

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Laura Farina	:	
	:	C-2022-3030803
v.	:	
	:	
Metropolitan Edison Company	:	

ORDER
MODIFYING LITIGATION SCHEDULE

On December 9, 2021, Laura Farina (Ms. Farina or Complainant) filed a Formal Complaint against Metropolitan Edison Company (Met-Ed or Company). The Formal Complaint was served on Met-Ed on February 9, 2022. The Complainant alleges that Met-Ed’s smart meter is unsafe and unhealthy. As relief, Ms. Farina requests that the smart meter be replaced with an analog meter at no cost, and that she not be charged a monthly fee for having an analog meter.

On March 2, 2022, Met-Ed filed a letter, stating that Met-Ed would respond to the Formal Complaint when the Commission lifts its stay on smart meter formal complaint proceedings at Docket No. M-2009-2092655.¹

On April 5, 2023, Ms. Farina filed a letter with the Commission inquiring about the status of her case.

On May 11, 2023, I was assigned to preside over this proceeding. Also on May 11, 2023, I issued an order advising the parties that this matter was stayed until further direction by the Commission.

¹ By Order entered November 4, 2020, the Commission ordered that any formal complaint filed with the Commission on or after November 4, 2020, challenging an electric distribution company’s deployment of smart meter technology as being in violation of 66 Pa.C.S. § 1501 is to be stayed until the Commission takes further action to lift the stay. *See, Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered November 4, 2020).

By order entered November 14, 2023, the Commission lifted the general stay of smart meter proceedings and directed the Office of Administrative Law Judge to proceed with pending formal complaint proceedings as directed by the presiding administrative law judge.

On December 4, 2023, Met-Ed filed an answer and new matter to the Complaint. In the answer, Met-Ed denied that the smart meter installed at Ms. Farina's service location is unsafe or unhealthy. Met-Ed further alleges that it is legally required to install the smart meter, and that a customer cannot opt-out of, or rescind, a smart meter installation. In its new matter, Met-Ed asserts that, consistent with the Pennsylvania Supreme Court's decision in *Povacz*,² Met-Ed customers may only receive a smart meter related accommodation ordered by the Commission if they are able to establish a violation of 66 Pa.C.S. § 1501. Met-Ed further asserts that it is willing and available to discuss with Complainant the option under its tariff that a customer may request that the meter be relocated to a mutually agreeable location, subject to the customer bearing the related expenses.³ However, Met-Ed reiterates that its tariff does not allow customers, such as Complainant, to opt-out of the smart meter installation. Met-Ed's new matter included a notice to plead. The Complainant did not file a reply to Met-Ed's new matter.

On January 5, 2024, the Commission issued a telephonic prehearing conference notice setting a call-in telephonic prehearing conference for this matter for March 1, 2024 at 10:00 a.m. In anticipation of that prehearing conference, I issued a prehearing conference order on January 5, 2024, setting forth various rules that would govern the March 1, 2024 prehearing conference.

² *Povacz v. Pa. PUC*, 2022 Pa. LEXIS 1598 (Pa. 2022). In *Povacz*, the Pennsylvania Supreme Court resolved many of the outstanding legal issues in many smart meter cases. The court held, among other things, that under Act 129, customers have no right to refuse smart meter installation. *Id.* at 997. The court further clarified the burden of proof required to support a claim that the installation of a smart meter violates the safe and reasonable service requirement of Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501. Specifically, the court held that to prove that a smart meter is unsafe service under Section 1501, a complainant must support that allegation with expert testimony. *Id.* at 1006.

³ See Met-Ed Tariff Rule 4, Electric Pa. P.U.C. No. 52, Original Page 32.

The March 1, 2024 prehearing conference was held as scheduled. Counsel for Met-Ed, Daniel Garcia, appeared at the prehearing conference. Ms. Farina did not appear.⁴ As was stated in the prehearing conference order, failure of a party to participate in the conference, after being served with notice of the date, time, and location thereof, without good cause shown, shall constitute a waiver of all objections to the agreements reached, and an order or ruling with respect thereto. 52 Pa.Code § 5.222(e). At the prehearing conference, I directed that, before an evidentiary hearing is scheduled, several steps should take place, including identification of expert witnesses, which is a requirement per *Povacz*. During the prehearing conference, I also granted counsel for Met-Ed's request that written testimony be permitted in this proceeding.⁵ Accordingly, on March 1, 2024, I issued an order directing the parties to: identify by April 26, 2024 any experts they may wish to provide testimony in this proceeding, along with a summary of the expected testimony of each expert; submit a status report, as well as written direct testimony and proposed exhibits by June 14, 2024; submit written rebuttal testimony and proposed exhibits by July 19, 2024; and confer and propose to me evidentiary hearing dates for August and/or September 2024.

On April 26, 2024, Met-Ed submitted a letter, identifying one expected witness, along with the expected subject matter of the witness's testimony. Ms. Farina did not submit information regarding any potential witness by April 26, 2024.

On June 14, 2024, Met-Ed submitted a letter, identifying a new witness that it expected to present at an evidentiary hearing, and noting that the Company had not, to date, received Ms. Farina's witness information. Met-Ed's letter also requested a one-day telephonic evidentiary hearing. Also on June 14, 2024, Met-Ed submitted exhibits that it intends to present at a future evidentiary hearing. Met-Ed did not submit written testimony by June 14, 2024.

On June 18, 2024, I received a letter from Ms. Farina dated June 7, 2024 (June 7 letter), which stated that she did not receive any mail advising her to respond to any hearing or

⁴ The prehearing conference convened at 10:00 a.m. but did not start until 10:15 a.m. to provide Ms. Farina additional time to appear.

⁵ Use of written testimony in Commission proceedings is encouraged, especially in connection with the testimony of expert witnesses. 52 Pa. Code § 5.412.

advise of witnesses by a set date. Ms. Farina's June 7 letter identified two witnesses. Ms. Farina's letter also requested to be advised of a hearing date. Ms. Farina did not submit written testimony by June 14, 2024.

Also on June 18, 2024, I forwarded the June 7 letter to counsel for Met-Ed by e-mail, copying Ms. Farina, and stated that I would like to bring the following two issues to the attention of the parties:

1. Written direct testimony was due to be submitted on June 14, 2024 pursuant to the litigation schedule set by order issued on March 1, 2024. Although I received proposed exhibits from Met-Ed, neither party submitted written testimony.
2. I received the June 7 letter from Ms. Farina. Ms. Farina states that she did not receive notice of certain matters in this case, but it is unclear what she claims not to have received. The service list indicates counsel for Met-Ed, Mr. Garcia, was also sent a copy of this letter from Ms. Farina.

In response to both issues, I informed parties by e-mail that I would like to issue a modified scheduling order, changing the requirement from submitting written testimony to the expectation that parties will present their testimony orally at an evidentiary hearing. Section 5.483 of the Commission's regulations provides presiding officers with the authority to regulate the course of proceedings. 52 Pa.Code § 5.483(a). Presiding officers are required to conduct fair and impartial hearings and maintain order. 52 Pa.Code § 5.485(a). In my e-mail, I explained to parties that I planned to issue such an order because it appears likely the simplest way to ensure both parties will be able to provide testimony at a future evidentiary hearing without further issue. I requested that parties respond to my e-mail with any objections but, to date, no party has objected to my intention to issue a modified scheduling order. Therefore, there appears no reason why an evidentiary hearing cannot be scheduled in this hearing, anticipating that testimony shall be provided orally, rather than through pre-served written testimony. The purpose of this order is to modify the March 1, 2024 Order Establishing Litigation Schedule, and provide instructions to participate in a telephonic evidentiary hearing scheduled for September 27, 2024, beginning at 10 a.m.

THEREFORE,

IT IS ORDERED:

1. That all ordering paragraphs in the March 1, 2024 Order Establishing Litigation Schedule are superseded by the below ordering paragraphs.

2. **DATE AND TIME OF HEARING.** An initial telephonic hearing will be held for this case on:

Friday, September 27th, 2024, beginning at 10:00 a.m.

To participate in the hearing, you must dial the toll-free number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name, press the # key, and then the telephone system will connect you to the hearing. If you have any witnesses you want to have present during the hearing who are participating from a separate phone, you must provide them with the telephone number and PIN Number.

Toll-free Bridge Telephone Number: **888.459.7411**

PIN Number: **95632432**

3. **FAILURE TO APPEAR:** You must attend the hearing and present evidence on the issues raised in the pleadings. You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

4. **CONTINUANCES.** You may request a continuance of the hearing if you have a good reason. Continuances will be granted only for good cause. To request a continuance, you must serve a written request to me and every other party (a “motion”) at least five (5) days before the hearing. Your motion should be served pursuant to paragraph 5 below. Your motion should include:

- (1) The case name, case number, and hearing date;
- (2) The reason you are requesting a continuance; and
- (3) State whether the other party(s) agrees to the request. If you do not know whether the other party(ies) agrees to the request, state that you do not know.

5. **PRESENTING EXHIBITS.** If you intend to present any documents or exhibits at the hearing, you must email one (1) copy to the presiding officer at jcoogan@pa.gov and one (1) copy each must be served to every other party pursuant to paragraph 5B below. All copies must be received at least five (5) business days before the hearing. Proposed exhibits should be properly pre-marked for identification purposes. **Do not include account numbers or any other personally identifiable information (PII), such as social security numbers, in your documents or exhibits. It is the parties' responsibility to redact any PII contained within a document or exhibit before submitting it into the record.** Do not file your proposed documents or exhibits with the Secretary's Bureau. However, you should file a Certificate of Service with the Secretary's Bureau indicating you sent the proposed documents or exhibits to every other party.

6. **FILING AND SERVING DOCUMENTS.** When you file a document, you must provide the original to the PUC *and* serve a copy to the other party or parties. Instructions on how to file with the PUC and serve other parties are provided below.

A. FILING DOCUMENTS

(1) **E-FILING.** To file with the PUC, the PUC offers a free e-Filing Subscription Service. This service allows a user to file documents electronically and receive an automatic email notification whenever a document is added, removed, or changed on the PUC website in a specific case. For information and to subscribe to this service, visit the PUC's website at: <https://www.puc.pa.gov/filing-sources/efiling/>

(2) **PAPER FILING.** If you do not have the capability to open and use an e-Filing account, you may file paper documents with the Secretary of the Commission. Filing of paper documents may be hand delivered or sent to:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

(3) CONFIDENTIAL MATERIAL. If a filing contains confidential or proprietary material, the filing should be submitted by overnight delivery to ensure arrival. Large filings containing confidential or proprietary material may also be submitted through the Commission's Share Point File system. These filings should be followed by a hard copy with a flash drive or CD for the Commission's file. Filers should contact the Secretary's Bureau in advance to set up a Share Point File before submitting the filing.

B. SERVING DOCUMENTS

(1) SERVING OTHER PARTIES. When you file documents with the PUC, you must also serve a copy on the other party or parties. You may serve a copy by U.S. First-Class Mail or by hand. You may also serve a copy by eService or email, if the other party has agreed to electronic service. For your convenience, a copy of the PUC's current service list of all parties to this proceeding is enclosed with this Order.

(2) SERVING THE PRESIDING OFFICER. Be sure that you serve me directly with a copy of any document that you file in this proceeding at the time of its filing. You must email one (1) copy to me at jcoogan@pa.gov. **If you do not have access to email, you must serve me by mail, addressed to:**

Administrative Law Judge John Coogan
PA Public Utility Commission
400 North Street
Harrisburg, PA 17120

If you send me any correspondence or document, you must also send a copy of that correspondence or document to every other party pursuant to paragraph 5 of this Order.

7. **DOMESTIC VIOLENCE VICTIM.** If you are a domestic violence victim and you want to be considered for protections that may be available to domestic violence victims, you must submit a copy of your Protection from Abuse (PFA) Order or other Court Order issued by a Pennsylvania court, which provides evidence that you are a domestic violence victim. You should mark this Order as “CONFIDENTIAL.” In the case of these Orders, we will take precautions to ensure that your address is not made public.

8. **REPRESENTATION.** If you are an individual, you may represent yourself or you may have an attorney represent you. All others, including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented by an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*.⁶ And, unless you are an attorney, you may not represent someone else.

9. **BURDEN OF PROOF.** The Complainant (the one filing the Complaint) bears the burden of proof and must present evidence sufficient to demonstrate that the utility has violated the Public Utility Code, or a regulation or order of the PUC.⁷

Additionally, as noted in the Prehearing Conference Order issued on January 5, 2024, a customer cannot successfully present a *prima facie* case involving an alleged violation of 66 Pa.C.S. § 1501 regarding the safety of smart meters and RF emissions unless that customer presents appropriate expert scientific and medical testimony. *Povacz, et al. v. Pa. Public Utility Commission*, 280 A.3d 975 (Pa. 2022)

10. **ACCOMMODATION.** Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Please call the PUC scheduling office at least five (5) business days prior to your hearing to submit your request.

If you require an interpreter to participate in the hearing, we will have an interpreter present. Please call the scheduling office at the PUC at least ten (10) business days prior to your hearing to submit your request.

⁶ 52 Pa. Code §§ 1.21 & 1.22.

⁷ 66 Pa.C.S. § 332(a).

Scheduling Office: (717) 787-1399
The AT&T Relay Service number for persons who are deaf or hearing-impaired is:
1-800-654-5988.

11. **CONTACT INFORMATION.** If your e-mail address or telephone number changes during the course of the proceeding, you must immediately update the Office of Administrative Law Judge by calling 717-787-1399.

12. **SETTLEMENT.** The PUC's policy is to encourage settlements.⁸ The utility shall contact the Complainant at least one week before the scheduled hearing to talk over a possible settlement of this case. Even if you are unable to settle this case, you may still resolve many questions or issues during your talks. If an agreement is reached on all the issues, a formal hearing will not be necessary and the scheduled hearing will be cancelled.

13. **PAYMENT ARRANGEMENT CASES.** If you have requested a payment arrangement, Chapter 14 of the Public Utility Code will be applied.⁹ You must be prepared to testify about the total gross monthly income of the household. A household includes all adults living at the service address and benefiting from the utility service. The "total gross monthly household income" includes, but is not limited to, the following: (a) the "before taxes or other deductions" pay from salaries, wages, tips or other compensation; (b) pension, retirement or social security benefits; (c) Supplemental Security Income (SSI); (d) unemployment compensation benefits; (e) workers' compensation benefits; (f) alimony; and (g) any other source(s) of income.

The utility must prepare and submit the following documents at least five (5) business days before the hearing: (a) an account statement, showing the history of the account for a minimum of 24 months or the entire history of the account, whichever is less; (b) a copy of the most recent Bureau of Consumers Services (BCS) decision, if any; and (c) a brief summary of any payment arrangement(s) made between the utility and the customer.

⁸ 52 Pa. Code § 5.231(a).

⁹ 66 Pa.C.S. §§ 1401-1419.

The customer must make monthly payments for current usage on or before the billing due date while this complaint is pending. Failure to make payments may result in the utility terminating your service.

14. **BILLING COMPLAINT.** If you are claiming that there are incorrect charges on your utility bill, then you must be prepared to provide the dates that are important and an explanation about any amounts or charges that you believe are not correct.

15. **VIOLATIONS.** A finding of a violation of a PUC Order, regulation, or statute, by the public utility may result in the imposition of a civil penalty on the public utility company, consistent with 66 Pa.C.S. § 3301 or other provisions of the Public Utility Code.

16. **HEARING PROCEDURES.** Although the hearing is being conducted telephonically for the convenience of the parties, it is still a formal hearing and will be conducted in accordance with the PUC's Rules of Practice and Procedure at 52 Pa. Code Chapters 1, 3, and 5.

Please be sure to participate from a location, and using a phone, where background noise will be minimized, and the reception is clear.

17. **FURTHER INFORMATION.** A guide to participating in a Formal Complaint proceeding is available on the PUC's website at:
<https://www.puc.pa.gov/complaints/formal-complaints>

Date: June 21, 2024

_____/s/
John M. Coogan
Administrative Law Judge

C-2022-3030803 - LAURA FARINA v. METROPOLITAN EDISON COMPANY

LAURA FARINA

Served via email

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