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January 26, 2024

**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: John M. Chenosky v. Metropolitan Edison Company**  
**Docket No. C-2019-3007622**

Dear Secretary Chiavetta:

Attached please find the Pre-Hearing Conference Memorandum of FirstEnergy Pennsylvania on behalf of its Met-Ed Rate District 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.

Very truly yours,



Tori L. Giesler

TLG/vlr  
Enclosures

c: As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JOHN M. CHENOSKY**

v.

**METROPOLITAN EDISON COMPANY**

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**Docket No. C-2019-3007622**

**PRE-HEARING MEMORANDUM OF FIRSTENERGY PENNSYLVANIA ELECTRIC  
COMPANY ON BEHALF OF ITS MET-ED RATE DISTRICT  
TO THE FORMAL COMPLAINT OF JOHN M. CHENOSKY**

**TO ADMINISTRATIVE LAW JUDGE CONRAD A. JOHNSON**

Pursuant to 52 Pa. Code § 5.222(d) and the December 22, 2023 Prehearing Conference Order, FirstEnergy Pennsylvania Electric Company,<sup>1</sup> on behalf of its Met-Ed Rate District (hereinafter “Company”), by and through its counsel, Tori L. Giesler, hereby submits this Prehearing Conference Memorandum.

**I. SERVICE OF DOCUMENTS**

1. Company requests that all documents be served on:

Tori L. Giesler  
Attorney No. 207742  
FirstEnergy Service Company  
2800 Pottsville Pike  
Reading, Pennsylvania 19612  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

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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.

## II. PROCEDURAL HISTORY

1. On January 25, 2019, John M. Chenosky (“Complainant”), who resides at 1000 Huffs Church Road, Alburtis, Pennsylvania 18011 (“Service Location”), filed a Formal Complaint (“Formal Complaint”) alleging that he does not want a smart meter installed at the Service Location. (Formal Complaint ¶¶ 4, 5.)

2. On February 24, 2019, the Company filed its Answer and New Matter denying the material allegations in the Formal Complaint. On that same day, the Company also filed Preliminary Objections to the Formal Complaint.

3. On March 15, 2019, the Complainant filed a request for an extension of time to respond to the Company’s Answer and New Matter.

4. On March 20, 2019, a Motion Judge Assignment Notice was issued assigning this matter to Administrative Law Judge Jeffrey A. Watson (“ALJ Watson”) for disposition.

5. On March 29, 2019, the Complainant filed a response to the Company’s Answer and New Matter and a response to the Company’s Preliminary Objections directly to the Company.

6. On May 3, 2019, ALJ Watson issued an Interim Order, which denied the Company’s Preliminary Objections.

7. On May 16, 2019, in accordance with 52 Pa. Code § 5.341, the Company forwarded to the Complainant interrogatories and document requests (“Discovery Requests”) via first class mail.

8. By letter dated May 24, 2019, which was postmarked on May 30, 2019, the Complainant requested both an “unspecified time frame extension” to respond to the Company’s Discovery Requests while in the alternative objecting to the Company’s Discovery Requests.

9. The Company voluntarily extended the time for the Complainant to object to and respond to the Company's Discovery Requests. As such, on June 6, 2019, the Company filed correspondence with the Commission memorializing this extension. The Complainant was afforded an extension until June 21, 2019 to provide detailed objections with responses due no later than July 15, 2019.

10. On July 1, 2019, an Interim Order Establishing Initial Litigation Schedule was issued which set forth the schedule for discovery, the identification of witnesses, and filing of motions in this proceeding.

11. Also on July 1, 2019, ALJ Watson issued an Interim Order which granted in part the Complainant's request for an extension of time to respond to the Company's Discovery Requests and to file a response to the Company's Answer and New Matter. ALJ Watson directed that the deadline for Complainant to file a response pleading to the Company's Answer and New Matter shall be extended until July 8, 2019 and that the Complainant shall provide detailed objections to any specific Discovery Requests propounded by the Company on or before July 8, 2019 and full and complete responses to all remaining Discovery Requests to the Company on or before July 19, 2019.

12. By letter dated July 18, 2019, and received by the Company on July 22, 2019, the Complainant submitted objections to the Company's Discovery Requests.

13. On July 30, 2019, the Company filed a Motion to Compel the Complainant to provide full and complete responses to Discovery Requests issued by the Company on May 16, 2019.

14. On August 2, 2019, the Complainant filed Objections to Interrogatories.

15. On August 19, 2019, the Complainant filed Objections to Motion to Compel.

16. On September 3, 2019, ALJ Watson issued an Interim Order granting the Motion to Compel Responses to Interrogatories and Requests for Productions of Documents filed by the Company on July 30, 2019, denying the Company's objections to the Discovery Requests, and directing the Complainant to serve full and complete responses by September 23, 2019. This deadline was further extended by Interim Order dated September 25, 2019.

18. On September 26, 2019, a Judge Change Notice was issued changing the Administrative Law Judge from ALJ Jeffery Watson to ALJ Joel Cheskis ("ALJ Cheskis").

19. On October 18, 2019, ALJ Cheskis acknowledged the Complainant's request for an accommodation under the terms of the Americans with Disabilities Act and requested of the Complainant information regarding his disability and the accommodation being sought by December 15, 2019.

20. On December 26, 2019, ALJ Cheskis issued a litigation schedule requiring the Complainant to serve Direct Testimony on June 1, 2020, the Company to serve Rebuttal Testimony by September 1, 2020, and the Complainant to serve Surrebuttal Testimony on November 2, 2020.

21. On September 1, 2020, the Company filed Motion to Strike portions of the Complainant's written direct testimony and exhibits because they were irrelevant, contain hearsay not subject to the hearsay exemption, constitute improper testimony, and contain allegations that are time-barred by Section 3314(a) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 3314(a).

22. On September 2, 2020, the Company served the Rebuttal Testimony of Mr. John C. Ahr and Ronald Long.

23. On September 22, 2020, ALJ Cheskis modified the litigation schedule to accommodate for certain ongoing complications due to the COVID 19 pandemic, among other

things. The modified litigation schedule changed the date that the Complainant's surrebuttal testimony was due from November 2, 2020 to January 4, 2021.

24. On October 8, 2020, the Commonwealth Court of Pennsylvania 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>

25. On November 4, 2020, the Commission entered an Order and Notice 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 ("November 4, 2020 Stay Order"). The November 4, 2020 Stay Order applied to and was docketed at the instant case.

26. 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.

27. On August 16, 2022, the Pennsylvania Supreme Court issued an Opinion and Order.<sup>3</sup>

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

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

28. On November 21, 2022, a Judge Change Notice was issued informing the parties of a change in the Administrative Law Judge from ALJ Cheskis to ALJ Conrad A. Johnson (“ALJ Johnson”).

29. Given the Supreme Court’s decision in *Povacz II*, the Commission lifted the stay implemented by the November 4, 2020, Stay Order on November 14, 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.

30. On December 21, 2023, ALJ Johnson issued a Telephonic Prehearing Conference Notice scheduled for February 1, 2024.

31. On December 22, 2023, ALJ Johnson issued a Prehearing Order for the telephonic conference. The Prehearing Order set forth, inter alia, for the parties to discuss a proposed litigation schedule as well as settlement. Counsel for the Company made several attempts to reach the Complainant but was unable to do as of the date of this filing.

32. On January 17, 2023, Complainant submitted an *ex parte* Motion requesting an indefinite stay of the proceedings.

33. On January 24, 2024, ALJ Johnson denied the Complainant’s request. Further, ALJ Johnson ordered the Complainant file medical documentation regarding his physical or mental impairment that substantially limits a major life activity and (2) the specific reasonable accommodation he is requesting to participate in the prehearing conference with the Commission’s Secretary’s Bureau by 4:00 p.m., Friday, January 26, 2024, and serve copies of such to the ALJ and the Company.

### **III. ISSUES**

34. The presently identified issues are: (1) whether the Complainant has the ability to opt-out of the installation of the “Smart Meter” under Act 129 of 2008; and (2) whether the Company’s installation of the new “Smart Meter” at the Service Location would violate 66 Pa. C.S. § 1501. As stated in the Company’s Answers to the Complainants, the Company maintains that there is no opt-out of the new “Smart Meter” installation under Act 129 and that the installation of its new “Smart Meters” would not violate Section 1501 of the Public Utility Code.

### **V. WITNESSES AND EXHIBITS**

35. The Company stands by its previously submitted testimony and exhibits and intends to present those same exhibits in an evidentiary hearing, to be adopted by Company witness, Mr. Villao. Further, the Company reserves the right to supplement testimony and exhibits in response to any new evidence submitted by the Complainant.

### **V. DISCOVERY**

36. As indicated above, the Company has propounded interrogatories and document requests upon the Complainant and has yet to receive an appropriate response despite orders by ALJ Watson and ALJ Cheskis.

VI. **CONCLUSION**

The Company is willing to participate in settlement discussions and coordinate and address procedural matters with the Complainant.

Respectfully submitted,

Dated: January 26, 2024



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Tori L. Giesler  
Attorney No. 207742  
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2800 Pottsville Pike  
Reading, Pennsylvania 19612  
(610) 921-6658  
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Counsel for FirstEnergy Pennsylvania  
Electric Company (Met-Ed Rate District)

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**Docket No. C-2019-3007622**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Prehearing Memorandum of FirstEnergy Pennsylvania Electric Company, on behalf of its Met-Ed Rate District to the Formal Complaint of John M. Chenosky 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 Mail, postage prepaid, as follows:

John M. Chenosky  
P.O. Box 423  
Alburtis, PA 18011

Service by Electronic Mail as follows:

Administrative Law Judge Conrad A. Johnson  
[cojohnson@pa.gov](mailto:cojohnson@pa.gov)

Dated: January 26, 2024



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Tori L. Giesler  
FirstEnergy Service Company  
2800 Pottsville Pike  
Reading, Pennsylvania 19612-6001  
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[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)