BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Deborah Engisch-Platt and Kim Platt	:	
	:	
v.	:	C-2019-3013745
	:	
Metropolitan Edison Company	:	

INTERIM ORDER
CANCELLING HEARING AND SCHEDULING FURTHER PROCEEDINGS

YOU ARE DIRECTED TO READ THIS ORDER CAREFULLY AND IN ITS ENTIRETY. IT CONTAINS IMPORTANT INFORMATION REGARDING THIS CASE.

The Complainants, Deborah Engisch-Platt and Kim Platt filed a formal complaint on October 17, 2019. In their complaint, the Platts allege that they did not want a smart meter installed at their home. Specifically, in their complaint, they stated that Mr. Platt has an irregular heart rate that is compounded by electromagnetic sensitivity and their daughter also has a sensory disorder affected by high pitched electrical humming sounds and pulsations. As relief, the Platts requested that the analog meter remain on their home, citing Sections 1501 and 1502 of the Public Utility Code.[1] Metropolitan Edison Company (the Company), responded to the claims made by the Platt's in an answer filed on November 12, 2019.[2] The complaint was assigned to Deputy Chief Administrative Law Judge Joel Cheskis.

On January 21, 2020, the Platts requested that the hearing be done entirely in writing because Mr. Platt has hearing loss, and he believed that a telephone hearing will compromise his ability to understand what is being said and to respond properly. In response to

[1] 66 Pa. C.S. §§ 1501, 1502

[2] The Company also filed preliminary objections. By order entered January 7, 2020, the preliminary objections were dismissed

the Platt's request, Judge Cheskis emailed both the Platts and counsel for Company and proposed a schedule for the exchange of written testimony. By email, counsel indicated that the Company did not object to the proposed schedule with the caveat that a brief hearing be held for the submission of all written testimony and cross examination to the extent that the Platts intend to submit testimony from any expert witness. The Platt's also indicated via email that the proposed schedule is acceptable.

On February 11, 2020, Judge Cheskis issued a scheduling order which memorialized the agreement of the parties to exchange written direct, rebuttal and surrebuttal testimony rather than the usual hearing format for consumer hearings. That is, the parties would not present their witness testimony orally at the hearing, but in a written format.

Judge Cheskis amended the original schedule for the exchange of written testimony by order on August 18, 2020. In that order, he deemed the Platts' filing entitled "Brief of Complainant" as the Platts' written direct testimony. He denied the Company's motion for summary judgement as well as the Platts' request for a stay. However, he revised the schedule for the exchange of written testimony and permitted the Platts to file additional written direct *expert* testimony.

In the following months, the Commission issued a general stay of all smart meter proceedings. The Platts' complaint was reassigned to me. Following the Supreme Court rendered a decision in *Povacz II* [3] which resolved outstanding legal issues regarding smart meters, the Commission lifted the stay on November 14, 2023. On December 6, 2023, I issued an order which directed the parties to confer and submit a joint status report which included a schedule which revised the due dates for the exchange of the remaining written testimony. The Company filed a status report as directed and proposed a schedule for written supplemental direct testimony by the Platts, as well as written Company rebuttal and written surrebuttal by the

[3] Povacz v. Pa. Public Utility Commission, 280 A.3d 975 (Pa. 2022) (Povacz II)

Platts. The Platts did not object[4] to the Company's proposal and I memorialized the revise schedule by Interim Order entered February 14, 2024.[5]

The Platts did not file supplemental direct testimony. However, the Company filed written rebuttal testimony of David R. Villao.[6] The Platts thereafter filed a set of documents titled as "Reply Brief."

On July 25, 2024, I issued a prehearing order to schedule "for a brief hearing, so that each party may request that their written testimony be authenticated and admitted into the evidentiary record." "[7] In my prehearing order which scheduled a hearing on September 11, 2024, consistent with Judge Cheskis' conclusion regarding the Platts' March 30, 2020, Brief of Complainant," I concluded that it appeared that the Platts intended the document as surrebuttal to the written testimony of Mr. Villao.

By email dated August 27, 2024, the Platts emailed a Motion for Recusal of ALJ.[8] I directed the Company to file a response to the motion by September 4, 2024, and issued an order on August 28, 2024, which memorialized those instructions.[9]

On September 3, 2024, I received emailed copies of proposed exhibits from the Company. These proposed exhibits included additional documents that were not included with the written testimony of Mr. Villao that the Company had served in May 2024. Also on

---

[4] The status report did not indicate whether the Company had contacted the Platts to secure their agreement to the schedule. The Platts did not provide an alternate schedule.

[5] I granted a short extension to the service deadlines by interim order entered February 26, 2024.

[6] Mr. Villao's testimony included two exhibits identified as FE PA -1 and FE PA-2.

[7] The "Reply Brief" included six pages of mixed testimony and legal argument and attached 546 pages of other documents.

[8] The Complainants claim that they served this motion in July. Commission records do not indicate that a motion was received from the Complainants in July.

[9] The Company filed an answer to the Motion to Recuse as directed. A decision on the motion will be rendered in a separate order.

September 3, 2024, I discovered that the Platts had e-filed with the Secretary's Bureau a copy of their Motion for Recusal of ALJ. However, the e-filed version of the motion included a letter from Giovanni Catalano, DO and a photograph. The Platts' motion states that I "ignored the Platts exhibits" and that "Mr. Platt's physicians' affidavit shall be submitted later."

Upon review of these recent documents submitted by the Company and the Platts, as well as the orders issued by Judge Cheskis, I have concluded that my orders in this matter may have been unclear. Neither the Platts nor the Company are prepared to proceed with the hearing. This order will attempt to clarify the procedure and expectations for the conduct of a hearing in this case.

The Platts bear the burden of proof.

In their complaint and in the written materials submitted thus far, the Platts have argued that a smart meter will exacerbate their existing health conditions and be harmful to them. As explained below, the Platts must support this claim with expert scientific or medical testimony.

On August 16, 2022, the Pennsylvania Supreme Court issued a decision in *Povacz v. Pa. Public Utility Commission*.[10] In *Povacz II*, the court resolved many of the outstanding legal issues regarding smart meter complaints filed before the Commission. Specifically, the Supreme Court held that customers have no right to refuse smart meter installation.[11] However, the court also held that even though a customer can not refuse a smart meter, a customer may claim that the installation of a smart meter violates the safe and reasonable service requirement of Section 1501 of the Public Utility Code.[12]

---

[10] Povacz v. Pa. Public Utility Commission, 280 A.3d 975 (Pa. 2022) (Povacz II).

[11] *Id.* at 997.

[12] *Id.* at 999-1000, citing 66 Pa. C.S. § 1501.

The court emphasized that the customer making a claim that a smart meter is unsafe has the burden of proof. This means that the customer must prove that it is more likely than not that a utility's service or equipment is the cause of the problem described in their complaint. This burden of proof is called the preponderance of evidence standard.[13]

Povacz II specifically held that a customer making a claim that a smart meter violates Section 1501 of the Public Utility Code must provide *expert* evidence:

> Specific to smart meters and RF emissions, the burden is two-fold. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that smart meters emit RFs and that RF emissions cause adverse health effects and, second, expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. See PA SSJI (Civ) § 4.80 ("An expert witness gives his or her opinion, to a reasonable degree of professional certainty, based upon the assumption of certain facts."). Once the customer produces such evidence, the utility may then defend by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm. The fact finder must then weigh the evidence and decide whether it is more likely than not that the smart meter causes harm to the customer. [14]

If a customer proves that a smart meter is unsafe and causes or contributes to harm to the customer, the Commission has the authority to direct the utility to offer an accommodation to the customer that is consistent with the utility's tariff:

> If the customer establishes by a preponderance of the evidence based on the totality of the circumstances that smart meter service violations Section 1501, they are entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff. [15]

---

13 *Id.* at1006

14 *Id*.

15 *Id.* at 1014.

The Commission is required to follow the directives of the Pennsylvania Supreme Court and can not direct a utility to allow a customer to retain their analog meter as an accommodation.[16]

Although Judge Cheskis directed the Platts to provide written *expert* testimony in his August 18, 2020, Order Denying Motion for a Stay, Denying a Motion for Summary Judgment and Setting Revised Litigation Schedule, subsequent orders did not specify that the Platts were specifically required to provide expert testimony in accordance with the schedule for the exchange of written testimony. Therefore, in the ordering paragraphs below, the Platts will be provided with an opportunity to identify an expert and provide expert written testimony in support of their claim that a smart meter is harmful and will harm their health. If the Platts can prove that the smart meter will harm their health with expert testimony, the Commission may direct the Company to provide an accommodation to the extent allowed by Act 129 and the Company's tariff.

Because the Platts will be offered an opportunity to submit written expert testimony, I will also provide the Company to submit additional written testimony to support the proposed exhibits that were not included with Mr. Villao's written testimony.

The Platts were granted an accommodation to present their testimony in writing.

As explained above, the Platts requested that the hearing be done entirely in writing because "Mr. Platt has hearing loss, and he believes that a telephone hearing will compromise his ability to understand what is being said and to respond properly."[17] Judge Cheskis approved this procedure. Although February 11, 2020, Scheduling Order and subsequent orders included a schedule for the exchange of written testimony, the Company served additional exhibits that were not included with the written testimony of its witness. The

---

[16] *Id.* at 1014 ("Pursuant to our interpretation of Act 129 as mandating the installation of smart meter technology, a customer may not prevent the installation of a smart meter.").

[17] February 11, 2020, Scheduling Order at p. 2.

Platts also may not understand the intended procedure for written testimony and the procedure for introducing that testimony for admission into the record at a hearing.

Commission regulations permit the exchange of written testimony. Written testimony is often used as a substitute for the oral questioning of witnesses. However, written testimony is still subject to the same rules of admissibility "as if it were presented orally in the usual manner."[18] The testimony of a witness must be authenticated as the sworn or affirmed testimony as the truth. The witness must be competent to offer the written or oral testimony.

Although Judge Cheskis granted the Platts' request to conduct the hearing in writing as an accommodation of their self-reported "disability," he also recognized that written testimony must be offered for admission into the record. Therefore, he also directed "a brief hearing for the submission of all written testimony and cross examination to the extent that the Platts intend to submit testimony from any expert witness."[19] Due process requires that the opposing party be provided with the opportunity to ask question about a witness's written testimony. Due process also requires that the opposing party be provided with an opportunity to object to the admission of the evidence because it is not admissible in accordance with the rules of evidence.[20]

The Platts and the Company have shared written testimony. The written testimony, in some cases, included attached exhibits. None of this material is considered evidence in the record. Until evidence is admitted into the record, I can not consider any of the served material as part of my decision on the Platts' complaint.

The sole purpose of the hearing that is scheduled will be for each party to offer their written testimony for admission into the record. Either party may object to the offer of written testimony for admission into the record because the testimony is not admissible

---

[18] 52 Pa. Code § 5.412(c).

[19] February 11, 2020, Scheduling Order at p. 2-3.

[20] See 52 Pa. Code § 5.401.

according to a rule of evidence. Expert witnesses must be present at the hearing. Either party may ask expert witnesses questions about their testimony.

3. Summation

I recognize that the Platts are self-represented. Both Judge Cheskis and I have offered the Platts a great deal of leeway and have not demanded strict compliance with the Commission's procedure rules. Yet, Commission proceedings must be fair to *both* parties. Thus, an ALJ may provide enhanced explanations of the procedural and evidentiary requirements for proceedings, liberally construe pleadings, and permit narrative testimony for the benefit of the self-represented. But an ALJ may not accommodate unreasonable demands for assistance to a self-represented party to such a degree that it affects the substantive rights of the utility[21] or create an unfair advantage to complainants. This means that self-represented complainants must meet procedural deadlines, answer appropriate discovery requests, and comply with the orders of the ALJ.

In the ordering paragraphs below, I will set deadlines and provide instructions for the procedure in this hearing. Both parties are expected to fully comply with each and every directive in these paragraphs below. Any failure to comply with the ordering paragraphs below may result in the exclusion of evidence or dismissal of the complaint.

THEREFORE,

IT IS ORDERED:

1. That the hearing currently scheduled for September 11, 2024, is cancelled.

[21] 52 Pa. Code § 1.2(c) (the presiding officer may waive procedural requirements "if the waiver does not adversely affect a substantive right of a party.")

2. That on or before **October 3, 2024**, the Platts may serve expert written testimony (including but not limited to medical, technical, etc.). Written expert testimony must include a resume or curriculum vitae which shows the expert's qualifications to render an opinion with a reasonable degree of professional certainty.

3. That if the Platts fail to serve written expert testimony in compliance with Paragraph 1, the Platts' complaint may be dismissed.

4. That on or before **November 4, 2024**, the Company may serve written rebuttal to the Platts expert written testimony as well as any additional non-expert testimony responsive to the Platts allegations in their complaint.

5. That written testimony must be accompanied by all exhibits to which it relates.

6. That all written testimony shall be served by email. Any email sent to me must copy the opposing parties. **Any email that does not indicate that all parties have been provided with the email and attachments will be disregarded.**

7. That all motions, including any dispositive motions or motions objecting the admission of written testimony or exhibits served pursuant to this order or the February 14, 2024, Interim Order Scheduling Written Testimony, shall be filed on or before **December 4, 2024, at 4:30 p.m.**. No motion filed after December 4, 2024, at 4:30 p.m. will be considered.

8. That all motions must be filed with the Secretary's Bureau by e-file. Copies of any motions must also be served on me and opposing parties by email. **Any motion that late or is not filed by e-file and also served by email will be disregarded.**

9. That a hearing will be scheduled after disposition of motions filed, if any.

10. That expert witnesses must be present at the hearing to authenticate their written testimony and answer questions about their written testimony. No written expert testimony will be admitted into the record if the expert witness does not appear at the hearing when scheduled.

11. That all parties must attend the hearing as scheduled. You may lose the case if you do not take part in the hearing when scheduled.

12. Following the hearing, the evidentiary record will be closed, and a decision will be rendered. I will not consider any evidence that is not presented at the hearing or that was not admitted into the evidentiary record.

13. That no continuances or extensions will be granted absent emergency circumstances that are verified by a third party.

14. That the failure to comply with any of the directives in this order may result in dismissal of the complaint.

15. That all other provisions of the July 25, 2024, Prehearing Order remain in effect.

Date: September 5, 2024

/s/
Mary D. Long
Administrative Law Judge

C-2019-3013745 – DEBORAH ENGISCH-PIATT AND KIM PIATT v METROPLLITAN EDISON COMPANY

Revised Sept 3, 2024

DEBORAH & KIM PIATT
PO BOX 175
RIVER ROAD
POINT PLEASANT PA 18950
267-261-4104
Riversong3@comcast.net
Accepts eService

TORI L GIESLER ESQUIRE
FIRSTENERGY
2800 POTTSVILLE PIKE
PO BOX 16001
READING PA 19612-6001
610-921-6658
tgiesler@firstenergycorp.com
Accepts eService

DANIEL A. GARICA
JAMES AUSTIN MEEHAN ESQUIRE
FIRSTENERGY
76 SOUTH MAIN STREET
AKRON OH 44308
724.838.6406
610-921-6783
dagarcia@firstenergycorp.com
jameehan@firstenergycorp.com
Accepts eService