

February 12, 2026

VIA ELECTRONIC FILING

Matthew Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Lauren Zonca v. Metropolitan Edison Company
Docket No. C-2023-3041619

**REPLY BRIEF OF LAUREN ZONCA TO BRIEF OF MET-ED
IN THE AMENDED FORMAL COMPLAINT OF LAUREN ZONCA**

Dear Secretary Homsher:

I am copying you on my filing of my Reply Brief to Brief of Met-Ed. I have served a copy of this letter on First Energy Service Company/Metropolitan Edison Company and ALJ Jeffrey Watson.

Sincerely,

A handwritten signature in black ink, appearing to read 'L Zonca', with a long horizontal flourish extending to the right.

Lauren Zonca

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lauren Zonca :
 :
 v. : **DOCKET NO. C-2023-3041619**
 :
FirstEnergy Pennsylvania Electric Company :

**REPLY BRIEF OF LAUREN ZONCA TO BRIEF OF MET-ED
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I. INTRODUCTION

This Reply Brief is submitted in direct response to Respondent Metropolitan Edison Company's ("Met-Ed's") Main Brief and is expressly grounded in, and limited to, the causes of action, statutory authorities, and requested relief set forth in Complainant's Amended Formal Complaint dated April 14, 2025, incorporated by reference herein as if fully set forth herein.

Despite having had this Amended Formal Complaint since April of 2025 and despite the corpus of Interrogatories and Answers to Interrogatories, Respondent Met-Ed continues to push in its Brief of January 30, 2026 the narrative that the Complainant is making a 1501 claim. Complainant is making no such claim.

A 1501 claim is merely a non-actionable inquiry into the PUC's requirement that "Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities" and that "Such service and facilities shall be in conformity with the regulations and orders of the commission." Nothing can come of this claim, as every single complainant requesting relief from smart meters has found.

To obtain action from the Commission, a complainant would have to enter a 1505 claim to the Commission, urging it, "upon its own motion or upon complaint," to "find that the service or facilities of any public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation" Complainant is not making a 1505 claim.

Another apt claim might be made under 1504(3) to the Commission, again urging it "upon its own motion or upon complaint" regarding smart meters, to "Prescribe reasonable regulations for the examination and testing of such service, and for the measurement thereof." Complainant is not making this claim.

Complainant merely makes two other claims, each backed up by a preponderance of evidence. First, consumer choice prevails as evidenced by the multiple instances in which smart meters are available "at customer's request." Second, the burden of proof rests, in multiple instances, on the utility, in this case on Met-Ed.

Complainant does not seek to re-litigate the Commission's general approval of smart meter programs or individual utility plans. In this Reply Brief the Complainant focuses on whether Met-Ed has violated a

particular section of Act 129 of 2008 [§ 2807(f)(2)], the Commission’s June 18, 2009 Implementation Order, its own Commission-approved tariff, and multiple provisions of the Public Utility Code and Commission regulations, leading to Met-Ed misapplying a purported “mandate” to compel installation of a smart meter at Complainant’s residence absent request, consent, and statutory authority including required consumer disclosures.

In its Brief Met-Ed presents no rebuttal to the unmistakable pattern shown collectively in Act 129, the PUC’s 2009 Implementation Order, its tariff and a slew of Codes cited in Complainant’s filings. By a preponderance of evidence, this pattern affirms two principles: first, consumer choice reigns; and second, the burden of proof is on the respondent utility, in this case, Met-Ed. Instead, Met-Ed attempts to saddle Complainant with the dead legal horse of a 1501 claim. Our Complaint is not moot as Met-Ed asserts, and *Povacz II* has not disposed of the matters raised in this Complainant’s Amended Formal Complaint. Complainant replies to the assertion of mootness in Appendix B, Proposed Conclusions of Law.

II. THE SCOPE OF THIS PROCEEDING IS DEFINED BY THE AMENDED FORMAL COMPLAINT

2.1 In the Amended Formal Complaint, Complainant quotes from ALJ Watson’s Interim Order Establishing Initial Litigation Schedule of April 4, 2025, wherein it states that “Complainants bear the burden of proof and must demonstrate by a preponderance of the evidence that Respondent violated its tariff, the Public Utility Code or a Commission order or regulation, and that they are entitled to the relief requested in the Complaint.”

2.2 In its Amended Formal Complaint this Complainant asserts four specific claims:

- (a) Met-Ed violated multiple provisions of the Public Utility Code and Commission regulations governing advanced metering, consumer notice and safety;
- (b) Met-Ed violated Act 129 by misapplying the Commission’s June 18, 2009 Implementation Order;
- (c) Met-Ed violated Act 129 itself by treating an opt-in statute as mandatory; and
- (d) Met-Ed violated its own tariff by compelling installation absent a written request.

2.3 In this Reply Brief the use of the term Act 129 is taken to refer primarily to § 2807(f)(2), the principal section at issue for Complainants, EDCs and Courts, and the section at the center of all smart

meter cases. Here and § 2807(g) are the only places in the entire Act where the term “smart meter(s)” is used.

2.4 Regarding § 2807(f)(2), the Commonwealth Court, in its October 8, 2020 decision in *Povacz et. al.*, found that “The definition [of furnish] does not imply that the recipient is forced to accept that which is offered. Therefore, we find the PUC is incorrect in concluding that Act 129 facially precludes any customer refusal of installation of smart meters.”¹

2.5 Respondent’s Brief does not rebut these pleaded claims. Instead, it relies on generalized assertions of Commission policy and alleged mandate, which do not address the specific statutory and tariff violations alleged in the Amended Formal Complaint of May 12, 2025. By neither denying nor answering the Complainant’s claims, Met-Ed has effectively ceded their validity, leaving it to the Court to decide. This dismissive approach mirrored that which Respondent exhibited earlier during interrogatories.

III. THE COMPLAINANT’S CASE IS NOT COVERED BY *POVACZ II*

3.1 The PA Supreme Court decision in *Povacz II* on which Respondent Met-Ed relies, depends on, and is built around, a 1501 claim. Complainant is not making a 1501 claim. Therefore, the rulings in *Povacz II* do not apply to this Complainant. Therefore Met-Ed’s Arguments in Part IV of its Brief are not pertinent to this Complainant’s case.

3.2 In *Povacz II* the PA Supreme Court relied on two contradictions that have trapped other complainants in the 1501 legal bog from which none has escaped: (1) The Preponderance of Evidence-Feather Metaphor Contradiction; and (2) The Conclusive Causal Connection-Precautionary Principle Contradiction.

A. The Preponderance of Evidence-Feather Metaphor Contradiction

A-1 The Court uses the metaphor of a teeter totter, asserting that the sufficiency of evidence put forth by the complainant is such that even if the weight in favor of the complainant is that of a feather, the decision goes to the complainant. Then the Court undermines this teeter by moving the fulcrum so close

¹ *Povacz v PUC* 241 A.3d 481 (Pa. Cmwlth. 2020) page 10

to the complainant that it would take a load of bricks to offset the weight of evidence put forth by the utility sitting at the longer end of the teeter.

A-2 How does the Court accomplish moving the fulcrum? First, by giving greater weight to the “expert witnesses” put forth by the utilities. Second, by deferring to the administrative agency’s interpretation of codes and statutes.

A-3 Regarding deference, the PA Supreme Court has ruled in two cases relevant here that agency deference cannot override legislative primacy in setting policy.² *Crown Castle v. PUC* and *Corman v. Pa Dept of Health* anticipate the U.S. Supreme Court’s ruling in *Loper Bright v. Raimondo* against administrative overreach. In *Corman v. Pa Dept of Health*, the Court wrote, “What the Department (of Health) actually asks for is Auer or Seminole Rock deference, under which courts ‘defer to an agency’s interpretation of its own regulation ... unless that interpretation is ‘plainly erroneous or inconsistent with the regulation.’” (Page 55) This is what consumers faced in *Povacz II*.

A-4 By contrast, the Court in *Povacz I* did not defer to the Commission and did not find that the statutory language carried a smart meter mandate for all customers. Thus, the Court agreed with Complainant regarding the interpretation of the Plain English reading of the statute. By contrast, the PA Supreme Court in *Povacz II* engaged in deference to an agency (the PUC) that rewrote, rather than interpreted, the statute. In the latter case, the decision in *Povacz II* rested on an incorrect or incomplete statutory analysis, completely neglecting the historically documented intent of the legislators, for which deference to the agency (the PUC) was not warranted.

B. Conclusive Causal Connection-Precautionary Principle Contradiction

B-1 Here the PA Supreme Court erects a double hurdle. First, the complainant must show a conclusive causal connection based on scientific evidence between smart meter RF emissions and health effects. Second, the complainant must show that the preponderance of (scientific) evidence links smart meter RF emissions to the complainant’s specific damaging health effects.

² *Crown Castle NG East LLC and Pennsylvania-CLE LLC v. PUC*; *Jacob Doyle Corman, III et.al. v. Acting Secretary of the PA Dept. of Health*.

B-2 Now that the fulcrum of the teeter totter has been moved close to the complainant, what was now a feather gets transmogrified into a heavy load of conclusive bricks. That is not science. Science is a method for stating and testing hypotheses, not pre-loading a teeter whose fulcrum is set next to the complainant.

B-3 This double hurdle makes a mockery of science and eviscerates the precautionary principle. In other words, you are only qualified to bring a 1501 claim if you have already been harmed by smart meters, AND you can prove that you have been harmed, AND that the science backs you up CONCLUSIVELY in both cases. That feather just flew out the window.

B-4 Certainly persons injured by something can quickly deduce what the source is without knowing the mechanism of action or science behind it. Symptoms flare up in the presence of a smart meter and subside when the smart meter is removed. Repeated trials with the same outcomes turns suspicion into confirmation.

B-5 The corrective to this double hurdle: acknowledge that science is never settled and therefore not conclusive. Recover the feather. Restore the fulcrum. Respect personal testimony of lay witnesses (PA 225 Rule 701).

IV. THE LEGAL ARGUMENT: REPLY TO MET-ED'S BRIEF ARGUMENTS

A. Met-Ed Violated Multiple Public Utility Code and Regulatory Provisions

A-1 As pleaded in Paragraph V-5, 52 Pa. Code § 57.251(a) expressly states that participation in advanced metering programs is not required of the public.

A-2 Section 57.255(a) further requires a written request from both the customer and the Electric Generation Supplier before installation may occur. In interrogatory Set I-A Q1 Met-Ed replied, "The Company does not have written requests from the Complainant or her EGS for the installation of an AMI smart meter." Later, in its May 12, 2025 Answer and New Matter ... to The Amended Complaint of Lauren Zonca Met-Ed wrote "It is admitted that the Complainant did not request a smart meter to be installed at the Service Location."

A-3 Sections 57.259(b) and (c) require disclosure of both advantages and disadvantages of advanced metering prior to participation. Complainant received no such disclosure of disadvantages.

A-4 Section 57.28(a)(1) imposes a duty to warn of danger. Met-Ed failed to warn Complainant of potential health or safety risks. All technologies come with risks. The risk is never zero.

A-5 Under 66 Pa. C.S. § 315(c), the burden of proof regarding safety rests with the utility. Met-Ed has offered no proof of safety, either in general or specific to Complainant's circumstances. By relying on an assertion, as it did in Interrogatory Set II Q5 that "the smart meters that Met-Ed is installing comply with all safety requirements and standards established by agencies such as the Federal Communications Commission" Met-Ed reveals it has not done its own studies which would allow this Complainant to query the authors of these studies, but on standards established by some other party at some other time, in some other context to which this Complainant has no access.³ In relying on its expert witness, Mr. Ahr failed to uphold 225 PA 702(c); lacking studies, he also lacked the accompanying methodology. Further, lacking studies, Mr. Ahr also lacked any bases for his opinions on facts or data (225 PA 703).

A-6 The Public Utility Code defines "service" broadly, but does not authorize unilateral alteration of service in a manner not approved by statute. See 66 Pa. C.S. § 102.

B. Met-Ed Misapprehended and Misapplied the June 18, 2009 Implementation Order

B-1 On page 13 of its Brief Met-Ed states: "Neither Act 129 nor subsequent Commission orders and/or appellate court decisions related to smart meter installation and deployment permit customers to "opt-out" from smart meter installation." The subsequent Commission order of relevance here is the June 18, 2009 Implementation Order.

B-2 As pleaded in Paragraph II-1 of the Amended Formal Complaint, the Commission's Implementation Order repeatedly states that smart meters are to be installed "upon request" from a customer. There are approximately eleven instances of the "upon request" phrase in the Implementation Order, leaving no doubt that this was an opt-in law.

B-3 Met-Ed acknowledges this "upon request" condition in its Brief where it states, on the same page 13, that "Specifically, Section 2807(f)(2) of the Code directed EDCs to furnish smart meter technology as follows: 1) upon request from a customer that agrees to pay the cost of the smart meter at the time of

³ These FCC standards are outdated and were at issue in EHT v FCC (August 13, 2021) in which the Washington District Court of Appeals remanded the case "to the Commission to provide a reasoned explanation for its determination that its guidelines adequately protect against harmful effects of exposure to radiofrequency radiation unrelated to cancer..." Despite at least three subsequent petitions to that Court to enforce its decision with a deadline, the FCC has not responded.

the request; 2) in new building construction; and 3) in accordance with a depreciation schedule not to exceed fifteen years.⁴³”

B-4 The Implementation Order expressly provides that Act 129 requires EDCs to furnish smart meter technology “upon request from a customer” and does not state that customers must accept installation absent such request. The “mandate’ is upon the EDCs only to offer, as the Commonwealth Court found in *Povacz I*.⁴ Acceptance is left to the customer.

B-5 Met-Ed’s interpretation converts consumer choice, request-based language into a compulsory mandate, directly contradicting the plain language of the Implementation Order it claims to follow.

B-6 A utility is not in the position to interpret Orders, let alone Laws. Met-Ed violated Act 129 as implemented by the Commission’s Implementation Order.

C. Met-Ed Violated Act 129 Itself By Treating An Opt-In Statute As Mandatory

C-1 In IV-B of its Argument (page 10), Met Ed asserts that “Act 129 requires the Company to install smart meters for all of its customers, including the Complainant.”

C-2 As pleaded in Paragraph III-2 of the Amended Formal Complaint, Act 129 of 2008 was written, debated, and enacted as an opt-in law for customers. Legislative intent is confirmed by statements in the Senate Journal, including Senator Vincent Fumo’s explanation that smart meters were made optional and mandated only in new construction where practical. In addition, Thomas Yewcic, a Pa Representative at the time of passage, testified in his own PUC hearing objecting to smart meters that smart meters were not mandatory under Act 129.⁵

C-3 Met-Ed’s reliance on the Pennsylvania Supreme Court’s *Povacz II* decision in various places in its Brief is misplaced. *Povacz II* only applies to the particular factual record before the *Povacz II* Court and therefore does not preclude review based upon a substantially different record. The *Povacz II* decision

⁴ Commonwealth Court in *Povacz I*, p. 10: “To ‘furnish’ means to provide with what is needed; . . . supply, give.’ Webster’s Ninth New Collegiate Dictionary 499 (1985). The definition does not imply that the recipient is forced to accept that which is offered. Therefore, we find the PUC is incorrect in concluding that Act 129 facially precludes any customer refusal of installation of smart meters.”

⁵ Thomas Yewcic PUC docket # C-2018-3001276

did not refer to or base its decision on the legislative history cited above.⁶ Furthermore, Complainant maintains there is nothing in Act 129 to specify that § 2807(f)(2)(i) was only for early adopters of the technology.⁷

C-4 Silence in a statute cannot be construed as compulsory authority. Nothing in Act 129 eliminates customer choice or authorizes forced installation in existing residences absent request. For Complainants in these cases there is harmony between the plain English meaning and the intent of the Legislature. See 1 Pa.C.S. § 1921 (b) and (c)(7).

D. Met-Ed Violated Its Own Tariff By Compelling Installation Absent A Written Request

D-1 As pleaded in Paragraph IV-3 of the Amended Formal Complaint, Met-Ed's tariff provides that advanced metering will be acquired and installed "upon written request" of the customer. Advanced metering is not mandated.

D-2 Met-Ed has not identified any tariff provision authorizing compelled installation absent a written request.

D-3 By attempting to force installation, Met-Ed violated its own Commission-approved service terms. Met Ed installs advanced metering on written request.⁸

⁶ No clearer intent of the General Assembly can be found than that expressed in the historical record which meets the demand in *Povacz II*, p. 21: "When interpreting a statute, we strive to ascertain the intent of the General Assembly in enacting the law under review. 1 Pa.C.S. § 1921(a); *Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 249 A.3d 963, 970 (Pa. 2021), *reargument granted in part*, 256 A.3d 1092 (Pa. 2021)."

⁷ The allegation by the utility that § 2807(f)(2)(i) was for "early adopters" defies the *Povacz II*, p.22 criterion that "Adding words or phrases to a statute in a way that changes its scope and operation is prohibited. 1 Pa.C.S. § 1923(c); *Pa. Sch. Bds. Ass'n, Inc. v. Pub. Sch. Emps. Ret. Bd.*, 863 A.2d 432, 439 (Pa. 2004)."

⁸ See First Energy's Electric Generation Supplier Coordination Tariff, p. 29 effective January 1, 2024.

V. RESPONDENT’S “MANDATE” THEORY IS INCONSISTENT WITH THE PUBLIC UTILITY CODE

5.1 Met-Ed’s position that smart electric meters are mandatory conflicts with a multiplicity of PA Public Utility Codes, the 2009 Commission Implementation Order, Act 129, and Met Ed’s own tariff. Collectively, all of these expressly preserve customer choice. This constitutes a preponderance of evidence in favor of the Complainant.

5.2 The word “mandate” does not appear anywhere in Act 129. Neither does the word “mandate” appear in the PUC’s Implementation Order of June 18, 2009 regarding smart meter mandates.⁹

5.3 The word “mandate” does appear once in the March 9, 2009 MADRI Steering Committee Meeting slide presentation by then PUC Commissioner Kim Pizzigrilli and PUC Counsel Shane Rooney. It appears in slide 4 in the Title: Smart Metering **Mandate**, followed by five bullets, the third one of which reads: “At a minimum, smart meters must be provided upon customer request (if customer pays), in all new building construction in the service territory, and to all other customers within 15 years.” Complainant simply notes that the text of the third bullet continues the pattern of consumer choice. Does the presence of the word **Mandate** in the title of slide 4, buried in a long-forgotten conference presentation, presage the regime of compulsory installation that has come to dominate this legal controversy? In other words, does Pizzigrilli and Rooney’s use in this slide of the word “Mandate” reveal an internally held intention to subvert PA Public Utility Codes, the Implementation Order, Act 129 and utility tariffs?

⁹ The word “mandate” appears only once in the PUC Implementation Order in a sentence having nothing to do with smart meters, as follows: “PECO expressed a concern about network security and management risks and does not want a mandate that provides customers and third-parties unrestricted access to the EDC’s metering network.”

VI. CONCLUSION AND PROPOSED ORDERING PARAGRAPHS

For the reasons pleaded in the Amended Formal Complaint and reaffirmed herein, Complainant respectfully requests that the Administrative Law Judge recommend that the Commission:

1. Find that Act 129 does not mandate smart meter installation absent customer request;
2. Find that Met-Ed misapplied the June 18, 2009 Implementation Order;
3. Find that Met-Ed violated its tariff and applicable provisions of the Public Utility Code;
4. Order Met-Ed to refrain from replacing Complainant's existing electromechanical analog meter with a smart or wireless meter; and
5. Grant such other relief as is just and reasonable.

Complainant also wishes to invoke pro se leniency as per 207 Pa. Code 33a, Rule 2.2, Impartiality and Fairness: "It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters heard fairly and impartially. See also Erickson v. Pardus, 551 U.S. 89, 94 (2007): "A document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers. See also Haines v. Kerner, 404 U.S. 520 (1971): "...[W]e hold a pro se complaint...to less stringent standards than formal pleadings drafted by lawyers...."

Respectfully submitted,



Lauren Zonca

Complainant, Pro Se

Date: February 11, 2026

APPENDIX A

PROPOSED FINDINGS OF FACT

- 1) Items 1-6 in Met-Ed's Proposed Findings of Fact (Appendix A in its Brief of 1-30-26) together with the parent text in the main body of Met-Ed's Brief do not bear on the arguments made in Complainant's Reply Brief, and are therefore not contested because these are irrelevant.
- 2) Mr. Ahr's Testimony focused purely on technical and programmatic aspects of the smart meter rollout. The claim in item 8 that Mr. Ahr fully explained smart meter safety is without merit. Nothing in his testimony treats the negative non-thermal impacts of pulsed RF and microwave electromagnetic radiation on humans.
- 3) Act 129 of 2008 was passed as an opt-in law with regard to smart meters by the General Assembly as well-documented in the historical record. The intent of the General Assembly in this regard is unequivocal and clear.
- 4) As per PUC docket # C-2018-3001276, the testimony of former legislator, Thomas Yewcic, who was in office and participated in the passage of HB2200 that became Act 129 of 2008, directly attests to the fact that the General Assembly made smart meters optional.
- 5) *Povacz II* makes no mention of the General Assembly's intent as historically documented and substantiated by the Yewcic testimony, but derives rulings based on a different record than that of the Complainant.
- 6) Act 129 of 2008 is consistent with 52 Pa. Code § 57.251(a) which expressly states that participation in advanced metering programs is not required of the public.
- 7) The ruling in *Povacz II* poses a contradiction with 52 Pa. Code § 57.251(a) which Met-Ed has not addressed.
- 8) Consistent with Act 129 of 2008 and 52 Pa. Code § 57.251(a), Met-Ed/FirstEnergy's tariff (10.1 Meter Installations) also says that customers who have signed up for the Electric Choice Program may request a smart meter; it is not mandated: The Company will utilize its installed metering

installation for each Customer participating in the Pennsylvania Electric Choice Program. **Upon written request the Company will acquire, install, maintain and read qualified advanced metering and meter-related devices** as approved by the Commission from time to time.¹⁰

- 9) In *Povacz II* and in other utility and Commission filings Complainant finds subsection (i) of § 2807(f)(2) frequently included but rejecting the Plain English meaning of “**Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.**” Instead, the Courts, including the *Povacz II* Court, and utilities resort to the fiction that this section is for “early adopters.” There is no language anywhere in § 2807(f)(2) or anywhere in Act 129 that states § 2807(f)(2)(i) was only for “early adopters” of smart meter technology. § 2807(f)(2), including (i), contains no surplusage inviting application to early adopters. The *Povacz II* Court treats this section as ripe for surplusage. There is a long history of the Commission inserting their ability to “interpret the intent of the legislature” and to create “ambiguity” where none exists. This practice was thoroughly explored and settled in a series of court cases ending up with the 1987 Pa. Supreme Court case *Barasch v. Pa. PUC*, 516 Pa. 142 (1987), 532 A.2d 325 wherein 66 Pa. C.S. § 1315 was definitively affirmed.¹¹ Then, as now, the Commission was guilty of inserting its ability to “interpret the intent of the legislature” and to create “ambiguity” where none exists. In *Barasch* the Pa. Supreme Court affirmed the plain English meaning of words to ascertain legislative intent.¹²
- 10) Customers are required to opt in to the smart metering program as per Act 129 of 2008. There is no opt-out in the statutory language because the law necessitated that customers request a smart meter –

¹⁰ FirstEnergy Pennsylvania Electric Company, Electric Generation Supplier Coordination Tariff, January 1, 2024 at 29.

¹¹ <https://law.justia.com/cases/pennsylvania/supreme-court/1987/516-pa-142-1.html>

¹² It is fundamental that in ascertaining the legislature's intent, the plain words of its laws may not be ignored. *Stegmaier Estate*, 424 Pa. 4, 225 A.2d 566 (1967). A court may not alter, under the guise of interpretation, the express language and intent of the legislature. *Commonwealth v. Pope*, 455 Pa. 384, 317 A.2d 887 (1974); see *Zimmerman v. O'Bannon*, 497 Pa. 551, [442 A.2d 674](#) (1982). Thus, where the words of a statute are clear and free from ambiguity, a court may go no further to determine the legislative intent. *Kritz Estate*, 387 Pa. 223, 127 A.2d 720 (1956); *Rich v. Meadville Park Theatre Corp.*, 360 Pa. 338, 62 A.2d 1 (1948); *Commonwealth ex rel. Smith v. Clark*, 331 Pa. 405, 200 A. 41 (1938); see 1 Pa.C.S. § 1921(b), (c). It is only when the words of the statute are not explicit that the intention of the legislature may be ascertained by considering other means of statutory interpretation or construction. *Davis v. Sulcove*, 416 Pa. 138, 205 A.2d 89 (1964); *Commonwealth v. Chester County Light and Power Co.*, 339 Pa. 97, 14 A.2d 314 (1940).

that is, opt in -- except in new building construction.

- 11) Act 129 of 2008 required electric distribution companies with more than 100,000 customers to adopt smart meter deployment plans *subject to* § 2807(f)(2) which does *not* carry a mandate for smart meter installation for all customers.
- 12) The utilities, including Met-Ed, tasked with coming up with a smart meter deployment plan, failed to undertake a basic marketing survey of their customer base to ascertain how many customers would agree to accept a smart meter. Instead, smart meters were forced on all customers in violation of the “at customer’s request” opt-in law, Act 129 of 2008.
- 13) In its Brief, Met-Ed alleges “The Company has not violated any Commission order, statute or regulation” (Appendix A, item 14) but has not responded (other than to say “denied”) to PA Code violations Complainant laid out in Complainant’s Amended Formal Complaint.
- 14) To-date, Met-Ed admits that it has not received a written request from Complainant for a smart meter and, in general has not received written requests from both the customers in its service territory and the Electric Generation Supplier before installing a smart meter on the customers’ home, in violation of 52 Pa. Code § 57.255.
- 15) To date, Met-Ed has not disclosed both advantages **and disadvantages** of advanced metering prior to customer participation as per 52 Pa. Code § 57.259(b) and (c). The promotional flyer sent to all customers only cites advantages and with biased and incomplete attempts to quell potential concerns. Met-Ed/First Energy has now fielded dozens if not hundreds of complaints from customers who are aware of and/or victims of the disadvantages.
- 16) To-date, Met-Ed has not warned customers of possible danger from smart meter technology as is required under 52 Pa. Code § 57.28(a)(1). As all technologies come with risks, Met-Ed did not warn Complainant of possible health or safety risks.
- 17) To-date Met-Ed/First Energy has fielded dozens or more of complaints from customers regarding harm to health from their smart meter installations, but unlike other businesses that take corrective action and/or warn their customers of potential dangers, has persisted in denying these problems rather than responsibly warning customers as per 52 Pa. Code § 57.28(a)(1).
- 18) Met-Ed’s expert witness, Mr. Ahr, did not address Met-Ed’s PA Code violations.

- 19) Mr. Ahr lacked the credentials, background and/or experience required to opine on matters of health and safety of smart meters as required per 225 PA Code Rule 703, and provided no studies or corresponding methodology to deem smart meters “safe” for all customers.
- 20) Mr. Ahr presented no evidence on the safety of smart meters as per the burden on the utility to prove safety under 66 Pa.C.S. § 315(c).
- 21) Mr. Ahr and Met-Ed allege safety of smart meters based on the FCC’s safety standards which have been proven insufficient and out-of-date with regard to human safety at today’s level of exposure to radio frequencies, which information both parties are informed about from other smart meter complaints that have gone before the Commission citing *Environmental Health Trust v FCC* (August 13, 2021).
- 22) From Met-Ed’s exhibits, namely:
 - a) FE PA-1(p.19) “2.3.3 Assessment of Smart Meter and AMI Technologies “
 - b) FE PA-1(pp. 27-30) on selection criteria for smart meters
 - c) FE PA-1 (p. 30) on Lab and Field Testing Process

It is clear there are no studies on human health relevant to the emissions from smart meters, either short-term or long-term, neither on sensitive populations (the elderly, the very young, those with cancer and other degenerative diseases including cardiac issues) nor even on healthy populations. Neither has Met-Ed requested or attempted to obtain such studies or testing, and yet these are demanded from complainants in their PUC cases when, in fact, the burden to prove such safety falls upon Met-Ed.
- 23) Mr. Ahr presented all the usual details about Met-Ed’s smart meter plan but did not mention the marketing/customer survey necessary to comply with Act 129 from the very beginning to assess the customer base receptive to smart meter installation prior to forcing smart meters on all customers in violation of the opt-in law that was passed by the General Assembly as Act 129 of 2008.
- 24) From Met-Ed Exhibit FE PA-1, p. 19, under Customer Contacts, they demonstrate that customers are able to still submit meter readings. “...Other capabilities include enrollment in budget billing and paperless billing, *the ability to submit meter readings...*” which indicates that its system can accommodate the electromechanical analog meter that Complainant wishes to retain.
- 25) Complainant, being pro se, and with no experience in a court setting, is at significant disadvantage in these proceedings against a corporate utility with wealth and means, and therefore was unable to

obtain or afford expert witnesses, much less proffer a strong case in her hearing and brief, hence is learning from Met-Ed's filings and invokes pro se leniency.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

Met-Ed's Mootness Claim

- 1) Complainant's case is not moot. The PA Supreme Court's decision in *Povacz II* does not render Complainant's case moot. *Povacz II* does not render Complainant's case moot because it is distinguishable. "...A party usually distinguishes one case from another as part of the argument that because of a certain distinction, the court's decision in the first case should not apply as precedent (*stare decisis*) to the second case, despite any factual similarities between the cases."¹³
- 2) A case is not moot if a live "case or controversy" exists, meaning a court can still grant effective, meaningful relief to the parties involved.¹⁴ Complainant is one of hundreds of complainants in Pennsylvania who have opposed the violation of the opt-in intent of Act 129 of 2008 and have opposed the forced installation of a smart meter on their home, including several ongoing live cases at the levels of the PUC and the Commonwealth Court with which both Met-Ed and the present court are already familiar. Thus the controversy has not been settled.
- 3) An issue before the court is moot if, in ruling upon the issue, the court cannot enter an order that has any legal force or effect."¹⁵ In the Complainant's case, the Court could enter an order that has legal force or effect because Complainant's arguments differ from what has previously been ruled upon in *Povacz II*.
- 4) A case is not moot when it presents an issue of broad public concern that warrants judicial review. Complainant's case involves questions important to public interest because: (1) there were some 5400 disputed installations of smart meters as per FirstEnergy's 2018 report and hundreds of customers pursued legal recourse at the PUC to prevent or remove smart meters, an effort that is ongoing to this day; (2) numerous complaints have been filed with documented harm to customers

¹³ <https://www.law.cornell.edu/wex/distinguish>)

¹⁴ *City of Los Angeles v Lyons* (1983); *Burke v. Barnes*, 479 U.S. 361, 363 (1987) ("Article III of the Constitution requires that there be a live case or controversy at the time that a federal court decides the case; it is not enough that there may have been a live case or controversy when the case was decided by the court whose judgment we are reviewing.")

¹⁵ *Burns v. Dep't of Human Servs.*, 190 A.3d 758, 762 (Pa. Cmwlth. 2018).

from the smart meters installed on their homes.¹⁶

Other Proposed Conclusions of Law

5) Under 66 Pa. C.S. § 315(c), the burden of proof regarding safety rests with the utility. Met-Ed has offered no proof of safety, either in general or specific to Complainant's circumstances, including proof of safety of pulsed radio frequency and microwave radiation particularly non-thermal effects on humans. Met-Ed's claim in its Appendix B item 1 that the Complainant maintains the burden of proof is in error. The actual text of 332(a) is:

Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

Section 315 is precisely the exception Complainant asserts. Second, the Complainant is not a proponent of a rule or order.

6) 52 Pa. Code § 57.251(a) expressly states that participation in advanced metering programs is not required of the public. Complainant has elected not to participate. Met-Ed's insistence that Complainant accept a smart meter under threat of turning off her electricity is a violation of this code.

7) 52 Pa. Code § 57.255(a) requires written requests from both the customer (i.e., Complainant) and the Electric Generation Supplier for installation of a smart meter. Met-Ed has admitted that "The Company does not have written requests from the Complainant or her EGS for the installation of an AMI smart meter." Met-Ed's insistence on installing a smart meter violates this code. Claiming that *Povacz II* mandates installation of a smart meter is contrary to law.

8) 52 Pa. Code § 57.259(b) and (c) require utilities to disclose both advantages and disadvantages of advanced metering prior to participation. Complainant received no such disclosure of disadvantages. The brochure Met-Ed appended as an answer to Complainant's interrogatories is wholly inadequate by the standards of evidence and science Respondent and this Court require. By omission, Met-Ed violated this code.

¹⁶ FirstEnergy's 2018 Annual Progress Report Smart Meter Technology Procurement and Installation Plan (For the Twelve-Months Ended June 30, 2018), states on page 2, "...there have been approximately 5400 disputed installations since project inception." <https://www.puc.pa.gov/pcdocs/1579284.pdf>.

- 9) 52 Pa. Code § 57.28(a)(1) imposes a duty to warn customers of danger. Met-Ed failed to warn Complainant of potential health or safety risks. All technologies come with risks. The risk is never zero. By omission, Met-Ed violated this code.
- 10) 66 Pa. C.S. § 102 defines “service” broadly, but does not authorize unilateral alteration of service in a manner not approved by statute. The forced installation of a smart meter as part of providing electric service to Complainant was not authorized by statute as indicated above. Met-Ed therefore, violated this code.
- 11) As per *Povacz II*, p. 21. “Adding words or phrases to a statute in a way that changes its scope and operation is prohibited. 1 Pa.C.S. § 1923(c); *Pa. Sch. Bds. Ass’n, Inc. v. Pub. Sch. Emps. Ret. Bd.*, 863 A.2d 432, 439 (Pa. 2004).” Allegations that § 2807(f)(2)(i) was only for “early adopters” of smart meter technology has no legal standing for such language is absent from the statute and cannot be added. Consequently, § 2807(f)(2)(i) affirms that smart meters are optional, “Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.”
- 12) The Pennsylvania Supreme Court’s decision in *Povacz II* requires the installation of smart meters based on a particular factual record before the Povacz Court but does not preclude review based upon a substantially different record. The *Povacz II* decision did not refer to or base its decision on the legislative history and/or the Yewcic testimony

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Complainant's **REPLY BRIEF OF LAUREN ZONCA TO BRIEF OF MET-ED IN THE AMENDED FORMAL COMPLAINT OF LAUREN ZONCA** have been served upon the following persons in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

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