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September 13, 2010

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Via UPS Overnight Mail

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

RECEIVED

SEP 13 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Gary Cronin v. Metropolitan Edison Company
Docket No. F-2010-2194075

Dear Secretary Chiavetta:

Enclosed please find an original and three (3) copies of the Notice to Plead and the Preliminary Objections to the Complaint of Gary Cronin on behalf of Metropolitan Edison Company in the above-referenced matter. These documents have also been served on the parties of record as shown in the Certificate of Service.

If you have any questions, please contact me.

Very truly yours,

RYAN, RUSSELL, OGDEN & SELTZER P.C.



Bridgid M. Good

Enclosures

BMG:lds

c: As per Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SEP 13 2010

GARY CRONIN

v.

METROPOLITAN EDISON COMPANY

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No. C-2010-2194075

PRELIMINARY OBJECTIONS TO THE COMPLAINT OF GARY CRONIN

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Metropolitan Edison Company ("Met-Ed" or the "Company") by and through its counsel Bridgid M. Good, Alan Michael Seltzer, John F. Povilaitis, Jeffrey A. Franklin, and Ryan, Russell, Ogden & Seltzer PC, pursuant to Section 5.101 of this Commission's regulations, 52 Pa. Code § 5.101, requests that the Commission dismiss the Complaint of Gary Cronin, and in support of its Preliminary Objections ("Motion") states as follows:

I. Introduction

1. This Motion requests the dismissal of the Complaint of Gary Cronin, on behalf of Wasabi Japanese Steakhouse, (collectively, "Wasabi" or the "Complainant") because the Pennsylvania Public Utility Commission ("Commission") lacks *jurisdiction to decide disputes between private parties, including an issue of monetary damages*. The foregoing is the bulk of the relief the Complainant is requesting in this proceeding.

2. In the event the Commission is loathe to grant the relief requested in paragraph 1 of this Motion, Met-Ed requests, in the alternative, that, at a minimum, (i) the Complainant be precluded from introducing any evidence at the hearing regarding the

private dispute between it and the owner of the service location, i.e, not related to Met-Ed's provision of electric service.

I. Factual Background

3. Gary Cronin is the manager of Wasabi Japanese Steakhouse (“Complainant”), a commercial customer receiving electric service from Met-Ed at 1070 Carlisle Street, Hanover, Pennsylvania (“Service Location”).

4. Upon request by the Complainant, Met-Ed made a field visit to the Service Location on or about February 8, 2010 to assess the possibility of foreign load on Wasabi's electric meter (“Meter”). Answer and New Matter, ¶25.

5. Upon investigation, Met-Ed found that the Meter served Wasabi and a banquet room, breakfast area, office and hotel room of the Rodeway Inn. Thus, Met-Ed did find electric usage not being solely consumed by Wasabi, i.e. foreign load. Answer and New Matter, ¶26.

6. Due the findings of the investigation described in paragraph 26 above, Met-Ed initially placed the meter solely in the name of the owner of the Service Location. However, upon further consideration, since Wasabi is not a residential customer and the Service Location is a not a “Residential Building” as defined by 66 Pa. C.S. §1521. Met-Ed placed the name of the Meter back into the name of Wasabi as of February 27, 2010. Answer and New Matter, ¶27.

7. On or about August 7, 2010, the Complainant filed a formal complaint with the Commission at Docket No. C-2010-2194075 alleging that Met-Ed should place the name of the meter in the name of the owner of the Service Location (“Owner”) until further inspections demonstrate no shared metering and the Commission

should order the Owner to (i) move his family from the attached hotel; (ii) reimburse the Complainant for the past two years of service; court costs, attorney fees; (iii) remediate the shared metering situation at the Service Location; and (iv) assess fines and damages against the Owner ("Formal Complaint" or "Complaint"). Formal Complaint, ¶¶ 4 and 5.

8. In an Answer and New Matter being served contemporaneously with this Motion, Met-Ed has denied the material allegations in the Formal Complaint.

III. The Commission Lacks Jurisdiction

9. The Service Location in question is a restaurant attached to a Rodeway Inn. There are three (3) meters at the Service Location all served by Met-Ed under its commercial tariff rates. One of these meters serves Wasabi.

10. It is well settled that the Commission has only the powers, and can only consider such matters, as are expressly, or by necessary implication, given it by the legislature. Behrend v. Bell Telephone Co., 363 A.2d 1152 (Pa. Super 1976); Brockway Glass Company, Inc. v. West Penn Power Co., 54 Pa. P.U.C. 509 (1980); Bones v. Bates Taxi, Inc. 51 Pa. P.U.C. 346 (1977). The Public Utility Code, 66 Pa. C.S. § 101, et seq. (the "Code"), gives the Commission supervisory and regulatory power over the rates, service and facilities of public utilities. Brockway Glass Company, Inc. at 514.

11. The Commission does not have any authority over private parties, not acting as a public utility, to comply with any of the provisions of the Public Utility Code. *Shank v. PPL Electric Utilities Corporation*, 2009 Pa. PUC LEXIS 202, May 12, 2009.

12. Nor does the Code give the Commission jurisdiction over claims for damages. Behrend v. Bell Telephone Co., 363 A.2d 1152 (Pa. Super 1976);

Brockway Glass Company, Inc. v. West Penn Power Co., 54 Pa. P.U.C. 509 (1980); Bones v. Bates Taxi, Inc., 51 Pa. P.U.C. 346 (1977). The Courts of Common Pleas retain original jurisdiction over suits for damages. Behrend v. Bell Telephone Co., 363 A.2d at 1158.

13. Furthermore, §1529.1 of the Public Utility Code provides for the following in instances of shared metering:

..if a mobile home park or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment of the utility services rendered thereunto.

66 Pa. C.S. §1529.1.

14. A Residential building is defined by the Public Utility Code as "[a] building containing one or more *dwelling units* occupied by one or more tenants. The term does not include nursing homes, *hotels and motels* or any dwelling of which the landlord ratepayer is the only resident." 66 Pa. C.S. §1521.

15. Foreign load describes a situation where a ratepayer's meter registers usage for utility service provided to another person or other persons, or for use in a common area shared by others, e.g., hallway lighting, furnace fan, laundry room appliances. *Policy Statement Re: Resolution of Issues Common to Complainants Involving 66 Pa. C.S. §1529.1*, 1998 Pa. PUC LEXIS 129, September 23, 1998. If a foreign load situation occurred, the meters would no longer be individually metered as provided for in Section 1529.1 above. 66 Pa. C.S. §1529.1.

16. Section 1529.1 only applies to electric service provided to *residential* buildings where there are *one or more dwelling units*. 66 Pa. C.S. §1529.1.

Indeed, this provision of the Public Utility Code has been found not to apply to commercial properties, such as the Service Location in question, where no residential buildings exist. *Shank v. PPL Electric Utilities Corporation*, 2009 Pa. PUC LEXIS 202, May 12, 2009.

17. Furthermore, the Code specifically excludes hotels and motels from the definition of Residential Buildings. 66 Pa. C.S. §1521. The Service Location contains the Complainant, a restaurant, attached to a Rodeway Inn – a motel or a hotel. This portion of the Public Utility Code, therefore, does not apply to any foreign load in commercial property situations and considers it a dispute between private parties.

18. The Complainant in this case is seeking a number of different bases for relief, including damages *from the Owner of the Service Location*. The majority of the claims for relief are solely against the Owner of the Service Location and not against Met-Ed at all. Formal Complaint, ¶5. Based on the above, these portions of the prayer for relief and the accompanying complaint allegations should be dismissed, with prejudice, since the Commission clearly has no jurisdiction to adjudicate such matters. Indeed, the Owner of the Service Location is not even a party to this Complaint. The proper forum for the Complainant's dispute with another private party is the Court of Common Pleas.

19. Furthermore, the Complainant requests that the Commission order Met-Ed to put the meter at the Service Location in the name of the Owner. Formal Complaint, ¶5. However, as described above, the portions of the Code applying to foreign metering situations only apply to residential properties, not commercial like the Service Location in question. Thus, it is a dispute between private parties and Met-Ed

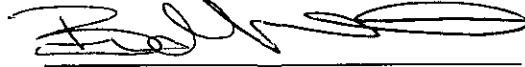
should not be required to place the meter at the Service Location in the name of the Owner of the Service Location.

IV. Conclusion

WHEREFORE, Metropolitan Edison Company requests that the Commission (i) dismiss the Formal Complaint of Gary Cronin with prejudice because the Commission has no jurisdiction to decide disputes between private parties, including an issue of monetary damages or, in the alternative, (ii) issue an order advising that the Complainant cannot introduce any evidence at the hearing regarding the private dispute between it and the Owner of the Service location, i.e, not related to Met-Ed's provision of electric service.

Dated: September 13, 2010

Respectfully submitted,



Bridgid M. Good, Esquire
John F. Povilaitis, Esquire
Jeffrey A. Franklin, Esquire
Bridgid M. Good, Esquire
RYAN, RUSSELL, OGDEN & SELTZER PC
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Attorneys for
Metropolitan Edison Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GARY CRONIN

v.

METROPOLITAN EDISON COMPANY

Docket No. C-2010-2194075

TO: Gary Cronin
1070 Carlisle Street
Hanover, Pennsylvania 17331

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.101 (b), you are hereby notified that, if you do not file a written response to the enclosed Motion within ten (10) days from service of this notice, the facts set forth by Metropolitan Edison Company in the Motion may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to the enclosed Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with copies served on all other parties to this proceeding. Failure to respond to this Motion could result in the dismissal of your case.

Dated: September 13, 2010



Jeffrey A. Franklin

Alan Michael Seltzer

John F. Povilaitis

Bridgid M. Good

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Counsel for Metropolitan Edison Company

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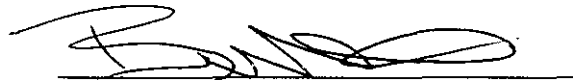
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Notice to Plead and Preliminary Objections to the Complaint of Gary Cronin of Metropolitan Edison Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, addressed as follows:

Gary Cronin
1070 Carlisle Street
Hanover, Pennsylvania 17331

Dated: September 13, 2010



Jeffrey A. Franklin
Alan Michael Seltzer
John F. Povilaitis
Bridgid M. Good
RYAN, RUSSELL, OGDEN & SELTZER P.C.
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Attorneys for
Metropolitan Edison Company

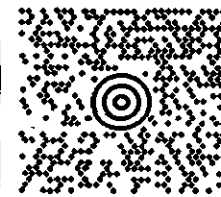
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0.0 LBS LTR

1 OF 1

SHIP TO:

ROSEMARY CHIAVETTA, SECRETARY
PA PUBLIC UTILITY COMMISSION
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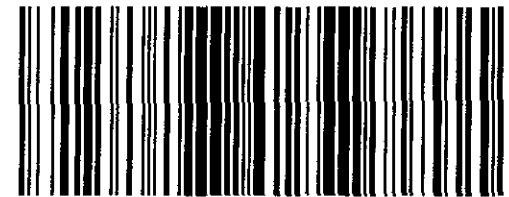
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Reference#1: BMG: 1004.2610

Reference#2: Preliminary Objections

US 12.8.05.

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