

**Bridgid M. Good**  
610 372 4761  
bridgid.good@bipc.com

1150 Berkshire Blvd., Suite 210  
Wyomissing, PA 19610-1208  
T 610 372 4761  
F 610 372 4177  
www.buchananingersoll.com

September 1, 2011

VIA UPS

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

**RECEIVED**

SEP 01 2011

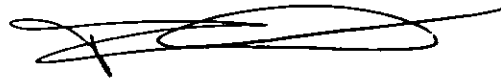
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Wilbert Thomas v. Metropolitan Edison Company  
Docket No. C-2010-2163584

Dear Secretary Chiavetta:

Enclosed please find the original and nine (9) copies of the Reply of Metropolitan Edison Company to the Exceptions of Wilbert Thomas in the above-captioned proceeding. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,



Bridgid M. Good

BMG/ljs  
0078977-000029  
Enclosure

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

WILBERT THOMAS

v.

METROPOLITAN EDISON COMPANY

:  
:  
:  
:  
:  
:

Docket No. C-2010-2163584

---

REPLY OF METROPOLITAN EDISON COMPANY  
TO THE EXCEPTIONS OF WILBERT THOMAS

---

**RECEIVED**

SEP 01 2011

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dated: September 1, 2011

Bridgid M. Good  
BUCHANAN INGERSOLL & ROONEY PC  
1105 Berkshire Boulevard, Suite 210  
Wyomissing, Pennsylvania 19610  
(610) 372-4761

Attorneys for  
Metropolitan Edison Company

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. FACTUAL BACKGROUND ..... 2

III. REPLY EXCEPTIONS ..... 4

    A. The ALJ Properly Found that the Complainant Had the Burden of Proof ..... 4

    B. The Complainant Failed to Meet His Burden of Proof That Met-Ed Provided  
    Unreasonable, Unsafe or Inadequate Service ..... 5

    C. The ALJ's Conduct Throughout this Proceeding was Appropriate ..... 7

IV. CONCLUSION ..... 7

## I. INTRODUCTION

In accordance with this Pennsylvania Public Utility Commission's ("Commission") regulations at 52 Pa. Code §5.535, Metropolitan Edison Company, ("Met-Ed" or the "Company") is filing the following Reply to the Exceptions of Wilbert Thomas dated August 10, 2011 ("Exceptions") in response to the Initial Decision of Administrative Law Judge ("ALJ") David A. Salapa dated July 12, 2011 ("Initial Decision").

In the Initial Decision, the ALJ found that Wilbert Thomas ("Mr. Thomas" or the "Complainant") failed to meet his burden of proof that Met-Ed provided unreasonable or inadequate electric service to the Complainant or violated any provision of the Public Utility Code ("Code") or the Commission's regulations. As discussed more fully below, the Initial Decision properly addressed all of the issues pertinent to this case.

This proceeding involves Mr. Thomas' claim that Met-Ed's facilities provided excess and/or fluctuating voltage to his residence located at 270 County Ridge Drive, Red Lion, Pennsylvania ("Service Location") causing damage to certain electrical receptacles and appliances. At the hearing, Mr. Thomas provided general testimony related to voltage fluctuations, i.e. blinking lights, at the Service Location and his belief that the Company is providing excess voltage. He offered into evidence at the hearing four (4) exhibits - three of which were receipts for damaged appliances and the fourth of which was his hand-written note showing that a Met-Ed crew visited the Service Location to investigate his claims of momentary outages.

In contrast, the Company demonstrated with clear and convincing evidence at the hearing that it (i) appropriately responded and investigated Mr. Thomas' claims of momentary outages; (ii) measured the voltage at the Service Location on two separate

occasions, which both tests showed results indicating that the voltage level was in accordance with the Commission's regulations; (iii) investigated and remediated an issue with a manufacturing customer taking service on the same electric circuit serving the Service Location to minimize any further momentary outages; (iv) remediated the loose connections at the meter base of the Complainant's equipment - even though the Company was not under any obligation to do so; and (v) explained other possible causes of the momentary outages.

While the Company is responding to the Exceptions, it should be noted that they fail to specifically conform to the Commission's regulations at 52 Pa. Code § 5.533. The Exceptions neither explain any findings of fact or conclusions of law to which the Complainant is excepting nor cite relevant portions of the record. Indeed the Exceptions are very difficult to understand. In order to provide a meaningful response to the Exceptions, in certain circumstances, Met-Ed made reasonable assumptions about Mr. Thomas' allegations of error in the Initial Decision.

## **II. FACTUAL BACKGROUND**

Since November 2006, Mr. Thomas has resided at the Service Location where he receives residential retail electric service from the Company. (N.T. 44-45). The Complainant claims that since moving into the Service Location he occasionally noticed momentary outages and/or voltage fluctuations.<sup>1</sup> (N.T. 46-47). Several of the Complainant's electrical receptacles, an alarm system, and several other appliances were damaged or malfunctioned since 2006. (N.T. 51, 61-64).

---

<sup>1</sup> Throughout this proceeding, the terms momentary outages and voltage fluctuations were used interchangeably.

The Complainant contacted Met-Ed in August 2008 when he experienced momentary outages at the Service Location. (N.T. 97). The Company promptly dispatched a crew to the Service Location to investigate the Complainant's claims of momentary interruptions and it found that (i) the Complainant's connections at the meter base were loose; (ii) the Company's facilities appeared to be in good condition and working properly; and (iii) the voltage levels at the Service Location were within the levels required by the Commission's regulations. (N.T. 97-101). During the August 2008 visit, the Company tightened the connection at the Complainant's meter base - even though it was not obligated to do so because these connections are considered the customer's equipment and responsibility. (N.T. 97-98, 101-102, 104; Respondent Exhibits 2 and 3). The Company reported the results of its investigation to the Complainant. (N.T. 101-102).

In March 2010, the Company again sent personnel to the Service Location to inspect its facilities and found them to be working properly. (N.T. 102 - 104; Respondent Exhibit 4). The Company also took a voltage reading which indicated that the voltage level at the Service Location was within the Commission's guidelines. (N.T. 102-103; Respondent Exhibit 4). *52 Pa. Code §57.14*. The Company promptly communicated the results of this investigation to the Complainant. (N.T. 104-105).

The electric circuit serving the Complainant is the Company's 557 circuit, which originates at the Windsor Substation ("Circuit"). (N.T. 95). The Circuit serves 749 customers, including one large industrial, manufacturing customer ("Industrial Customer"). (N.T. 95, 105-108). The Company discovered in 2007 that the manufacturing process of the Industrial Customer, a large welding company, was causing

momentary interruptions on the Circuit. (N.T. 105-108). The Company worked with the Industrial Customer to address this issue<sup>2</sup>. The Industrial Customer installed a Static Var<sup>3</sup> Compensator and changed its welding process to comply with the Institute of Electrical and Electronic Engineers ("IEEE") flicker index. (N.T. 105-108). Since the Complainant is served by the same Circuit as the Industrial Customer, he likely experienced momentary interruptions related to this customer's operations. (N.T. 108-109).

In 2010, the Company received eight complaints related to momentary interruptions. (N.T. 111). In 2011, by the time of the hearing, the Company had received no complaints related to momentary interruptions. (N.T. 111).

### **III. REPLY EXCEPTIONS**

#### **A. The ALJ Properly Found that the Complainant Had the Burden of Proof**

As pointed out in the Initial Decision, as the party seeking affirmative relief from the Commission, Mr. Thomas has the burden of proving the allegations in his complaint by producing evidence that establishes the material facts by a preponderance of the evidence. (Initial Decision at pp. 9-10). *66 Pa. C.S. § 332(a)*; *Patterson v. Bell Telephone Co. of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Suburban Water Co.*, 50 Pa. PUC 300 (1976). "Preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-Ling Hosiery v. Marguiles*, 70 A.2d 854 (Pa. 1950).

---

<sup>2</sup> This issue was the subject of a Commission proceeding at C-20078326.

<sup>3</sup> In the transcript, this piece of equipment is listed as a "Static Bar Compensator". It should be a Static Var Compensator

Public Utility Code Section 332(a) provides, in pertinent part, "...the proponent of a rule or order has the burden of proof." *66 Pa. C.S. § 332(a)*. Here, as the ALJ found, the Complainant is requesting, through his filed formal complaint, that the Commission issue an order granting him relief against Met-Ed. Thus, he has the burden of proof and must show by a preponderance of the evidence that Met-Ed has violated the Public Utility Code or the Commission's regulations. He failed to do so, as will be discussed more fully below.

**B. The Complainant Failed to Meet His Burden of Proof That Met-Ed Provided Unreasonable, Unsafe or Inadequate Service**

The Complainant first argues that the evidence he presented - i.e., a list of damaged/malfunctioning equipment - demonstrated that Met-Ed damaged these items at the Service Location. Therefore, he claims that the Company has infringed upon his "...right to possess, use and enjoy a thing" and the Initial Decision is contrary to this "right".

It is not necessary for the ALJ to include or comment upon all of the evidence introduced at the hearing in support of his findings. Rather, it is necessary for the Initial Decision to be supported by substantial and credible evidence. *Se-Ling* at 10-11, *citing*, *Murphy v. Pa Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961). Here, the ALJ properly found that the Complainant produced insufficient evidence, consisting only of personal opinions and assertions, to meet his burden of proof while there was an abundance of credible evidence produced by Met-Ed.

Indeed, the Complainant failed to provide much evidence other than (i) the list of damaged appliances/equipment and (ii) a general assertion about experiencing

momentary interruptions and excess electrical energy at the Service Location. Mr. Thomas provided no evidence about the details of any momentary outages he experienced, such as dates, times, weather conditions, etc. As the Initial Decision properly points out, the Complainant did not provide any evidence that he was an electrician or electrical engineer, or had any training on electricity or electrical wiring. (Initial Decision, 15). Nor did the Complainant provide any other witnesses who may have such specialized training.

On the other hand, Met-Ed provided extensive and ample evidence that it provided safe, reasonable and adequate electric service to the Service Location. James A. Sarver, a Met-Ed Senior Engineer with a degree in electrical engineering and a Commonwealth of Pennsylvania professional engineering license with over 38 years of experience with the Company ("Mr. Sarver"):

- described the investigations the Company completed to determine if any issues existed at the Service Location, including a voltage level test on two (2) separate occasions showing that the voltage levels were within the Commission's guidelines of +/-5% (N.T. 95-105; Respondent Exhibits 2-4); 52 Pa. Code §57.14;
- testified that the Industrial Customer on the Circuit most likely caused momentary interruptions due to its manufacturing process (N.T. 105-109);
- described the various steps the Industrial Customer has taken to reduce the number of interruptions it causes to the IEEE standard - which is the industry standard to be followed for momentary interruptions (N.T. 105-109); and
- testified that the momentary interruptions experienced by the Complainant could also have been caused by appliances/equipment at the Service Location or by the operation of one of the Company's protective devices that are used to prevent sustained outages. (N.T. 109-111).

Based on this extensive and convincing evidence, the Initial Decision properly found that Met-Ed provided reasonable and adequate electric service to the Complainant

in accordance with the Commission's regulations and the Public Utility Code, and that Mr. Thomas failed to satisfy his burden to the contrary. (Initial Decision at pp. 12-16).

**C. The ALJ's Conduct Throughout this Proceeding was Appropriate**

The Complainant next claims that the ALJ was "intolerant" towards him and this affected the hearing and the Initial Decision.<sup>4</sup> However, the Complainant does not cite any specific instances of the ALJ's alleged "intolerance".

An Administrative Law Judge is required to "...conduct a fair and impartial hearing and maintain order." *52 Pa. Code §5.485(a)*. Moreover, the presiding officer has the authority to "...exclude irrelevant, immaterial or unduly repetitive evidence, to prevent excessive examination of witnesses...and to otherwise regulate the course of the proceeding." *52 Pa. Code §5.483*. At no time during this proceeding has the ALJ failed to comply with his duties as described above and Met-Ed believes the ALJ reasonably and appropriately handled the Complainant, who at times acted in a belligerent manner.

**IV. CONCLUSION**

For all of the foregoing reasons, Met-Ed requests that the Exceptions of Wilbert Thomas be denied, and the Initial Decision of Administrative Law Judge David A. Salapa be approved in its entirety.

WHEREFORE, Metropolitan Edison Company respectfully requests that the Exceptions of the Complainant be denied and the Initial Decision be approved in its entirety and the Commission grant such other relief that is just and appropriate under the circumstances.

---

<sup>4</sup>Exceptions, p. 2.

Respectfully submitted,

Dated: September 1, 2011



---

Bridgid M. Good  
BUCHANAN INGERSOLL & ROONEY PC  
1105 Berkshire Boulevard, Suite 210  
Wyomissing, Pennsylvania 19610  
(610) 372-4761

Attorneys for  
Metropolitan Edison Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WILBERT THOMAS	:	
	:	
v.	:	Docket No. C-2010-2163584
	:	
METROPOLITAN EDISON COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Reply of Metropolitan Edison Company to the Exceptions of Wilbert Thomas in the above referenced matter 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:

Wilbert Thomas  
P.O. Box 524  
Red Lion, PA 17356

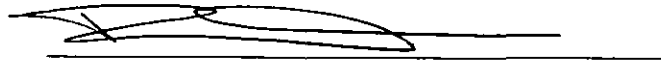
Office of Special Assistants  
3rd Floor, Keystone Building  
400 North Street  
Harrisburg, PA 17105

**RECEIVED**

SEP 01 2011

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dated: September 1, 2011



Bridgid M. Good  
BUCHANAN INGERSOLL & ROONEY PC  
1150 Berkshire Boulevard, Suite 210  
Wyomissing, PA 19610-1208  
Telephone: (610) 372-4761

Attorneys for  
Metropolitan Edison Company

**UPS CampusShip: View/Print Label**

1. **Print the label(s):** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. **Fold the printed label at the solid line below.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.

**3. GETTING YOUR SHIPMENT TO UPS**

**Customers without a Daily Pickup**

Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.


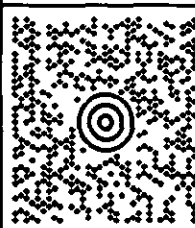


Hand the package to any UPS driver in your area.

Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

**Customers with a Daily Pickup**

Your driver will pickup your shipment(s) as usual.

FOLD HERE

<p>STEWART, LAURA D. (610) 372-4761 4761 BUCHANAN INGERSOLL &amp; ROONEY PC ONE SOUTH MARKET SQUARE HARRISBURG PA 17101</p> <p><b>SHIP TO:</b> ROSEMARY CHIAVETTA, SECRETARY PA PUBLIC UTILITY COMMISSION SECOND FLOOR 400 NORTH STREET COMMONWEALTH KEYSTONE BUILDING HARRISBURG PA 17120-0093</p>	<p>0.0 LBS LTR 1 OF 1</p> <p><b>PA 171 9-20</b></p>  	<p><b>UPS NEXT DAY AIR</b></p> <p>TRACKING #: 1Z VE5 478 01 9888 4193 <b>1</b></p>		<p>BILLING: P/P</p> <p>Timekeeper Name: B. Good C/M #: 0078977-000029</p>  <p>CS 13.6.07. WXP1E70 18.0A 07/2011</p>
---	---	--	--	--