April 18, 2024

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility
Commission Commonwealth
Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

Re: Judith D. Hendin vs. Metropolitan Edison Company

Dear Secretary Chiavetta,

Attached please find a Reply to the Answer of FirstEnergy Electric Company to Judith Hendin's Petition for Reconsideration. This document has been served on the all parties as shown in the Certificate of Service.

Respectfully submitted,

/s/ *Judith D.* Hendin

Judith D. Hendin

Represented Pro Se

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Judith D. Hendin,	**:**	
	:	
Complainant	**:**	
	:	
v.	**:**	**Docket No. C-2018-3003324**
	:	
	:	
	:	
Metropolitan Edison Company,	**:**	
	:	
Respondent.	**:**	

REPLY TO ANSWER OF FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY TO JUDITH HENDIN'S PETITION FOR RECONSIDERATION

HISTORY

1. On January 26, 2024, the Pennsylvania Public Utility Commission issued its Opinion and Order in this case.
2. On February 12, 2024, Complainant submitted a Petition for Reconsideration.
3. On February 22, 2024, the utility filed an Answer to Complainant's Petition.
4. Complainant's Petition included nineteen (19) new or novel arguments; three (3) matters that were overlooked; and two (2) errors of fact. Complainant discussed **24 new salient arguments in her Petition for Reconsideration.**

REPLY TO MET-ED'S ANSWERS TO THE PETITION FOR RECONSIDERATION

1. **Answer #1:** The main thrust of *Environmental Health Trust v. FCC* is that the dangers of electromagnetic frequency radiation and other related forms of radiation have not been thoroughly evaluated and updated by the FCC. In its *Povacz II* decision, the Pennsylvania Supreme Court, which Met-Ed cites (*Answer* at 11-12), failed to comprehend this.

   In the *EHT* case, the United States Court of Appeals **ordered the FCC to provide a reasoned determination** as to whether the evidence submitted by EHT (See *Petition,* Attachment II, Evidence of Harm Files) warrants a change to 1996 RF limits especially in regards to:

   - children's vulnerability
   - long-term exposure
   - environmental impacts
   - new technological developments and the ubiquity of wireless how FCC's cell phone tests only measure heat and allow a space between the phone and body

The FCC has not reported its conclusions yet. Until then, the safety of smart meters is highly in question.

2. **Answer #2:** Met-Ed misstates several points:
    a. Met-Ed claims that Complainant attempted to "reargue" that she incurred harm. This is untrue. There was no re-argument, simply a statement of newfound evidence, which succeeds under *Duick*.
    b. Met-Ed claims that the emails submitted as evidence were "unauthenticated" (*Answers* at 11, 13). That is untrue. Email authentication, as required by the Pa. Code 225-901, was supplied with HTML code. Also, the recipient of the email signed and notarized an Affidavit attesting to the validity of the email she received as well as the email she sent in response. *(*Met-Ed says the emails, *"are holy [sic] unauthenticated."* (*Id.* at 13) A fascinating typo.)
    c. Met-Ed claims the emails do not meet the *Duick* standard. But *Duick* specifically allows for new evidence. The fact that these emails were 12 years old accounts for why they are late-found evidence.
    d. Met-Ed claims that "the model of smart meter" is irrelevant. That is blatantly untrue. The foundation of this case is that Complainant—I—was medically harmed by a smart meter. In previous filings, Met-Ed claimed it was important that there was no evidence that a smart meter was in place. Now the evidence exists, and Met-Ed would still like to twist the argument in their favor, rather than acknowledge that I was severely harmed by a smart meter and that my symptoms healed shortly after the meter was removed from the house.
3. **Answer #3:** Met-Ed misstates several points:

a. Met-Ed avers that the argument that the corporate officers, directors and agents are responsible for harm done to me and others, fails under *Duick*. However, this is a new argument and succeeds under *Duick.* As Met-Ed rightly quotes from *Duick*:

> What we expect to see raised in such petitions are new and novel arguments, not previously heard…
> *Answer* at 8.

This argument has not been heard previously in this case.

b. Met-Ed says Complainant's arguments related to causation and harm are a re-argument. They completely miss the point of the "but for" argument, which is completely new and novel in this case. Thus, the *Duick* standard is met.

c. Met-Ed notes that Complainant says that if they were to place a smart meter on the house, it would constitute cruel and unusual punishment, and that Complainant has no support the bolster this claim. That is patently false. The medical records in this case show the suffering Complainant—I—endured from exposure to a smart meter, which completely supports this claim. (See medical records for a full account.) **Individuals at Met-Ed and the PUC need to recognize this: if you place a smart meter on my home, you are condemning me to pain and suffering.**

d. Once again, Met-Ed invokes *Duick*, saying that the "cruel and unusual argument" could have been made earlier and therefore fails the *Duick* standard. Met-Ed misconstrues *Duick. Duick* does not say that any argument that could have been made earlier fails the standard. In contrast, *Duick* says that any argument that is new and novel in this case, is allowed. In her Petition for Reconsideration,

Complainant took great care **not to reargue any issue**, and repeatedly pointed this out. Therefore, Met-Ed's attempts to dismiss arguments based on *Duick* lack merit in each instance.

4. **Answer #4:** Met-Ed misstates several points:
    a. Met-Ed does not understand the "but for" argument. I sympathize. Even though this is my professional field, it took me a while to understand it. Let me try again, very briefly: This issue it is **not** about whether RF radiation harmed me. It is the fact that when I was exposed to a smart meter, I got very sick, and when the smart meter was removed, I got well. If anyone reading this has an allergy, it is similar: If you are allergic to, say, beestings, and you get stung by a bee and go into anaphylactic shock, you would not have gotten sick "but for" the sting of the bee. Use peanut butter if you like. Or shellfish. The significant point is that you don't need to prove that there is some substance that interacts in your body when you are exposed to a beesting, or peanut butter, or shellfish. It is a medical fact for you. Just as exposure to a smart meter is a medical fact for me.
    b. Contrary to Met-Ed's claim, none of this was addressed in *Povacz II.*
5. **Answer #5:**
    a. Once again, Met-Ed thinks *Duick* applies to any argument that could have been raised earlier in the case, as opposed to a new argument that is being raised currently.
    b. Even if the Commission "generally" (*Answer* at 15) does not make determinations regarding the Americans with Disabilities Act, this fits into the overall picture of

Met-Ed placing harmful devices on homes of people whose medical records have proven they will be harmed.

6. **Answer #6:**

   a. Again Met-Ed interprets *Duick* to mean arguments that "could have been made previously." *Answer* at 16. *Duick* does not presume that a Complainant would know every possible argument that might have been made, and it allows new arguments to be introduced.

   b. Complainant did not cite *Environmental Health Trust* "to support her purported right to a pollution free environment (*Id.* at 16), as Met-Ed says. She merely cited two articles to demonstrate new terminology. The Petition for Reconsideration states:

> The public is accustomed to terms like "air pollution" and "water pollution." New terms have entered the English language in recent years that can be found in scientific journals and in use by the general public: "electromagnetic pollution" and "electrosmog." Two scientific articles in Environmental Health Trust v. FCC use these terms (See Attachment II):
>
> > 12 2390-2439 Aug. 26, 2016 Heidi M. Lumpkin Biosystem & Ecosystem; Birds, Bees and Mankind: Destroying Nature by '**Electrosmog**': Effects of Mobile Radio and Wireless Communication. Dr. Ulrich Warnke, Ph.D., 2007 (emphasis added)
> >
> > 120 6342- 6349 Apr. 8, 2014 M.K. Hickcox Biosystem & Ecosystem; The Dangers of **Electromagnetic Smog**, Prof. Andrew Goldsworthy, PhD.; 2007 (emphasis added)
>
> *Petition* at 17.

   c. Once again Met-Ed refers to the *Povacz II* mention of *Environmental Health Trust.* Met-Ed's and the Supreme Court's misinterpretation of the significance of this case and the pending reevaluation of safety standards by the FCC have been addressed in Answer #1, *supra.*

d. Met-Ed correctly points out that Complainant was referring to Article 1, Section 27 of the Pennsylvania Constitution. (Complainant appreciates the respectful and kind tone with which this correction was made.) Complainant's Petition quoted Section 27: "The people have a right to…the preservation of the **natural**…values of the environment." The Petition goes on to say, "**Radiofrequency transmission generated by human activity is not natural. It is not made naturally by the environment. It is made by humans…. The vast network of smart meters contributes to this electromagnetic pollution.** At 17. (emphases added here) Met-Ed states that Complainant's reading of Section 27 is "unsupported by case law." (*Ibid.)* Common sense and a plain language reading of Section 27 should suffice as support.

7. **Answer #7:** Met-Ed misconstrues this in the following ways: {review this order:}

   a. Contrary to Met-Ed's claim, this argument does not fail under *Duick* because the PA Supreme Court *Povacz II* ruling came out long after Complainant's initial filings, so the argument is new and novel. The Petition for Reconsideration stated:

> … [T]he Supreme Court opened the door for utilities to provide an accommodation without proving a Section 1501 violation:
>
> > See 66 Pa.C.S. 1505 (requiring the PUC to prescribe remedial action upon finding a violation of Section 1501 "as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public") and 1501 (requiring utility to take remedial action "as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public"). **This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation** pursuant to a customer service policy. *Povacz II*, footnote 5, page 7 (emphasis added)
>
> *Petition* at 19.

b. Met-Ed states that "the clear directive of *Povacz II* [is that] … customers that are able to prove a Section 1501 violation related to the smart meter's installation are only entitled to an accommodation authorized by the Company's tariff." Met-Ed's statement has several components:

    i. It implies that an accommodation is available only to customers that are able to prove a Section 1501 violation. This is in complete contrast to *Povacz II* cited *supra*. The *Povacz II* opinion footnote specifically states that the consumer need **not** prove that smart meter deployment in their case had or would result in a violation of Section 1501 of the PA PUC Code. So, even if I (or other disabled Pennsylvania consumers) could not prove a violation of Section 1501 of the PA PUC Code to the satisfaction of the PUC, those consumers should still be offered an accommodation.

    ii. Met-Ed says that "customers…are only entitled to an accommodation authorized by the Company's tariff." That is in contradistinction to *Povacz II* requiring a "**reasonable**" accommodation, as discussed *supra.*

c. Relocation of the meter cannot be the only accommodation offered. The law requires a "**reasonable**" accommodation. Other Pennsylvania residents have received other types of accommodations, such as periodic reporting of electric usage, which saves Met-Ed the expense of sending someone to read the meter. Other accommodations have also been used in other situations.

Complainant thoroughly investigated the possibility of relocating the meter on the property, meeting with Met-Ed employees and Met-Ed lawyers to try to find a way to make it work. Complainant's efforts to try to meet Met-Ed's relocation requirements are fully documented in earlier briefs. In sum, given the land here, which is solid rock, it was not possible to place a wire underground; and given the number of large trees, it was unfeasible to place the wire aboveground. Therefore, **another accommodation must be found.** As has been stated in previous filings, Complainant has phoned and emailed Met-Ed attorneys Giesler and Lepkoski to arrive at an amicable solution that works for all parties. They never responded. One hopes they will.

d. The *Povacz II* footnote *supra* states, "This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation **pursuant to a customer service policy**." (emphasis added) Met-Ed needs to institute such a customer service policy. The PUC has the ability to say to the utilities that they have the ability to protect disabled customers, to provide protections that they are entitled to under federal law.

e. Complainant just found that Met-Ed offers customers the option to submit meter readings by phone or on its website. Complainant been requesting this as accommodation for years, and she humbly ask Met-Ed to allow this.

8. **Answer #8:** If Met-Ed wants to eliminate FirstEnergy's criminal acts from the case, that is acceptable to the Complainant. The Courts have proven that FirstEnergy bribed public

officials. FirstEnergy has paid heavy fines, and the former Ohio House Speaker has been sentenced to 20 years in prison.

9. **Answer #9:** Complainant's Petition goes into detail about Met-Ed being a state actor. The definition of "state actor" as presented in the Petition applies perfectly to Met-Ed. The Petition presents seven (7) pages of arguments, many of which are new and novel. This succeeds under *Duick.*

10. **Answer #10:** Met-Ed brings several disagreements here:

    a. Met-Ed states concepts that have probably been stated in every Pennsylvania smart meter opt-out case throughout time: burden of proof and preponderance of the evidence. What Met-Ed misunderstands here is that Complainant is introducing new and novel ways to approach the issue, providing Pennsylvania codes that state that the burden of proof actually lies with the Met-Ed to prove that its AMI wireless smart meter devices are safe.

    b. Met-Ed says that Complainant is bringing a wholly new argument about the undue burden standard, and then proceeds to say it fails under *Duick.* However, it is precisely because this is a new and novel argument that it succeeds under *Duick.*

11. **Answer #11:** Met-Ed makes several erroneous conclusions:

    a. As presented in the Petition for Reconsideration, federal law applies to state law:

> Article VI, Clause 3 of the United States Constitution states:
>
> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

> The Supremacy Clause of Article VI of the U.S. Constitution mandates that states must provide hospitable forums for federal claims and the vindication of federal rights (Felder v. Casey, 487 U.S. 131, 108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988)).
>
> The Supremacy Clause establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions. In Edgar v. MITE Corp., 457 U.S. 624 (1982), the Supreme Court ruled: "A state statute is void to the extent that it actually conflicts with a valid Federal statute".

Petition at 2.

b. Complainant proffers a new and novel argument about the Major Questions Doctrine. Met-Ed and the PUC may agree or disagree with the argument, but it is a new and novel argument and therefore succeeds under *Duick.*

c. Met-Ed focuses on one of the points made in this argument concerning the right to a jury trial. That was not the major argument in this section. The entire argument should not be rejected because of this one point.

d. The paramount argument here was that the major rules doctrine helps preserve the separation of powers and operates as a vital check on expansive and aggressive assertions of executive authority. Complainant will not repeat the examples given in the Petition demonstrating ALJ Joel Cheskis' expansive and aggressive assertions of executive authority.

e. Met-Ed says that "Act 129 was clear it its directive." That is false. Complainant's Main Brief presented several House Bills showing drafts of Act 129. An early draft stated that smart meters were mandated for everyone in Pennsylvania. The final draft eliminated that statement entirely.

Other Complainant's quote public officials who were present during the writing of Act 129:

> The testimony of Thomas Yewcic (*Yewcic v Penelec, Tr.*, July 22, 2020, C-2018-3001276), who was a state representative (1992-2008) in office at the time of the vote and vouched for the fact that HB2200 only passed because smart meters were NOT mandated. (*Bolte* Exceptions, August 31, 2020 at 2.)

Similar statements were published in the October 8, 2008 Senate Journal, immediately prior to voting to pass HB2200 PN # 4526:

> On Page 2626 of the Journal: Senator Tomlinson states, "Mr. President, I rise to ask for support for House Bill No. 2200 as amended by the Senate.…It also contains language in there that we will have smart meters. **It is not mandated, but it allows**…**for anyone who wants to purchase a smart meter which they feel will help them manage their electric load better**."
>
> On Page 2627, Senator Boscola states, "…this new technology will reward customers who are smart enough to realize that they can use electricity when it is cheapest during off-peak hours and pay a lower rate. **We also made sure that smart meters would not be mandated for every single ratepayer**. Not only is that a smarter approach to smart meter deployment, but it will also save electric customers hundreds of millions of dollars paying for something that will not provide a real benefit in their own households."
>
> On Page 2629, Senator Fumo states, "In addition, **we did not mandate smart meters, but we made them optional.** We did say in new construction, where they really are practical, they will be put in." (all emphases added)

found at https://www.legis.state.pa.us/WU01/LI/SJ/2008/0/Sj20081008.pdf#page=8):

Thus, contrary to Met-Ed's Answer, Act 129 was **not** clear in its directive.

Complainant is not rearguing this point in her case. She is replying to Met-Ed's Answer to her Petition.

12. **Answer #12:** Met-Ed makes two points here:

    a. Met-Ed claims that "Complainant generally disputes the Evidentiary rulings implemented by the ALJ in this proceeding, and the Company's arguments related

to the Complainant's hearsay evidence…" This was one of many miscarriages of justice by ALJ Cheskis, and in the PUC Administrative Law Courts in general. It deserves reconsideration.

b. Met-Ed refers to the "so-called" Lamech study. This study is not "so-called." It is so famous that it carries the name of the researcher who produced it. Met-Ed says that saying the Commission overlooked the Lamech study is "merely an attempt to relitigate the Complaint, thus failing under *Duick.*" Complainant's Petition states otherwise: Lamech was a landmark study of such import that Complainant cited it in her Main Brief, Reply Brief, and Exceptions. As such, it warranted some response from the Commission—disagreement perhaps, but some response. For example, the Commission gave a response to the equally important BioInitiative Report. Yet Lamech was always overlooked, in both the Initial Decision and the Opinion. This was probably because it presented such cogent evidence. The motive for mentioning Lamech in the Petition was not at all to relitigate the Complaint, but to spotlight "overlooked" material, as supported by *Duick*.

13. **Answer #13:** Met-Ed claims that "how the Commission is funded is irrelevant to its evaluation of the installation of smart meters…" (*Answer* at 22) Complainant disagrees, and presents this new argument which succeeds under *Duick.* Of course, this creates a conundrum: The Commission needs to rule in this case, even though it may have a conflict of interest.

14. **Answer #14:** Complainant appreciates what Met-Ed says here, that Act 129 is controlling on the Commission and that it cannot reconsider whether the Implementation Order was

rendered *ultra vires.* Complainant still maintains that this important *ultra vires* argument should be considered.

15. **Answer #15:** Met-Ed continues:

    a. Met-Ed states that, following the *Frye* standard, "Complainant does not argue that the several expert witnesses put on by the Company were not qualified." That is incorrect. The incompetence of Mark Israel was detailed in full in Complainant's briefs, and incorrect statements by Christopher Davis were enumerated.

    b. Complainant would like to say that she is well aware of the paradox that *Daubert* introduces. Met-Ed speaks as if she isn't:

> "The Complainant's basic position undercuts itself. According to the Complainant, the Presiding Officer and the Commission are not qualified to rule on "the science in this case" but asks that the Commission revaluate and revise the Opinion and Order in favor of her purported science. In doing so, the Complainant wishes to flip both sides of the coin." *Answer* at 23-24.

Not so. (NOTE that Complainant is not attempting to relitigate this, but is solely replying to Met-Ed's Answer to her Petition.) Complainant previously wrote:

> Yet ALJ Cheskis said he cannot evaluate scientific studies or medical reports. This was emphasized not once, but five (5) times in his Decision…:
>
> 1. "… [T]his Commission should not be in the position to balance the various merits and detriments of multiple scientific reports and medical documents." *Hendin* Decision at 30.
> 2. "… [T]his Decision does not determine whether…any other scientific report or medical document, should be given more or less weight than any other scientific report or medical document." *Id.* at 32.
> 3. "…[T]his Commission should not be in the position to balance the various merits and detriments of multiple scientific reports and medical documents." *Id.* at 38.

4. "A determination of the weight to be given to these studies is not necessary as part of this Decision." *Id.*
5. "This Commission cannot, and should not, attempt to weigh the merits of competing medical reports or studies." *Id.* at 43.

Exceptions at 35-36.

c. Complainant was unaware that Pennsylvania uses the *Frye* standard instead of *Daubert.* Before becoming *pro se*, she gave the *Daubert* argument to her Counsel, having discovered it in an article titled, "Science and the Legal System," in *Daedelus: Journal of the American Academy of Arts & Sciences.* It appears that Counsel was not aware that Pennsylvania uses *Frye* instead of *Daubert.* Thank you, Met-Ed, for explaining this.

d. *Frye* still poses a problem. From what Complainant has gleaned, the *Frye* Standard is used to determine the admissibility of an expert's scientific testimony and other types of evidence. https://www.law.cornell.edu/wex/frye_standard If I understand this correctly, the question remains: who determines the admissibility of an expert's testimony? I maintain that the ALJ, the attorneys on both sides, and the Commission are all unqualified to determine this. It seems that for expert witnesses to be truly reliable, they should be vetted by peers who are professionals in the field and who have no affiliations that might create conflicts of interest. Or some other means to verify the reliability of witnesses should be found. In the meantime, Mark Israel's and Christopher Davis' testimonies and evidence were fraught with errors, as detailed in Complainant's briefs.

e. Once again, Met-Ed's assumption that *Duick* requires new and novel arguments implies that these arguments could never have been presented earlier. *Duick* does not require a wholly new subject. That is never stated in any quotation defining

the *Duick* standard. If a new and novel argument can be brought to bear on a previously introduced subject, because Complainant has ascertained a new argument that she did not know before, and now she knows it, it meets the *Duick* standard.

16. **Answer #16:** Met-Ed comments on the Petition's listing of errors of fact:

    a. Met-Ed cites the Petition saying "that the Complainant was 'not prepared during the hearing to use these exhibits when Dr. Israel appeared.'" Complainant's Petition was not trying to relitigate this issue. Her intention was to address this lie that cast aspersions on her integrity, and to set the record straight.

    b. The Petition named another error of fact: the date that a smart meter was removed from Complainant's address. Met-Ed said this date was unknown. On the contrary, the date was known. This date is important as it correlates with Complainant's improvement of physical symptoms. Following *Duick*, this is not a new argument, but an error of fact.

Submitted,
/s/ *Judith D. Hendin*

Judith D. Hendin
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Dated: April 18, 2024

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2024, I caused to be served a true and correct copy of the foregoing upon the following:

Rosemary Chiavetta, Secretary
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By: /s/ *Judith D. Hendin*

Judith D. Hendin