and did not offer any exhibits.”<sup>22</sup> Through her Exceptions, however, the Complainant attempts to introduce and rely on various pieces of extra-record evidence that are not part of the evidentiary record in this proceeding. For example, the Complainant appends a series of links to her Exceptions purporting to be the testimony of various testimonies not previously offered in the instant proceeding.<sup>23</sup> However, as noted in the ID, the Complainant “did not offer any exhibits.” (ID at 2.) Thus, all of the Complainant’s appended links to various pieces of testimony in unrelated proceedings in other states are extra-record evidence and cannot be considered here.

The Commission should completely disregard the Complainant’s extra-record evidence and her arguments based on that extra-record evidence. It is well-established that parties cannot introduce new evidence and arguments for the first time at the exceptions stage.<sup>24</sup> In addition, Section 5.431 of the Commission’s regulations prescribes that “[t]he record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.” 52 Pa. Code § 5.431(a). Particularly relevant here, “[a]fter the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.” *Id.* § 5.431(b). In this case, the record closed on August 14, 2020,<sup>25</sup> and the Complainant never demonstrated good cause for introducing this extra-record evidence, nor does she show changes in fact or law that would warrant the reopening

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<sup>22</sup> ID at 2.

<sup>23</sup> See Complainant’s Exceptions, pp. 46-47.

<sup>24</sup> See, e.g., *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45, at \*8-9 (Order entered Feb. 10, 1994) (denying party’s attempt to introduce extra-record evidence in its exceptions); *Arthurs v. Pa. Elec. Co.*, 2019 Pa. PUC LEXIS 197, at \*14 (Order entered May 23, 2019) (“This Commission can consider only the evidence in the record before us, and we cannot consider extra record evidence or new arguments presented for the first time in the Exceptions stage of the proceeding.”).

<sup>25</sup> ID at 3.

of the record to admit such evidence. As a result, the Complainant's extra-record evidence cannot be admitted into the record.

Thus, although Met-Ed has decided not to burden the Commission with ruling on a Motion to Strike these portions of the Complainant's Exceptions, the Commission should not rely on the Complainant's extra-record evidence, as well as her arguments based on such extra-record evidence, to make any findings in this proceeding.<sup>26</sup>

Based on the foregoing, the Commission should deny the Complainant's Exceptions Nos. 1, 3 and 4 because the ALJ correctly determined that the Complainant failed to sustain her burden of proof that installing and retaining the smart meter would violate the Public Utility Code.

**B. REPLIES TO EXCEPTION NO. 2 – THE ALJ CORRECTLY REJECTED THE COMPLAINANT'S ARGUMENT THAT SHE SHOULD BE ABLE TO "OPT OUT" OF OR RESCIND THE SMART METER'S INSTALLATION**

In her Exceptions, the Complainant argues that she should be able to "opt out" of having the smart meters installed. (Complainant's Exceptions, pp. 18-27.) According to the Complainant, Act 129 of 2008 does not mandate the installation of the smart meters for all customers, and the Commission and ALJ misinterpret the General Assembly's intent in finding that the statute requires smart meters to be installed throughout the electric distribution companies' ("EDCs") service territories. (Complainant's Exceptions, pp. 18-24.) As alleged support, the Complainant relies on the statements of a few Pennsylvania legislators about the statute as well as the Commonwealth Court's ruling in *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020). (Complainant's Exceptions, pp. 18-27.) The Complainant's arguments on this point have no merit and should be rejected.

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<sup>26</sup> See, e.g., *Petition of Pa. Power Co. for Approval of Interim POLR Supply Plan*, 2006 Pa. PUC LEXIS 56, at \*3 (Order entered Apr. 28, 2006) (observing that "ALJ Gesoff ignored Reliant's Reply Brief, due to the extra-record evidence contained within.").

The ALJ properly held that Met-Ed must install smart meters for all of its customers. (ID at 4, Finding of Fact No. 14.) The Complainant’s arguments are largely based on the Commonwealth Court’s decision in *Povacz v. Pa. PUC* and fail to reflect the Pennsylvania Supreme Court’s reversal of the Commonwealth Court’s ruling on this issue.<sup>27</sup> Specifically, in *Povacz*, the Supreme Court “conclude[d] that Act 129 does mandate that EDCs,” like Met-Ed, “furnish smart meters to all electric customers within an electric distribution service area and does not provide electric customers the ability to opt out of having a smart meter installed.”<sup>28</sup> Moreover, even “[i]f the customer establishes by a preponderance of the evidence based on the totality of the circumstances that smart meter service violates Section 1501, they are entitled to an accommodation to the extent allowed by Act 129 and a utility’s tariff.”<sup>29</sup> Nothing in the Company’s tariff permits an opt-out of the smart meter’s installation. The only accommodation set forth in the Company’s tariff is for the meter to be relocated to a different location and for the customer to pay for the estimated relocation costs.<sup>30</sup> As a result, Met-Ed must install smart meters for all of its customers, including the Complainant, under Act 129.

For these reasons, the Commission should deny the Complainant’s Exception No. 2 because the ALJ correctly held that Met-Ed is required to install smart meters and that the Complainant cannot opt out of or rescind the meter’s installation.

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<sup>27</sup> See *Povacz v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (“*Povacz*”).

<sup>28</sup> *Id.* at 983.

<sup>29</sup> *Id.* at 1014 (emphasis added).

<sup>30</sup> See Met-Ed Tariff Rule 4, Electric Pa. P.U.C. No. 52, Original Page 33 (“[a] Customer desiring the removal, relocation or change of Company facilities or interruption shall submit a request to the Company. The Company may accept or reject said request in its sole and exclusive discretion. If the Company accepts said request, the Customer shall pay in advance the Company’s total estimated cost for any Customer requested temporary interruption in the Customer’s service due to construction, maintenance or other activities. All Customers or other parties that request the removal, relocation or change of Company facilities shall furnish, without expense to the Company, satisfactory and acceptable to the Company rights-of-way, easements and/or permits for the construction, maintenance and operation of the relocated facilities.”).

**C. REPLY TO EXCEPTION NOS. 1, 2, AND 4 – MET-ED HAS THE LEGAL RIGHT TO TERMINATE THE COMPLAINANT’S ELECTRIC SERVICE IF IT IS DENIED ACCESS TO ITS METER**

In her Exceptions, the Complainant erroneously asserts that Met-Ed should be prohibited from terminating her electric service if she does not allow the Company access to her smart meter. (Complainant’s Exceptions, pp. 14-15, 17, 25-26, 31, 33, 35.)

Met-Ed has a legal right under its Commission-approved tariff, the Commission’s regulations, and Chapter 14 of the Public Utility Code to terminate the Complainant’s service if it is denied reasonable access to its meters.<sup>31</sup> Indeed, the Commission has declared that “[i]t is well-settled that where a customer refuses a utility access to its meter, the utility may terminate service after required notice is provided.”<sup>32</sup> Therefore, the termination of service to a customer for refusing the Company access to its smart meter is consistent with Section 1501 of the Public Utility Code, the Commission’s regulations, and the utility’s tariff. *Id.* at \*91-94. Thus, the Company can legally terminate the Complainant’s electric service if she denies the Company access to its meter.

For these reasons, the Commission should reject the Complainant’s argument that the Company should not be permitted to terminate her electric service due to the Complainant’s refusal to permit Met-Ed access to its meter and, accordingly, deny the Complainant’s Exceptions Nos. 1, 2, and 4.

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<sup>31</sup> See 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); Met-Ed Tariff Rule 20, Electric Pa. P.U.C. No. 52, Original Page 55.

<sup>32</sup> *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at \*91-92 (Order entered May 3, 2018).

### III. CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in the Initial Decision of Administrative Law Judge Jeffrey A. Watson, the Company respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions filed by Lauren Zonca and adopt the Initial Decision without modification.

Respectfully submitted,



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Date: December 21, 2023

Attorneys for Metropolitan Edison Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**LAUREN ZONCA**

v.

**METROPOLITAN EDISON COMPANY**

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**DOCKET NO. C-2019-3007961**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of this document 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:

Lauren Zonca  
[Lezonca@gmail.com](mailto:Lezonca@gmail.com)

Law Judge Jeffrey A. Watson  
[jeffwatson@pa.gov](mailto:jeffwatson@pa.gov)

Office of Special Assistants  
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Dated: December 21, 2023



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