

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John M. Chenosky	:	
	:	
v.	:	C-2019-3007622
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Conrad A. Johnson  
Administrative Law Judge

**INTRODUCTION**

Notwithstanding the Commission’s lack of authority to grant Complainant the relief he seeks, that is, to opt-out of the installation of a smart meter at the service address, this decision dismisses the Complaint alleging that the installation of a smart meter would aggravate Complainant’s health conditions.<sup>1</sup> The Complaint is dismissed for Complainant’s failure (1) to comply with orders of the presiding officers and (2) to appear, without good cause, for the prehearing conference to prosecute his Complaint.

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<sup>1</sup> A smart meter is an electronic device that records a customer’s consumption of electric energy in increments of an hour or less and communicates that information at least daily back to the electric distribution company for monitoring and billing purposes. See 66 Pa.C.S. § 2807(f)(1), (2).

## **HISTORY OF THE PROCEEDING**

### **Complaint and Answer and New Matter**

On January 25, 2019, John M. Chenosky (Complainant or Mr. Chenosky) filed a Formal Complaint (Complaint) against Metropolitan Edison Company (Respondent or MetEd), and he alleged in part as follows:

[r]easonable accommodation disability/disabilities/medical conditions. I am a customer of Met-Ed/ First Energy electric utility, I live at 1000 Huffs Church Rd., Alburtis, PA 18011 and have lived there since 2002. I am a qualified individual with a disability/medical condition as defined by the Fair Housing Amendments Act of 1988, the Americans with Disabilities Act, and Section 504, Title 10, and other related state and federal discrimination laws. My residence is scheduled to receive two (2) electric smart meters. These meters emit RF radiation, which aggravates my existing medical conditions and disability. Because of my disabilities, I request the following accommodations:

1. Acceptance by PUC/Utility of request to Opt-Out of Smart Meter installations.
2. Retention of existing analog meters at no additional charges or fees, neither one time nor recurring charges.
3. Uninterrupted services as required by Utility to service the meters and reporting of usage as currently provided.

I request these accommodations that will enable me to have equal opportunity to live and enjoy my residence and receive full access to electric services without RF radiation exposure. I request that the smart meter Opt-Out to analog meter be part of the accommodation, without charges, fees or extra costs for the accommodation, which are not allowable under the above-mentioned discrimination laws.

Please let me know what, if any, additional information you need from my health care provider in order to better understand my disabilities and/or medical conditions pertaining to this request, and the limitations they impose. Under the Fair Housing

Amendment Act and/or Title III of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, and Title 10, in addition to other state and federal laws against discrimination, it is unlawful discrimination to deny a person with disability reasonable accommodation of policies, procedures, and activities, where necessary to avoid discrimination if such accommodation may be necessary to afford such person full enjoyment or equal access and /or participation in programs and services.

As the Complainant suffers from Anomic & Expressive Aphasia and has been Permanently Disabled as a result of three left Parietal Strokes, the PAPUC is required by previously cited ADA Law to provide a REASONABLE ACCOMODATION when reviewing the context of Complainants documents.

Complaint ¶ 5 Attachment.

On February 25, 2019, MetEd filed an Answer and New Matter. In relevant part, MetEd averred as follows:

[b] way of further response, the Company is attempting to install a smart meter at the Service Location in accordance with Act 129 of 2008 (“Act 129”)<sup>2</sup> and that the Complainant has refused installation of a smart meter at the Service Location. By refusing to allow the Company access to its meter, the Complainant is in violation of Rules 9 and 20 of the Company’s Commission-approved tariff<sup>3</sup> and would therefore be lawfully subject to termination in accordance with 66 Pa. P.C.S. § 1406(a)(4) and 52 Pa. Code § 56.81(3). The Commission has also upheld decisions finding that a utility has the ability to terminate the service of a customer who refuses installation of a smart meter.<sup>4</sup>

Answer ¶ 5 (footnotes original).

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<sup>2</sup> 66 Pa.C.S. § 2806.1 *et seq.* Among other things, Act 129 specifically directed that electric distribution companies with at least 100,000 customers file a smart meter technology procurement and installation plan with the Commission for approval. 66 Pa.C.S. § 2807(f)(1) and (2).

<sup>3</sup> *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective May 3, 2015.

<sup>4</sup> *Art Larson v. PECO Energy Company*, Docket No. C-2014-2541754 (Opinion and Order entered June 11, 2015). *See also, Catherine J. Frompovitch v PECO Energy Company*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018).

In New Matter, MetEd reiterated its argument: “The Company is in the process of deploying smart meter in its service territory in accordance with Act 129. Act 129 specifically direct that electric distribution companies with at least 100,000 customers file a smart meter technology procurement and installation plan with the Commission for approval.” (Footnotes omitted). New Matter ¶ 13. Additionally, MetEd argued, “Neither the Company SMP [Smart Meter Deployment Plan] nor Act 129 enable the Commission to grant the relief requested by the Complainant.” New Matter ¶ 16. Thus, MetEd argued, “In fact, if the Commission did rule in the Complainant’s favor and barred the Company from installing a smart meter at the Service Location, the Commission would be forcing the Company to be in violation of Act 129.” New Matter ¶ 16. For relief, MetEd requested that the Complaint be dismissed with prejudice, or in the alternative the matter be set for a prehearing conference.

#### Preliminary Objections

MetEd also filed Preliminary Objections on February 25, 2019. As grounds for the Preliminary Objections, MetEd asserted the Complaint was legally insufficient because Mr. Chenosky had not alleged that Met Ed had violated any of the Commission statutes, regulations, or orders. Additionally, the Commission could not grant the relief requested by Mr. Chenosky because Act 129 requires MetEd to install smart meters and does not allow a customer to opt-out of the installation. Preliminary Objection ¶ 18. Accordingly, MetEd requested that the Commission dismiss the Complaint in its entirety with prejudice.

On March 15, 2019, Mr. Chenosky filed a Petition for a 30-day extension to file a response to the Answer and New Matter.

By Motion Judge Assignment Notice dated March 20, 2019, the Parties were informed that the proceeding was assigned to Administrative Law Judge (ALJ) Jeffery A. Watson.

On March 29, 2019, Mr. Chenosky filed a document captioned: “Answer and Objection To New Matter & Preliminary Objection Of Metropolitan Edison To The Complaint Of John M. Chenosky To The Pennsylvania Public Utility Commission [Complainant’s March 2019 Filing].”<sup>5</sup> Mr. Chenosky argued in part that MetEd’s Preliminary Objections were conclusions of law, and he was exercising his right to opt-out of the installation of a smart meter at his residence. Complainant’s March 2019 Filing, Answer to New Matter ¶ 12.

### Interim Orders and Discovery Matters

Citing the Commonwealth Court’s ruling in *Romeo v. Pa. Pub. Util. Comm’n*, 154 A.3d 422 (Pa. Cmwlth. 2017), on May 3, 2019, ALJ Watson issued an interim order denying MetEd’s Preliminary Objections. In *Romeo*, as in the instant case, the customer refused installation of a smart meter and alleged in his complaint that he had safety concerns about the smart meter. Accordingly, there was an issue of fact as to the safety of the smart meter which would negate the granting of the utility’s preliminary objections.

On May 16, 2019, MetEd filed a Certificate of Service certifying that a true copy of Interrogatories and Requests for Production of Documents had been served upon Mr. Chenosky.

On July 1, 2019, ALJ Watson, issued an *Interim Order Establishing Initial Litigation Schedule*. Under the order, the Parties were required to submit in writing the names and business addresses of their fact and expert witnesses, including a written summary of their respective testimonies, by September 27, 2019, and discovery was to conclude by September 5, 2019.

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<sup>5</sup> Procedurally, Mr. Chenosky’s March 2019 Filing was not in conformity with the Commission’s regulations for Pleadings Allowed at Section 5.1, 52 Pa. Code § 5.1, nor was the filing in conformity with regulations as to the form of the answer to preliminary objections Section 5.101(f)(2), 52 Pa. Code § 5.101(f)(2), requiring numbered paragraphs to correspond with the preliminary objections. Here, Mr. Chenosky combined his reply to the New Matter and Answer to the Preliminary Objections into one lengthy and continuous pleading.

On July 22, 2019, the Commission's Secretary's Bureau docketed Mr. Chenosky's email (Complainant's July 2019, Email) and his Objections To Interrogatories And Objections To Requests For Production Of Documents Of Metropolitan Edison Company To John M. Chenosky. Set I (Objections to Interrogatories). In his cover letter, Mr. Chenosky wrote the following:

[n]otwithstanding your instructions regarding law reference requirements and the extent of the repetitive legal regurgitation from the Defendant, attempting to read, understand and comply with those statutes and answer the Interrogatories to your deadline, was for me, an impossibility.

As a consequence my effort to comply does not in any way mean any disrespect, but *I question why a Pre-trial Conference suggested by the Defendant in their preliminary objections was never honored.*

Clearly consumer complaints should be handled by Arbitration, not the Mediation Process in place. Additionally, the proposed court schedule in your instructions is an unrealistic effort for this Complainant.

By this email I am requesting a change of venue as both the Defendant and Complainant are Berks County based and my physical abilities limit the extent of my travel.

Complainant's July 2019 Email, pp. 1-2. (emphasis added).

In his Objections to Interrogatories, Mr. Chenosky maintained, in part, that his medical information is not subject to scrutiny, is protected by HIPPA and therefore the discovery request is moot. Complainant's Objection to Interrogatories at 1.

On July 29, 2019, MetEd filed a Motion to Compel Response to Interrogatories and Documents Requests, together with Notice to Plead within 20 days of service of the Motion. MetEd averred that Mr. Chenosky objected to the tenor, content, and violations of his rights under HIPPA and the Fourth Amendment Right of Privacy.

On August 19, 2019, Mr. Chenosky filed Objections To Metropolitan Edison Company Motion To Compel Of July 29, 2019 And Motion To Dismiss Interrogatories Of May 16, 2019 And Motion To Dismiss Motion To Compel Of July 29, 2019 All As Submitted By Defendant Metropolitan Edison Company (Complainant's Objections to Discovery). In his objections, Mr. Chenosky asserted the following:

[c]omplainant's position is that the timeframe demanded by the Defendant represents a major hardship. The allegations advanced by the Defendant have no merit, nor do they have any relevance as previously cited in the ATI. Consequently, Complainant is forced to object to the Motion to Compel in its entirety.

*Complainant is amenable to a Pre-Conference hearing to discuss the deficiencies of the process which results in the ignorance of Pro Se Complainants, the lack of Accommodation For Disability required by ADA Compliance, the preponderance of the evidence that Smart Meter Technology and its 5G future is a Fire Risk nor, Biologically Safe and that is overwhelmingly ignored by both the PA PUC and the Defendant. These deficiencies are finally becoming evident as Proceedings Pending Appeal are revealing.*

Complainant's Objection to Discovery at 1 and 3. (emphasis added).

On September 3, 2019, ALJ Watson issued an *Interim Order Granting In Part And Denying In Part Respondent's Motion To Compel Discovery Responses (September 3, 2019, Interim Order)*. Under the *September 3, 2019, Interim Order*, Mr. Chenosky was directed to serve upon counsel for MetEd, full, and complete responses to all of the interrogatories and request for production of documents served upon him by MetEd no later than September 23, 2019. Additionally, Mr. Chenosky was required to file a Certificate of Service indicating that he had responded to MetEd's discovery requests. However, Mr. Chenosky did not file any responses to MetEd's discovery requests.

On September 25, 2019, ALJ Watson issued an *Interim Order Extending Time Period For Complainant To Provide Full And Complete Answers To Discovery Requests Propounded By Metropolitan Edison Company, Amending Interim Order Entered On September 3, 2019 And Requiring Parties To Submit An Additional Status Report (September 25, 2019, Interim*

*Order*). The *September 25, 2019, Interim Order*; in part, required Mr. Chenosky to file answers to MetEd's interrogatories and request for production of documents by October 10, 2019.

Judge Change Notices and Complainant's Request for Hearing Accommodation

By Judge Change Notice dated September 26, 2019, the Parties were informed that the presiding officer had been changed from ALJ Watson to ALJ Joel Cheskis.

By letter dated October 18, 2019, and filed at the docket in this proceeding, ALJ Joel Cheskis informed Mr. Chenosky as follows:

[t]his letter acknowledges your request for an accommodation under the terms of the Americans with Disabilities Act in the above-referenced matter. Please know that the Public Utility Commission is committed to engaging in an appropriate interactive process regarding suitable access for any litigant appearing before the Commission's Administrative Law Judges. An appropriate interactive process presumes that an individual has a recognized disability, and also means that the Commission will receive information from all necessary inquiries regarding the litigant's condition and requested accommodation.

Therefore, **by December 15, 2019, please provide to me information regarding your disability as well as the accommodation which you are seeking with as much specificity as you are able to provide.** I will then establish a schedule for litigating your complaint against the company that I believe constitutes a reasonable accommodation for you. As I previously indicated to you, I would like to make this proceeding as simple and efficient as possible.

ALJ Cheskis' October 18, 2019, Letter at 1. (emphasis in original).

On December 26, 2019, ALJ Cheskis issued a *Scheduling Order*, under which service of Mr. Chenosky's written direct testimony was due by June 1, 2020; service of Met-Ed's written rebuttal testimony was due by September 1, 2020; and service of Mr. Chenosky's written surrebuttal testimony was due by November 1, 2020. Afterwards the remainder of the litigation schedule would be addressed. *Scheduling Order*, Ordering Paragraph 1. As noted below, Mr.

Chenosky served his written direct testimony; however, he did not file a Certificate of Service certifying that he served his written direct testimony or written surrebuttal testimony upon MetEd. On September 1, 2020, MetEd filed a Certificate of Service certifying that it had filed its written rebuttal testimony upon Mr. Chenosky.

### Respondent's Motion to Strike

On September 1, 2020, MetEd filed a “Motion Of Metropolitan Edison Company To Strike Portions The Written Direct Testimony And Exhibits Submitted By John M. Chenosky (Motion to Strike).” MetEd alleged that on June 1, 2020, Complainant served his written direct testimony and exhibits. Motion to Strike ¶ 14. MetEd argued that certain portions of Mr. Chenosky’s written direct testimony were irrelevant, contained hearsay not subject to a hearsay exemption, constituted improper expert testimony, and contained allegations that were time-barred by Section 3314(a) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 3314(a). Motion to Strike at 1. MetEd moved to strike certain portions of Mr. Chenosky’s written direct testimony based upon the following:

[t]he Complainant’s direct testimony addresses six primary topics: (1) the alleged medical issues he and others allegedly experience from being exposed to radio frequency (“RF”) fields and electromagnetic fields (“EMFs”); (2) allegation that the smart meter produces “dirty electricity”; (3) alleged issues concerning Met-Ed’s electric service and the electric distribution equipment providing that service to the Complainant’s property; (4) his argument that Act 129 of 2008 (“Act 129”) does not mandate the installation of smart meters; (5) allegation that the Company’s installation of its smart meter would violate the Americans with Disabilities Act (“ADA”) and the Fair Housing Act (“FHA”); and (6) allegation that the Company’s actions are inconsistent with the “Professional Engineers Act.”<sup>[6]</sup>

Motion to Strike ¶ 16. Mr. Chenosky did not file a response to the Motion to Strike.

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<sup>6</sup> The statutes referenced and quoted by Complainant are provisions in California’s Business & Professions Code. They are not Pennsylvania statutes.

## Litigation Schedule

On September 22, 2020, ALJ Cheskis issued another *Scheduling Order (Second Scheduling Order)*, stating the following:

[o]n September 3, 2020, however, Mr. Chenosky indicated that he had not received Met-Ed's rebuttal testimony. Met-Ed indicated that, due to the Covid 19 pandemic, counsel for Met-Ed had limited access to their office. Mr. Chenosky did not receive the hard copy of Met-Ed's rebuttal testimony until September 16, 2020. As a result, Mr. Chenosky requested that he be given an extension of time until June 1, 2021, to file his written surrebuttal testimony. This request was denied informally via email, but Mr. Chenosky was given until January 4, 2021 to submit his surrebuttal testimony in light of his delayed receipt of Met-Ed's rebuttal testimony and ongoing complications due to the Covid 19 pandemic, among other things. The purpose of this second scheduling order is to modify the schedule for submission of preserved testimony to formally recognize the changed date that Mr. Chenosky's surrebuttal testimony is due from November 2, 2020, to January 4, 2021.

Second Scheduling Order at 2-3.

## Stay of Smart Meter Litigation, Judge Change Notice and Lifting of Stay

On November 4, 2020, due to appellate litigation pertaining to smart meters, the Commission, in the matter of *Smart Meter Procurement and Installation* at Docket No. M-2009-2092655, issued an order staying smart meter proceedings involving challenges to electric distribution company (EDC) deployment of smart meter technology as being in violation of Section 1501 of the Code. (*November 4, 2020, Stay Order*). Thus, the Parties were informed that the proceedings in this case were stayed until further direction by the Commission.

On August 16, 2022, the Pennsylvania Supreme Court (Court) issued its Opinion in *Povacz v Pa. Public Utility Commission*.<sup>7</sup> In *Povacz II*, the Court, in relevant part, concluded that

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<sup>7</sup> *Povacz v Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa.2022) (*Povacz II*).

Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs, with no opt-out provisions. *Povacz II* at 992-993, 997. Additionally, the Court held that complainants seeking relief from the Commission must satisfy their burden of proof by a preponderance of the evidence, which requires a customer to prove that a service or facility is, more likely than not, the cause of the problem described in their complaint. *Id.* at 999-1000.

As a result of the Court's ruling in *Povacz II*, the Commission on November 14, 2023, issued an Order at Docket M-2009-2092655, lifting the stay implemented with the *November 4, 2020, Stay Order*, thereby permitting pending smart meter matters to proceed. The Commission's November 14, 2023, Order was served upon the Parties on the same date.

By Judge Change Notice dated November 21, 2022, the Parties were informed that the presiding officer had been changed from ALJ Cheskis to ALJ Conrad Johnson.

#### Prehearing Conference Notice and Prehearing Conference Order

By Call-in Telephone Prehearing Conference Notice dated December 21, 2023, the parties were informed that a prehearing conference was scheduled before me in this proceeding for February 1, 2024, at 10:00 a.m. The Prehearing Conference Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the conference to participate in the conference.

I issued a Prehearing Conference Order for Telephonic Conference on December 22, 2023 (*December 22, 2023, Order*), reminding the Parties to call on the date and at the time of the scheduled prehearing conference the Toll-Free Bridge Number and enter the PIN to participate in the conference. Additionally, I informed the Parties about the hearing procedures including the procedure to follow to request a hearing continuance.

The *December 22, 2023, Order* directed the Parties, in part, as follows:

7. Each party must prepare and serve a prehearing memorandum which sets forth a brief history of the proceeding, the issues you intend to present, a listing of your proposed witnesses and the subject of their testimony, a list of any exhibits or documents you intend to present at the hearing in this proceeding, and any proposed revisions to the Commission's discovery rules on or **before 4:00 p.m., Friday, January 26, 2024.**

*December 22, 2023, Order* ¶ 7 (emphasis original).

Additionally, the *December 22, 2023, Order* specifically directed Complainant John M. Chenosky as follows:

8. Consistent with the previously assigned presiding officer's October 18, 2019, directive attached hereto as **Attachment A**, Complainant John Chenosky shall file **(1) 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.** Complainant John Chenosky shall file his medical documentation and specific reasonable accommodation request with the Commission's Secretary's Bureau by **4:00 p.m., Friday, January 26, 2024**, and serve copies upon the ALJ at [cojohnson@pa.gov](mailto:cojohnson@pa.gov) and the Respondent.

*December 22, 2023, Order* ¶ 8 (emphasis original).

The December 22, 2023, Order cautioned the Parties as follows;

**You must call into the prehearing conference on the scheduled day and time. You will not be called by the Administrative Law Judge (ALJ).**

**You must participate in the prehearing conference. If you fail to do so, your case will be dismissed.**

*December 22, 2023, Order* at 1 (emphasis original).

Complainant's Motion for Indeterminate Stay and Denial of the Motion

On January 17, 2024, I received Complainant's "Motion of the Complainant for Indeterminate Stay as Chenosky Surrebuttal Testimony Ordered by ALJ Cheskis on 26DEC19 Was Stayed by the PA PUC and Never Allowed Complainant Opportunity to Answer, While the PA PUC and All Utilities Conduct a Weaponization of the Pennsylvania Justice System Against ADA Compliance EMF and Dirty Electricity Disabled, Providing Ample Justification for Stay (Motion for Stay)."

Complainant's Motion for Stay requesting an indeterminate stay of the proceedings by implication suggested that he was also seeking a continuance of the telephonic prehearing conference scheduled for February 1, 2024. Accordingly, the Motion for Stay was treated as a request for an indefinite stay of the proceedings and a continuance of the prehearing conference.

On January 24, 2024, I issued an *Interim Order Denying Complainant's Motion For Indeterminate Stay (Order Denying Continuance)* with Mr. Chenosky's Motion for Stay attached to the order and ruled as follows:

[o]nly for good cause shown will requests for a hearing continuance be considered. 52 Pa. Code §1.15(b).

Here, Complainant seeks an indefinite stay of the proceedings. Due process rights do not entitle a litigant to never-ending extensions of time to litigate their case. *See Steadwell v. Unemployment Compensation Board of Review*, 463 A.2d 1298 (Pa. Cmwlth. 1983). Thus, Complainant's Motion fails to state good cause warranting the granting of a continuance of the prehearing conference. Accordingly in the ordering paragraphs below, Complainant's Motion for an indefinite stay of the proceedings and a prehearing conference continuance will be denied. Additionally, the directive of the December 22, 2023, Order to Complainant will be reiterated in the ordering paragraphs below.

The Parties are encouraged to talk with each other to resolve this matter or some portion thereof. It is the Commission's policy to encourage settlement. 52 Pa. Code §5.231.

*Order Denying Continuance* at 2. The ordering paragraphs stated the following:

2. That the telephonic prehearing conference in the matter of John M. Chenosky v. Metropolitan Edison Company, Docket No. C 2019-3007622 **shall convene as scheduled on February 1, 2024, at 10:00 a.m.**

3. That Complainant John Chenosky shall file (1) 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 upon the ALJ at [cojohnson@pa.gov](mailto:cojohnson@pa.gov) and the Respondent.

*Order Denying Continuance*, Ordering Paragraphs 2-3 (emphasis original).

Mr. Chenosky did not provide any medical documentation regarding his physical or mental impairment that substantially limits a major life activity nor the specific reasonable accommodation he was requesting to participate in the prehearing conference.

On January 26, 2024, MetEd filed its Prehearing Conference Memorandum. Mr. Chenosky did not file a Prehearing Conference Memorandum. Tr. 16.

On February 1, 2024, Mr. Chenosky emailed me, counsel for MetEd and other Commission officials, three emails. Tr. 9. In his email at 6:29 a.m. Mr. Chenosky in part stated, "I am unable to join the party today because of continuing health reasons, many of which have been repeated ad-nauseam giving me the impression that you people are the ones with aphasia reinforcing my impressions that are spot on." Tr. 11-12. In his email, Mr. Chenosky did not clarify or explain his "continuing health reasons." Tr. 11. His second email at 6:41 a.m. was a duplicate of his first email. His third email at 9:48 a.m. was titled: OBJECTION TO THE LEGALITY OF TODAY'S

PRE-CONFERENCE HEARING. Tr. 9. In this email, Mr. Chenosky did not specifically request a continuance of the prehearing conference.

### Prehearing Conference

On February 1, 2024, the prehearing conference convened at 10:02 a.m. However, Mr. Chenosky was not present or represented by counsel. Tr. 4, 6. Respondent was represented by co-counsel, Tori Giesler, Esquire, and Daniel Garcia, Esquire. Tr. 4-5. Due to Mr. Chenosky's failure to appear at the prehearing conference, MetEd made an oral motion to dismiss the Complaint for Complainant's failure to appear to proceed with his Complaint. Tr. 15. The motion to dismiss was taken under advisement. The hearing adjourned at 10:38 a.m. Tr. 17. The hearing record closed on February 1, 2024, upon the conclusion of the telephonic prehearing conference, pursuant to 52 Pa. Code § 5.431(a).<sup>8</sup>

### FINDINGS OF FACT

1. Complainant is John M. Chenosky, who resides at 1000 Huffs Church Road, Alburdis, Pennsylvania 18011(Service Location). Complaint ¶ 5.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility, providing electric service to Pennsylvania customers. Answer ¶ 1.
3. On January 19, 2019, Mr. Chenosky filed his Formal Complaint requesting that the Commission grant him the accommodation to opt-out of the installation of a smart meter at the Service Location. Complaint ¶ 5 Attachment.

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<sup>8</sup> The regulation at 52 Pa. Code § 5.431(a) provides that the hearing record closes at the conclusion of a hearing unless otherwise directed by the presiding officer or the Commission. After the record closes 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. *See* 52 Pa. Code § 5.431(b).

4. On February 25, 2019, MetEd filed an Answer and New Matter arguing that neither the company's smart meter deployment plan nor Act 129 enabled the Commission to grant the relief requested by Mr. Chenosky. New Matter ¶ 16.

5. On July 22, 2019, Mr. Chenosky requested the convening of a prehearing conference in this proceeding. Complainant's July 2019 Email, pp. 1-2.

6. On August 19, 2019, Mr. Chenosky requested the convening of a prehearing conference in this proceeding. Complainant's Objection to Discovery at 1 and 3.

7. On September 3, 2019, ALJ Watson issued an interim order directing Mr. Chenosky to file full, and complete responses to MetEd's discovery requests by September 23, 2019. *September 3, 2019, Interim Order*. Mr. Chenosky did not comply with ALJ Watkins' order.

8. By Call-in Telephone Prehearing Conference Notice dated December 21, 2023, the Parties were notified that a prehearing conference was scheduled in this matter for February 1, 2024, at 10:00 a.m.

9. The Prehearing Conference Notice dated December 21, 2023, was electronically served on Mr. Chenosky at the email address provided by him in his Complaint and was not returned to the Commission as undeliverable.

10. By Prehearing Conference Order for Telephonic Conference dated December 22, 2023, the Parties were directed to file their respective Prehearing Conference Memorandums setting forth a brief history of the proceeding, the issues each intended to present, a listing of their proposed witnesses and the subject of the witness' testimony, a list of any exhibits or documents they intended to present at the hearing in this proceeding, and any proposed revisions to the Commission's discovery rules on or before January 26, 2024. *December 22, 2023, Order*.

11. Mr. Chenosky did not file his Prehearing Conference Memorandum as he was directed to do under the *December 22, 2023, Order*.

12. The Prehearing Conference Order for Telephonic Conference directed Mr. Chenosky to file, by January 26, 2024, (1) medical documentation regarding his physical or mental impairment that substantially limits a major life activity and (2) the specific reasonable accommodation he was requesting to participate in the prehearing conference. *December 22, 2023, Order*.

13. Mr. Chenosky did not comply with the *December 22, 2023, Order*, requiring him to file, by January 26, 2024, (1) medical documentation regarding his physical or mental impairment that substantially limits a major life activity and (2) the specific reasonable accommodation he was requesting to participate in the prehearing conference.

14. On January 17, 2024, Mr. Chenosky requested an indefinite stay of the proceedings and continuance of the prehearing conference scheduled for February 1, 2024.

15. On January 24, 2024, Mr. Chenosky's request for an indefinite stay of the proceedings and continuance of the prehearing conference was denied. *Order Denying Continuance*.

16. Mr. Chenosky was not present and did not participate in the prehearing conference that convened on February 1, 2024, in these proceedings. Tr. 1-18.

17. When Mr. Chenosky did not appear for the telephonic prehearing conference, MetEd made an oral motion for dismissal of the Complaint for Mr. Chenosky's failure to appear to proceed with his Complaint. Tr. 15.

18. Mr. Chenosky's failure to appear at the prehearing conference was not unavoidable.

## DISCUSSION

### Due Process

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are provided with notice and the opportunity to appear and be heard.<sup>9</sup> By Call-in Telephone Prehearing Conference Notice dated December 21, 2023, Mr. Chenosky was notified that a prehearing conference was scheduled in this matter for February 1, 2024, at 10:00 a.m. Mr. Chenosky was aware of the scheduled prehearing conference because on January 17, 2024, he requested an indefinite stay of the proceedings and a continuance of the prehearing conference. His requests were denied on January 24, 2024. *See Order Denying Continuance*. Accordingly, Mr. Chenosky's due process rights have been fully protected.

### Dismissal of Complaint for Failure to Appear and Prosecute

Prior to the commencement of the conference, Mr. Chenosky sent a series of emails objecting to the legality of the prehearing conference, but he did not specify that his failure to appear at the conference was unavoidable. Tr. 9-12. While Mr. Chenosky did not provide any authority or foundation for his objection, his objection to the convening the prehearing conference is confounding considering that on two separate occasions he requested a prehearing conference. *See Complainant's July 2019 Email*, pp. 1-2 and *Complainant's Objection to Discovery* at 1 and 3.

Section 332(f) of the Public Utility Code, 66 Pa.C.S. § 332(f), provides in pertinent part:

[a]ny party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such

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<sup>9</sup> *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat[.]

In this proceeding, Mr. Chenosky did not call into the telephonic conference as specified in the Prehearing Conference Notice and in the Prehearing Conference Order. The prehearing conference notice clearly indicated he was to call in to the hearing and provided him with the Commission's toll-free conference bridge number and PIN number to do so.

Since Mr. Chenosky did not appear or participate in the prehearing conference, despite receiving two written notices of the date and time of the conference, the conference was held in accordance with 66 Pa.C.S. § 332(f) and 52 Pa. Code § 5.245. Accordingly, MetEd's attorney moved to dismiss the Complaint for Mr. Chenosky's failure to proceed with his Complaint.

The party who fails to appear at a prehearing conference has the burden of explaining why his/her failure to appear was unavoidable.<sup>10</sup> When there are no facts in the record that the party's failure to appear was unavoidable, a complaint should be dismissed with prejudice.<sup>11</sup> Here, Mr. Chenosky sent a series of emails the morning of the prehearing conference objecting to the prehearing conference and claiming he had "health concerns" without specifically explaining how his health concerns prevented him from participating in the prehearing conference. Accordingly, a conclusion is required that Mr. Chenosky failed to provide an explanation as to why his failure to appear at the conference was unavoidable. Therefore, MetEd's oral motion to dismiss the Complaint will be granted in the ordering paragraphs below.

The granting of MetEd's oral motion does not end the discussion. There are other grounds warranting dismissal of the Complaint. Mr. Chenosky repeatedly failed to comply with the orders of the presiding ALJs.

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<sup>10</sup> 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

<sup>11</sup> *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Volgstadt v. UGI Penn Nat. Gas*, Docket No. F-02266429 (Opinion and Order entered Sept. 12, 2008); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

On September 3, 2019, ALJ Watson issued an interim order directing Mr. Chenosky to file full, and complete responses to MetEd’s discovery requests by September 23, 2019. *September 3, 2019, Interim Order*. Mr. Chenosky did not comply with ALJ Watkins’ order.

Mr. Chenosky did not comply with the *December 22, 2023, Order*, requiring him to file, by January 26, 2024, (1) medical documentation regarding his physical or mental impairment that substantially limits a major life activity and (2) the specific reasonable accommodation he was requesting to participate in the prehearing conference.

The *December 22, 2023, Order* required Mr. Chenosky to file his Prehearing Conference Memorandum setting forth a brief history of the proceeding, the issues he intended to present, a listing of his proposed witnesses and the subject of the witness’ testimony, a list of any exhibits or documents he intended to present at the hearing in this proceeding, and any proposed revisions to the Commission’s discovery rules on or before January 26, 2024. Mr. Chenosky did not comply with the *December 22, 2023, Order*.

The Commission has held, “An ALJ's Orders must be complied with, and such a lack of compliance presents a sufficient basis to dismiss the Complaint without a hearing.”<sup>12</sup>

Lastly, in his Complaint the only relief that Mr. Chenosky requested is a Commission order permitting him to opt-out of the installation of a smart meter at his residence. The Pennsylvania Supreme Court has foreclosed the granting of Mr. Chenosky’s requested relief. In *Povacz II*, the Court clearly held that there is no opt-out provision from the installation of smart meter under Act 129. Consequently, proceeding to a hearing on the relief that Mr. Chenosky seeks would be fruitless.

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<sup>12</sup> *Treffinger v. PPL Elec. Utils. Corp.*, 2003 Pa.P.U.C. LEXIS 3 (March 3, 2003).

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties in this proceeding. 66 Pa.C.S. § 701, 2807.

2. Complainant had actual notice of the date, time, and manner of the prehearing conference. Therefore, the due process rights of Complainant have been fully protected in this proceeding. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

3. Complainant, by failing to appear at the scheduled prehearing conference, waived the opportunity to participate in the prehearing conference. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

4. Once notice of a prehearing conference and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the prehearing conference. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

5. When a complainant fails to appear for a scheduled conference or hearing and a complainant's failure to appear does not appear to be unavoidable, the complaint may be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

6. An administrative law judge's Orders must be complied with, and such a lack of compliance presents a sufficient basis to dismiss the Complaint without a hearing. *Treffinger v. PPL Elec. Utils. Corp.*, 2003 Pa.P.U.C. LEXIS 3 (March 3, 2003).

7. Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs, with no opt-out provisions. 66 Pa.C.S. § 2807(f); *Povacz v Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of Metropolitan Edison Company to dismiss the Formal Complaint filed at John M. Chenosky v. Metropolitan Edison Company at Docket No. C-2019-3007622, is granted.

2. That the Formal Complaint filed by John M. Chenosky at John M. Chenosky v. Metropolitan Edison Company at Docket No. C-2019-3007622 is dismissed with prejudice.

3. That the Commission's Secretary's Bureau shall mark Docket No. C-2019-3007622 closed.

Date: March 19, 2024

\_\_\_\_\_/s/  
Conrad A. Johnson  
Administrative Law Judge