

Tori L. Giesler, Esq.  
(610) 921-6658

January 24, 2024

**VIA ELECTRONIC 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:

Enclosed please find the Motion of FirstEnergy Pennsylvania Electric Company on behalf of its Met-Ed Rate District for Summary Judgement with regard to 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,



Tori L. Giesler

TLG/vlr

Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**HEIDI FIEDLER**

v.

**METROPOLITAN EDISON COMPANY**

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:  
: **Docket No. C-2018-3003642**  
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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.102(b), YOU MAY FILE AN ANSWER TO THE ENCLOSED MOTION WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWER SHOULD 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.



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Tori L. Giesler  
Attorney No. 207742  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001  
(610) 921-6658  
tgiesler@firstenergycorp.com

Date: January 24, 2024  
Attorney for FirstEnergy Pennsylvania Electric  
Company (Met-Ed Rate District)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**HEIDI FIEDLER** :  
 :  
 v. : **Docket No. C-2018-3003642**  
 :  
**METROPOLITAN EDISON COMPANY** :

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**MOTION OF FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY  
ON BEHALF OF ITS MET-ED RATE DISTRICT FOR SUMMARY JUDGMENT**

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**TO DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE EMILY I. DEVOE:**

AND NOW, comes FirstEnergy Pennsylvania Electric Company on behalf of its Met-Ed Rate District<sup>1</sup> (the “Company”) and files this Motion for Summary Judgment pursuant to Sections 5.102 and 5.103 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, and 52 Pa. Code §§ 5.102- 5.103, and respectfully requests that the above-captioned Formal Complaint be summarily dismissed in its entirety and with prejudice.

As explained herein, Heidi Fiedler (“Complainant”) has the burden of proof in this proceeding to demonstrate that the installation of the Company’s smart meter would violate the Public Utility Code or a Commission regulation or order. While the Complainant provided notification of her factual witnesses, she failed to provide any expert witnesses or their written direct testimony in support of her allegations as required by the Scheduling Order dated October 10, 2019. Therefore, the Complainant has failed to present any evidence as part of her direct case. As a result, no opportunity exists for the Complainant to present any evidence in support of her

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<sup>1</sup> On January 1, 2024, FirstEnergy Corp.'s Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies' tariffs were consolidated into a single tariff, with each former operating company's rates becoming its own rate district. As such, the customers of the former Metropolitan Edison Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

direct case. Thus, there are no disputed issues of material fact in this proceeding, and the Company is entitled to judgment as a matter of law.

For these reasons, and as explained in more detail below, the Company respectfully requests that Administrative Law Judge Emily I. DeVoe (“ALJ DeVoe”) grant this Motion for Summary Judgment and summarily dismiss the instant Formal Complaint in its entirety and with prejudice.

In support thereof, the Company states as follows:

**I. BACKGROUND AND PROCEDURAL HISTORY**

1. On July 23, 2018, the Company was served with the Formal Complaint (“Initial Complaint”) filed by the Complainant, which challenged the Company’s planned installation of a smart meter at the Complainant’s property, 432 East Wesner Road, Blandon, Pennsylvania 19510 (“Service Location”). In her Initial Complaint, Ms. Fiedler averred that the Company was threatening to shut off her electric service because she objected to the installation of a smart meter at her residence due to health, safety, and privacy concerns. Ms. Fiedler averred that the Company was violating Act 129 of 2008 and Section 1501 of the Public Utility Code. As relief, Ms. Fiedler requested, among other things, that she be provided an “accommodation” and that she be allowed to continue to use her analog meter.

2. In her Initial Complaint, Ms. Fiedler averred that the Company was threatening to shut off her electric service because she objected to the installation of a smart meter at her residence due to health, safety, and privacy concerns.

3. On August 13, 2018, the Company filed an Answer, New Matter, and Preliminary Objections in response to the Initial Complaint. In the Preliminary Objections, the Company argued the Initial Complaint is legally insufficient because the Commission lacks authority to grant the requested relief and the Initial Complaint should be dismissed. The Company argued it is

required to install a smart meter at Ms. Fiedler's residence by Act 129 of 2008 ("Act 129") and its Smart Meter Deployment Plan ("SMP"), which was approved by the Commission at docket No. M-2013-2341990 by Order entered June 5, 2014. The Company argued there was no "opt-out" available to customers.

4. On September 11, 2018, the Commission issued a Motion Judge Assignment Notice, assigning this matter to Administrative Law Judge Jeffrey A. Watson ("ALJ Watson").

5. On September 21, 2018, ALJ Watson issued an Interim Order, denying the Preliminary Objections.

6. On September 21, 2018, ALJ Watson issued a second Interim Order, establishing a litigation schedule. The Parties were directed to exchange fact and expert witness information by December 28, 2018; conclude discovery by February 28, 2019; file any dispositive motions by April 4, 2019; and file any response to any dispositive motions within 20 days of service of the motion.

7. On October 25, 2018, the Company filed a certificate of service evidencing its service of Interrogatories and Requests for Production of Documents ("Discovery Requests") upon Ms. Fiedler.

8. On November 5, 2018, Ms. Fiedler filed an Amended Formal Complaint ("First Amended Complaint") and Objections to the discovery requests. Complainant indicated she was submitting a "blanket objection to the completion of the entire Met Ed Interrogatories and Request for production of documents dated October 25, 2018." Complainant objected that "[i]t is not possible to provide detailed information and comprehensive answers to the questions, and to provide documents be used in this case, without knowing the precise manufacturer and model of the smart meter system ... that the Company and FirstEnergy seek to install at my home."

9. On November 13, 2018, the Company filed a Motion to Compel.

10. On November 27, 2018, the Company filed an Answer and New Matter to the First Amended Complaint.

11. On November 27, 2018, Ms. Fiedler filed a response to the Motion to Compel.

12. On December 28, 2018, the Company served its witness information upon Complainant.

13. On January 7, 2019, ALJ Watson issued an Interim Order, granting the Company's Motion to Compel, denying Complainant's objections, and requiring Complainant to file full and complete responses to all the discovery requests upon the Company by February 1, 2019.

14. On February 1, 2019, Complainant filed a Request for Extension of Time for Discovery. The Complainant wrote, "On November 5, 2018, I filed an amended Complaint before the Pennsylvania Public Utilities Commission. As of February 1, 2019, I have not received a ruling from the Pennsylvania Public Utilities Commission on my amended complaint. I respectfully request a six-month extension of time for the discovery process." The document was accompanied by a cover letter from Complainant dated February 1, 2019, and a certificate of service dated February 1, 2019.

15. On February 13, 2019, the Company filed a Motion to Dismiss the Initial Complaint. It averred Complainant provided incomplete responses to the discovery requests on February 1, 2019, and untimely objected to other discovery requests, despite ALJ Watson already denying her objections. The Company also averred Complainant failed to provide any witness information as required by ALJ Watson's Order.

16. On February 14, 2019, ALJ Watson issued an Interim Order denying Complainant's Request for an Extension of Time for Discovery. ALJ Watson noted the request for an extension of time for discovery does not indicate what "ruling" Complainant anticipated receiving regarding the filing of her "amended complaint." He explained that no "ruling" is

required from the presiding officer regarding the filing of the “amended complaint” in this proceeding. In addition, he explained that the request from Complainant does not indicate if Complainant has initiated any discovery since the establishment of a litigation schedule by order entered on September 21, 2018, nor why discovery should be extended in this proceeding other than Complainant’s reference to the lack of a “ruling” on her “amended complaint.” ALJ Watson directed the Parties to comply with the litigation schedule set by the September 21, 2018, Interim Order. Therefore, discovery closed in this matter on February 1, 2019.

17. On February 25, 2019, Ms. Fiedler filed a response to the Motion to Dismiss. Notably, Ms. Fiedler indicated that she “had not retained any expert witnesses and therefore was not able to furnish a list of expert witnesses that did not exist.” She further argued an evidentiary hearing was necessary so she could “present evidence and testimony regarding the negative consequences and safety issues, including Electro Magnetic Field (EMF) radiation, that would result from the installation smart meter on her property.” She explained that all of her proposed exhibits would be provided to the Company as soon as possible.

18. On February 28, 2019, the Complainant filed a Second Amended Formal Complaint (“Second Amended Complaint”). In addition to averments related to the proposed installation of a smart meter, beginning at paragraph 15 of the Second Amended Complaint, Complainant avers that Respondent allowed its electrical equipment on Complainant’s property to severely deteriorate and that Respondent’s contractors caused damage to Complainant’s property upon removing a pole from the property. Complainant averred that Respondent did not contact Complainant regarding the alleged damage; Respondent made no effort to repair the damage; and that Respondent allowed its equipment to deteriorate and create an unsafe condition on Complainant’s property in violation of Section 1501 of the Public Utility Code and Section 57.194

of the Commission regulations. Complainant argued First Energy should be added as an additional respondent in this matter.

19. As relief, Complainant requested that Respondent abide by Section 1501 of the Public Utility Code and Section 57.194 of the Commission's regulations; that the Company retain a certified independent engineering firm to perform a company-wide inspection of the Company's entire electrical delivery system and equipment to ensure compliance with all safety codes and Commission regulations and promptly issue a report to the Commission; that Respondent pay \$7,469.78 to Complainant to cover the cost of repairs to her property allegedly caused by the Company's contractor; that an amended litigation schedule be issued to provide for 60 days of additional discovery; that the Company cease and desist from any attempts to install a wireless smart meter at Complainant's premises or that the Commission order a waiver of any rule, regulation or Commission Order that the Commission believes requires the Company to deploy a wireless EMF-emitting meter at Complainant's premises; and that the Commission order a comprehensive independent investigation into the cyber security of the Company's entire infrastructure, including computer networks and system communication systems.

20. On March 1, 2019, ALJ Watson issued an Interim Order scheduling a Prehearing Conference for April 19, 2019. ALJ Watson explained that the purpose of the conference was to provide the Parties with an opportunity to address any outstanding discovery issues, the Motion to Dismiss, and any other outstanding issues in this proceeding.

21. On March 5, 2019, the Commission issued a Notice for the Prehearing Conference.

22. On March 13, 2019, the Prehearing Conference was rescheduled to March 26, 2019, by an Interim Order and a Reschedule Notice.

23. On March 18, 2019, Complainant filed a Status Report and a Request to Cancel the Prehearing Conference and Amend the Litigation Schedule. Complainant noted that she had

recently filed a Seconded Amended Complaint, and she requested an additional sixty days for discovery regarding new claims she raised for the first time in her Second Amended Complaint.

24. On March 25, 2019, ALJ Watson issued an Interim Order denying Complainant's Request to Cancel the Prehearing Conference and directing the Parties to appear and participate in the Prehearing Conference on April 19, 2019.

25. On March 27, 2019, the Company filed an Answer, New Matter, and Preliminary Objections to the Second Amended Complaint. Respondent averred that Complainant, in her Second Amended Complaint, requested, in part, that Respondent financially compensate her for damage allegedly incurred at the Service Location. Respondent further asserted the Commission does not have the power or legal authority to award monetary damages.

26. On April 1, 2019, the Commission issued a Notice, rescheduling the March 26, 2019, Prehearing Conference to April 19, 2019.

27. On April 9, 2019, the Complainant filed a Motion to Dismiss the Company's Preliminary Objections to the Second Amended Complaint. Complainant averred, *inter alia*, that the Preliminary Objections were not timely filed and therefore should be dismissed.

28. On April 19, 2019, the Prehearing Conference convened as scheduled. Ms. Fiedler appeared self-represented and objected to the conference being convened on that day, which was Good Friday. Lauren Lepkoski, Esq., and Tori Giesler, Esq., were present on behalf of the Company. After discussion with and agreement by the parties, ALJ Watson rescheduled the conference for May 2, 2019.

29. On April 22, 2019, Ms. Fiedler filed a Motion to Dismiss the Company's Answer and New Matter filed in response to the Second Amended Complaint, averring they were untimely filed.

30. On April 24, 2019, the Commission issued a Notice, scheduling the prehearing conference for May 2, 2019.

31. On April 24, 2019, the ALJ Watson issued an Interim Order rescheduling the conference and advising the parties that no further continuances would be granted.

32. On May 1, 2019, Complainant filed a certificate of service evidencing her service of additional discovery responses to the Company.

33. The May 2, 2019, prehearing conference convened as scheduled. Complainant appeared and participated. Ms. Giesler, Esq., appeared and participated on behalf of Respondent. The Parties were provided an opportunity to address all of the outstanding issues in this proceeding. At the conference, ALJ Watson orally denied Complainant's request to join FirstEnergy as an additional party, and Complainant made a request to reopen discovery. Additionally, Complainant failed to identify any of her fact and expert witnesses, and Respondent indicated that it was unable to access the additional discovery responses Complainant purportedly provided on May 1, 2019, on a USB drive.

34. On May 9, 2019, Ms. Fiedler filed a status report, confirming her status as a *pro se* complainant and noting she served additional discovery responses on the Company.

35. On October 10, 2019, ALJ Watson issued three Interim Orders. In one, he considered Complainant's Motion to Dismiss the Company's Preliminary Objection to the Second Amended Complaint, finding the Preliminary Objection was, in fact, timely filed. He further granted the Company's Preliminary Objection to the Second Amended Complaint, striking the Complainant's request for monetary damages from the Second Amended Complaint. Regarding Complainant's Motion to Dismiss the Company's Answer and New Matter to Second Amended Complaint, ALJ Watson held the pleadings were timely filed and denied Complainant's Motion.

36. In a second Interim Order issued October 10, 2019, ALJ Watson revised the litigation schedule. ALJ Watson granted in part and denied in part Complainant's request to re-open discovery. He wrote, "Complainant's request to permit additional discovery in this proceeding is granted in part, solely to permit Complainant to serve proper Discovery Requests upon Respondent solely related to the averments set forth in the Second Amended Complaint beginning at paragraph 15 of the Second Amended Complaint, and specifically that Respondent allowed its electrical equipment on Complainant's property to severely deteriorate and that Respondent's contractors caused damage to Complainant's property upon removing a pole from the property; that Respondent did not contact Complainant regarding the alleged damage; Respondent made no effort to repair the damage; and that Respondent allowed its equipment to deteriorate and create an unsafe condition on Complainant's property in violation of § 1501 of the Public Utility Code and § 57.194 of the Commission regulations. Discovery regarding these issues shall be concluded on or before October 28, 2019." ALJ Watson denied Complainant's request in all other respects. He directed the Parties to exchange fact and expert witness information by November 1, 2019, and held that in the event that Complainant identified any fact or expert witnesses by the deadline, Respondent would be permitted to engage in discovery related to those named witnesses and their proposed or expected testimony, to be concluded on or before November 29, 2019. He also directed the Parties to file a status report by November 1, 2019.

37. In the third Interim Order issued October 10, 2019, ALJ Watson considered outstanding discovery disputes and held the Company's Motion to Dismiss the Complaint in abeyance. ALJ Watson, wrote, "under the circumstances and in order to provide Complainant with a final opportunity to comply with the order granting Respondent's Motion to Compel Responses to Discovery Requests entered on June 28, 2019, the Motion to Dismiss will be held in abeyance, subject to the terms set forth in the ordering paragraphs below. Complainant's failure

to provide timely as well as full and complete responses to the discovery responses may result in sanctions, up to and including dismissal of the Complaint.” ALJ Watson ordered Complainant to serve full and complete responses to all of the interrogatories and requests for production of documents forwarded by Respondent to Complainant on November 1, 2019, and file and serve a certificate of service regarding said service, on or before November 1, 2019. He also directed the Parties to file a status report addressing the compliance of the Order by November 8, 2019. He explained the Motion to Dismiss would be held in abeyance.

38. On November 1, 2019, Ms. Fiedler filed a status report indicating that she provided paper copies of her discovery responses on May 6, 2019, served her own discovery requests upon the Company on October 28, 2019, and attached her witness information to the status report. She listed one fact witness, one expert witness to testify about electrical safety issues, and identified herself as providing both fact and expert testimony.

39. On November 12, 2019, the Company filed a certificate of service evidencing its service of objections to Complainant’s discovery requests.

40. On November 19, 2019, the Company filed a status report. It advised that it was still reviewing whether it would be issuing any additional discovery in accordance with the October 10, 2019, Interim Order, and requested the hearing be scheduled as an in-person hearing.

41. On November 22, 2019, the Commission issued a Judge Change Notice, changing the presiding officer to Administrative Law Judge Francis J. Brady (“ALJ Brady”).

42. On November 25, 2019, the Company filed a certificate of service evidencing its service of additional discovery requests upon Ms. Fiedler.

43. On November 26, 2019, the Company filed a status report advising that while Complainant had not yet filed full and complete discovery responses, it was no longer pursuing additional responses. It further advised that it expected to serve additional discovery requests on

Complainant by the November 29, 2019, deadline, and provide responses to discovery requests served by Complainant by December 6, 2019.

44. On November 25, 2019, Complainant filed a status report as well as a Motion to Dismiss Objections of Metropolitan Edison Company to her discovery requests. Complainant's Motion did not include copies of her requests, or the Company's objections thereto.

45. On December 3, 2019, the Company filed a response to Complainant's Motion to Dismiss Objections to her discovery requests.

46. On December 4, 2019, Company filed an amended response to Complainant's Motion to Dismiss Objections to her discovery requests, including the original discovery requests Complainant propounded upon the Company.

47. On December 5, 2019, the Commission issued a Hearing Notice, scheduling an in-person evidentiary hearing for February 5, 2020.

48. On December 6, 2019, the Company filed a certificate of service evidencing its service of discovery responses on Ms. Fiedler.

49. On December 11, 2019, ALJ Brady issued an Interim Order denying Complainant's Motion to Compel.

50. On December 19, 2019, ALJ Brady issued a Prehearing Order, scheduling an in-person evidentiary hearing for February 5, 2020, to be held in ALJ's office in Philadelphia.

51. On January 24, 2020, Ms. Fiedler filed a written request to continue the hearing because her witnesses were not available on February 5, 2020, and change the location of the hearing to Harrisburg.

52. On January 27, 2020, the Commission issued a Notice and ALJ Brady issued an Interim Order changing the February 5, 2020, proceeding to a telephone prehearing conference.

53. On February 3, 2020, ALJ Brady was served with Complainant's Third Amended Formal Complaint ("Third Amended Complaint"), as well as her motion to extend discovery and revise the litigation schedule. Both documents were filed in the Commission's online docket on February 5, 2020.

54. On February 4, 2020, ALJ Brady issued an Interim Order Rejecting Complainant's Third Amended Complaint and Dismissing Her Motion for Discovery and Revised Litigation Schedule. ALJ Brady reminded the parties that the telephone conference would proceed as scheduled on February 5, 2020.

55. On February 7, 2020, the Company filed a letter stating it would not be filing a response to the Third Amended Complaint.

56. The conference convened as scheduled on February 5, 2020. Complainant appeared and represented herself. Tori Giesler, Esq., and Lauren Lepkoski, Esq., appeared on behalf of the Company. ALJ Brady explained to the parties that the purpose of the conference was to set a date and location for the evidentiary hearing. After discussion, the parties agreed to have an in-person hearing in Harrisburg, and ALJ Brady set the evidentiary hearing for April 28, 2020, at 10:00 a.m.

57. When the Complainant asked about his rejection of the Third Amended Complaint, ALJ Brady explained to her that the case would be transferred to a judge in Harrisburg, so she could refile her Third Amended Complaint after a new judge was assigned.

58. On February 12, 2020, then Deputy-Chief ALJ Joel Cheskis issued a Prehearing Order, scheduling the in-person evidentiary hearing for April 28, 2020, to be held in the ALJ office in Harrisburg.

59. On February 13, 2020, Complainant refiled her Third Amended Complaint, seeking reconsideration of ALJ Brady's rejection of it and again requesting an extension of discovery and

a revised litigation schedule. Complainant served her filing on all the sitting Commissioners, and ALJs Brady and Cheskis. Although this was not styled as a Petition for Interlocutory Review, it was treated as such by the Company and the Commission.

60. On February 26, 2020, the Company filed a brief in opposition to Complainant's Petition for Interlocutory Review.

61. On May 12, 2020, the Commission issued a Notice, rescheduling the evidentiary hearing for July 30, 2020, as a telephone hearing.

62. On June 30, 2020, Ms. Fiedler filed a letter requesting that the hearing scheduled for July 30, 2020, be held in abeyance pending the resolution of a decision of the Commission that was appealed to the Commonwealth Court, noting that the court held oral argument on the appeal on June 10, 2020. Ms. Fiedler attached a copy of an order from the court holding other similar appeals pending before it in abeyance. Ms. Fiedler also argued that the hearing scheduled for July 30, 2020, should be held in abeyance because the Commission had not acted on a petition for interlocutory review she filed on February 13, 2020. Ms. Fiedler added that the Commission has not yet acted on a petition for interlocutory review she filed. Finally, Ms. Fiedler stated that two of her witnesses are not available on July 30, 2020, and requested that the July 30, 2020, hearing be rescheduled as a result.

63. On July 14, 2020, the Company filed an answer to Ms. Fiedler's motion to hold her case in abeyance. The Company did not oppose Ms. Fiedler's request to reschedule the hearing because of her witnesses' lack of availability but did oppose Ms. Fiedler's request to hold her complaint in abeyance pending resolution of the appeal at the Commonwealth Court. The Company argued, among other things, that this complaint has been pending for nearly two years and there is no reason to stay the proceeding until after the Commonwealth Court issues its decision. The Company noted that Ms. Fiedler's petition for interlocutory review is deemed

denied if the Commission does not act on it within 30 days, which it did not. The Company also requested that a litigation schedule establishing a schedule for submission of pre-served written testimony be established.

64. On July 16, 2020, ALJ Cheskis denied Complainant's request to hold her Complaint in abeyance but did grant her request to reschedule the hearing. ALJ Cheskis also denied the Company's request to establish a litigation schedule for purposes of the submission of pre-served, written testimony. Finally, he directed the parties to confer and propose, within ten days of the date of the order, multiple dates the rescheduled hearing to occur.

65. On July 24, 2020, the Company filed a status report providing possible dates for the rescheduled hearing. The Company reported it had attempted to get dates for Ms. Fiedler but she did not have access to her witnesses' availability.

66. On July 27, 2020, the Commission scheduled a telephonic evidentiary hearing for October 30, 2020.

67. On July 30, 2020, Complainant filed a request for a new hearing date and that the hearing be held in-person. She argued that, as a pro se litigant, she would be at a disadvantage at a telephone hearing. She also requested the hearing be rescheduled to be held in person on October 30, 2020.

68. On October 16, 2020, the Company filed a Motion to Stay the proceedings.

69. On October 21, 2020, Attorney B. Myers filed a Motion for Admission *Pro Hac Vice* on behalf of Complainant. He represented he is a member of the bar in good standing in multiple jurisdictions, including Maryland and the District of Columbia, and notes he is a retired member of the Pennsylvania bar, with an original admission date of November 23, 1977.

70. On October 21, 2020, Attorney Myers filed a response to the Company's Motion for Stay, auguring it should be denied.

71. On October 22, 2020, ALJ Cheskis issued an Interim Order granting the Company's Motion for a Stay.

72. On October 23, 2020, the Commission issued Cancellation Notice, cancelling the evidentiary hearing for October 30, 2020.

73. On October 8, 2020, the Commonwealth Court of Pennsylvania ("Court") issued an Opinion in the first of several appeals before it that involve an electric distribution company's ("EDC") deployment of smart meter technology pursuant to Act 129 of 2008 ("Act 129"), codified at 66 Pa.C.S. § 2807(f). In this consolidated opinion, the Court partially affirmed, and partially reversed and remanded, the Commission's March 28, 2019 and May 9, 2019 Orders in *Maria Povacz v. PECO Energy Co.*, C-2015-2475023; *Laura Sunstein Murphy v. PECO Energy Co.*, C-2015-2475726, and *Cynthia Randall and Paul Albrecht v. PECO Energy Co.*, C-2016-2537666.<sup>2</sup>

74. On November 4, 2020, the Commission entered an Order and Notice on November 4, 2020 at Docket No. M-2009-2092655, pursuant to 66 Pa.C.S. § 501, instituting a stay of certain formal complaint proceedings then-pending before the Commission involving challenges to EDC deployment of smart meter technology as being in violation of Section 1501 of the Code ("November 4, 2020 Stay Order"). The November 4, 2020 Stay Order also directed that the stay would apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. The November 4, 2020 Stay Order applied to and was docketed at the instant case.

75. The Commission, as well as all other parties in *Povacz I*, subsequently sought and were granted review of the Commonwealth Court's *Povacz I* decision by the Supreme Court of Pennsylvania. Previously, the Commonwealth Court stayed the proceedings in several other

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<sup>2</sup> *Povacz v. Pa. PUC*, 241 A.3d 481, 495 (Pa. Cmwlth. 2020) ("*Povacz I*").

unconsolidated appeals that raised the same, or similar, smart meter issues pending its disposition of *Povacz I*. Upon application by the Commission, the Commonwealth Court continued the stay of these appeals pending the Supreme Court's disposition of *Povacz II*.

76. On August 16, 2022, the Pennsylvania Supreme Court issued an Opinion and Order.<sup>3</sup> Since the Supreme Court's issuance of its *Povacz II* decision, the Commonwealth Court has lifted the stays on the remaining unconsolidated smart meter appeals and directed the parties to submit briefs, supplemental briefs, and other appropriate filings as warranted. The Commonwealth Court has ultimately affirmed the Commission in several unpublished and published opinions.<sup>4</sup>

77. Given the Supreme Court's decision in *Povacz II*, the Commission lifted the stay implemented by the November 4, 2020, Stay Order on November 9, 2023. The Commission entered an Order at Docket No. M-2009-2092655, explaining that cases pending before the Office of Administrative Law Judge, such as the instant case, would proceed as directed by the assigned presiding officer.

78. The Complainant never served the written testimony summaries in support of her allegations as required.

79. The Company herein files this Motion for Summary Judgment and respectfully requests that the Formal Complaint be dismissed in its entirety and with prejudice because the Complainant failed to serve any direct testimony in support of her claims and, therefore, will be unable to sustain her burden of proof at the evidentiary hearing.

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<sup>3</sup> *Povacz, et al. v. Pa. Public Utility Commission*, 280 A.3d 975 (Pa. 2022) ("*Povacz I*").

<sup>4</sup> See *Hoffman-Lorah v. Pa. Pub. Util. Comm'n*, 2023 Pa. Cmwlth. Unpub. LEXIS 325, 2023, WL 4144399; *Branagh v. Pa. Pub. Util. Comm'n*, 2023 Pa. Cmwlth. Unpub. LEXIS 352, 2023, WL 4363414; *Hess v. Pa. Pub. Util. Comm'n*, 2023 Pa. Cmwlth. Unpub. LEXIS 371, 2023, WL 4540460; *Mary Paul v. Pa. Pub. Util. Comm'n*, No. 460 C.D. 2019, 2023 Pa. Cmwlth. LEXIS 113; *Schmukler v. Pa. Pub. Util. Comm'n*, No. 1102 C.D. 2019, 2023 Pa. Commw. LEXIS 136. The following smart meter appeals were dismissed by the Commonwealth Court on procedural grounds: *Sunstein v. Pa. Pub. Util. Comm'n*, No. 1581 C.D. 2019; *Ulmer v. Pa. Pub. Util. Comm'n*, No. 967 C.D. 2020; and *Lucey v. Pa. Pub. Util. Comm'n*, No. 1212 C.D. 2020.

## II. LEGAL STANDARDS

### A. BURDEN OF PROOF

80. On August 16, 2022, the Pennsylvania Supreme Court issued its Opinion affirming in part and reversing in part the Commonwealth Court’s decision in *Povacz I*.<sup>5</sup>

81. 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>6</sup>

82. The Supreme Court noted that while Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence, they may file a complaint with the Commission raising a claim that installation of a smart meter violates Section 1501 of the Code, 66 Pa.C.S. § 1501. The Supreme Court reiterated that complainants seeking relief from the Commission must satisfy their burden of proof by a preponderance of the evidence. The Supreme Court explained that inconclusive evidence – evidence that does not lead to a conclusion of a definite result one way or the other – does not meet even the minimal requirements of the preponderance of the evidence standard.<sup>7</sup> The Supreme Court opined that while a customer’s evidence does not need to prove their assertion beyond any doubt, evidence of a mere possibility that harm could result is insufficient to satisfy the preponderance of the evidence standard.<sup>8</sup>

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<sup>5</sup> See *Povacz II*.

<sup>6</sup> *Id.* at 1012-1014.

<sup>7</sup> *Id.* at 1005.

<sup>8</sup> *Id.* at 1008.

83. The Pennsylvania Supreme Court opined in *Povacz II* that the burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and radiofrequency (“RF”) emissions. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. The Pennsylvania Supreme Court concluded that neither fear nor inconclusive scientific research was sufficient to prove that smart meter technology constitutes unsafe service under Section 1501.<sup>9</sup> The Pennsylvania Supreme Court held that if a 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. However, given that Act 129 mandates smart meter deployment, the Pennsylvania Supreme Court clarified that such accommodation may not rise to the level of an opt-out from smart meter installation.<sup>10</sup>

#### **B. STANDARD FOR SUMMARY JUDGMENT**

84. Section 5.102 of the Commission’s regulations provides the Commission’s standard of review for a request for summary judgment:

(1) Standard for grant or denial on all counts. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) Standard for grant or denial in part. The presiding officer may grant a partial summary judgment if the

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<sup>9</sup> *Id.* at 1005.

<sup>10</sup> *Id.* at 1015.

pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

52 Pa. Code § 5.102(d)(1)-(2).

85. The Commission is granted discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.<sup>11</sup> A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing.<sup>12</sup>

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<sup>11</sup> 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d).

<sup>12</sup> *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993).

### III. ARGUMENT

#### A. **THE FORMAL COMPLAINT SHOULD BE DISMISSED BECAUSE THE COMPLAINANT FAILED TO CARRY HER BURDEN OF PROOF**

86. The Company incorporates by reference paragraphs 1 through 85 as if fully set forth herein.

87. The Company respectfully requests that the Formal Complaint be dismissed in its entirety and with prejudice due to the Complainant's failure to carry her burden of proof in support of her claims.

88. In its ruling in *Povacz II*, the Court held that Act 129 mandates the systemwide installation of smart meters.<sup>13</sup> The Pennsylvania Supreme Court noted in *Povacz II* that while Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence, they may file a complaint with the Commission raising a claim that installation of a smart meter violates 66 Pa.C.S. § 1501.

89. The Pennsylvania Supreme Court opined in *Povacz II* that the burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm.

90. *Povacz II* further affirmed that a complainant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible.<sup>14</sup> The Pennsylvania Supreme Court in *Povacz II* opined that while a customer's evidence does not need

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<sup>13</sup> See *Povacz II* at 1012-1014.

<sup>14</sup> *Povacz II* at 1012-14.

to prove their assertion beyond any doubt, evidence of a mere possibility that harm could result is insufficient to satisfy the preponderance of the evidence standard.<sup>15</sup>

91. Here, the Complainant raised concerns regarding the general privacy and safety of smart meters alleging the installation of a new smart meter at the Service Location would violate Section 1510 of the Public Utility Code, 66 Pa.C.S. § 1501.

92. As a matter of law, the Company is required to install a smart meter at the Service Location.

93. However, the Complainant has refused access to permit the installation of a smart meter at the Service Location and does not currently have a smart meter installed.<sup>16</sup>

94. Moreover, the Complainant has failed to include in the record any documentation or expert testimony evidencing, to a reasonable degree of scientific certainty, that smart meters emit a radio frequency and that such an emission would be a violation of 66 Pa.C.S. § 1501.

95. Rather, the Complainant simply proffers lay opinions and beliefs, or perceptions as to the effects RFs may have to her health, which do not constitute evidence.<sup>17</sup>

96. The Complainant's claim that she would be adversely affected by a smart meter fails to demonstrate that The Company would violate the Public Utility Code or a regulation or order of the Commission by installing a smart meter at the service location; and that the Company, by virtue of installing a smart meter at the service location, would provide unsafe or unreasonable service in violation of 66 Pa.C.S. § 1501.

97. As the party with the burden of proof,<sup>18</sup> the Complainant was required to establish a *prima facie* case that the Company's installation of a smart meter violates 66 Pa.C.S. § 1501. As

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<sup>15</sup> *Id.* at 1008.

<sup>16</sup> See Answer and New Matter to the Complaint of the Respondent (March 27, 2019).

<sup>17</sup> *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

<sup>18</sup> See Section II.A., *supra*.

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, the Company's Smart Meter Deployment Plan, and the Company's Commission-approved tariff and, therefore, cannot be granted by the Commission.

98. This request for an accommodation is essentially a request to opt-out of smart meter installation, which is simply not possible. Consistent with the Court's ruling in *Povacz II*, customers of the Company, such as the Complainant, may only receive a smart meter related accommodation ordered by the Commission if they are able to establish a violation of Section 1501 of the Public Utility Code.

99. None of the arguments of the Complainant demonstrate, by preponderance of the evidence, that installation of a smart meter at the Service Location would become an unsafe or unreasonable service in violation of 66 Pa.C.S. §1501.

100. Under Section 5.102(d)(1) of the Commission's regulations, summary judgment will be granted if there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.<sup>19</sup>

101. Due to the Complainant's failure to present any evidence in support of her claims, there are no material facts in dispute.

102. Here, the Complainant has the burden of proof to demonstrate that the installation of the Company's smart meter would violate the Public Utility Code or a Commission regulation or order. However, the Complainant failed to provide any testimony from her expert and factual witnesses and did not serve any written direct testimony in support of her allegations as required. Therefore, the Complainant has failed to present any evidence as part of her direct case and no such opportunity exists for the Complainant to present any evidence in support of her direct case.

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<sup>19</sup> 52 Pa. Code § 5.102(d)(1).

103. In sum, the Complainant was able to and should have served her factual and expert written direct testimony. By failing to do so, the Complainant failed to carry her burden of proof, and her Formal Complaint should be dismissed accordingly.

104. For these reasons, there are no material facts in dispute, and the Company is entitled to judgment as a matter of law. Thus, the Company respectfully requests that ALJ DeVoe grant the instant Motion for Summary Judgment and summarily dismiss the Formal Complaint in its entirety and with prejudice.

#### **IV. CONCLUSION**

WHEREFORE, FirstEnergy Pennsylvania Electric Company on behalf of its Met-Ed Rate District respectfully requests that Administrative Law Judge Emily DeVoe enter an Order granting the Motion for Summary Judgment and dismissing the Formal Complaint with prejudice, as explained above.

Respectfully submitted,



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Tori L. Giesler  
Attorney No. 207742  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001  
(610) 921-6658  
tgiesler@firstenergycorp.com

Date: January 24, 2024  
Attorney for FirstEnergy Pennsylvania Electric  
Company (Met-Ed Rate District)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**HEIDI FIEDLER**

v.

**METROPOLITAN EDISON COMPANY**

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**Docket No. C-2018-3003642**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Motion of FirstEnergy Pennsylvania Electric Company on behalf of its Met-Ed Rate District for Summary Judgement 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:

Heidi Fiedler  
432 East Wesner Road  
Blandon, PA 19510

Administrative Law Judge Emily I. DeVoe  
[edevoe@pa.gov](mailto:edevoe@pa.gov)

Respectfully submitted,



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Tori L. Giesler  
Attorney No. 207742  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001  
(610) 921-6658  
tgiesler@firstenergycorp.com

Date: January 24, 2024  
Attorney for FirstEnergy Pennsylvania Electric  
Company (Met-Ed Rate District)