

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Burgio for Aradiant

v.

Docket No. C-2014-2401287

Metropolitan Edison Company

**MOTION OF ARADIANT CORPORATION  
TO DISMISS OBJECTIONS AND  
TO COMPEL ANSWERS TO INTERROGATORIES  
DIRECTED TO METROPOLITAN EDISON COMPANY**

Pursuant to 52 Pa. Code § 5.432(g), Complainant Aradiant Corporation (“Complainant” or “Aradiant”) hereby requests that the Commission dismiss the objections (the “Objections”) filed by Metropolitan Edison Company (“Met-Ed” or “Respondent”) and compel full and complete answers to Aradiant’s Interrogatories Set I (“Set I Interrogatories”), which were served on February 26, 2014. A copy of Met-Ed’s Objections, which set forth the relevant Interrogatories, is attached as Exhibit A.

**I. BACKGROUND**

On or about January 17, 2014, Joseph Burgio, in his capacity as President of Aradiant filed a Formal Complaint on behalf of Aradiant and against Met-Ed. The Complaint alleges, among other things, that Met-Ed over-billed Aradiant for electric service and seeks a refund of claimed over-payments going back to 2011.

In the Answer and New Matter filed on or about February 6, 2014, Met-Ed denies the substantive allegations in the Complaint and claims that there are no incorrect charges on Aradiant’s account and that Respondent is permitted to estimate usage for billing purposes in situations where the utility is unable to obtain an actual meter reading.

On February 11, 2014, Chief Administrative Law Judge Charles Rainey issued an Interim Order setting the matter for mediation and asking the parties to report to Mediator Cynthia Lehman on their progress toward a settlement. Following the issuance of the Interim Order the parties have communicated and agreed that mediation and settlement are preferable to litigation and have agreed to cooperate regarding the exchange of information and discovery.

On February 26, 2014, Aradiant served upon Met-Ed its Set I Interrogatories, which contained twelve (12) questions and/or document requests. On March 11, 2014, Met-Ed filed its Objections to questions 1, 4, 5, 6, 7, 8, and 10 of Aradiant's Set I Interrogatories. In addition to specific objections to the referenced interrogatories, Met-Ed included in its Objections what it labeled "general objections" which appear to cover the instructions, and presumably, the entirety of Aradiant's Set I Interrogatories. On March 19, 2014, Met-Ed served partial responses to Aradiant's Set I Interrogatories.<sup>1</sup>

Aradiant respectfully submits that Met-Ed's Objections are baseless and improper and requests that the same be dismissed. Aradiant respectfully requests that the Commission issue an Order compelling Met-Ed to answer every one on the questions in the Set I Interrogatories and produce the documents requested in discovery. In support of its Motion to Compel, Aradiant sets forth the following.

## **II. MET-ED'S GENERAL OBJECTIONS ARE IMPROPER AND SHOULD BE DISMISSED.**

In its Objections, Met-Ed sets forth a number of "general objections" which are then repeated and incorporated into other objections. First, with regard to the instructions accompanying the

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<sup>1</sup> It should be noted that, although Met-Ed has provided partial responses to all questions in Aradiant's Set I Interrogatories, some of the answers do not contain information relating to the specific time periods requested by Aradiant.

discovery requests filed by Aradiant, Met-Ed objects in general terms because the instructions somehow “purport to impose discovery obligations on Met-Ed beyond those imposed by the Rules and other applicable provisions of law,” and “they purport to expand the scope of the individual data requests beyond their express terms.”<sup>2</sup> It is unclear from the Objections what Met-Ed means by these statements. These general objections do not include “a description of the facts and circumstances purporting to justify the objection” as required by Section 5.342(c)(3) of the Commission’s regulations.<sup>3</sup> Without factual justification for such generalized objections, it is impossible for Complainant to respond to the objection and for the Commission to determine whether the objection is valid. Vague and unspecific objections are improper and must be dismissed.<sup>4</sup>

### **III. MET-ED’S SPECIFIC OBJECTION ARE UNJUSTIFIED AND SHOULD BE DISMISSED.**

Met-Ed objects to Interrogatories 1, 4, 5, 6, 7, 8, and 10 on a number of grounds. The principal objections hinge on record retention policy that seems to prevent the Respondent from producing records that go back beyond four years, and a claim that a three-year statute of limitations for complaints should prevent Complainant from getting records that go back some four years (to 2010). These objections should be rejected and the Commission should issue an Order compelling Respondents to answer Set I Interrogatories fully and without reservation. In accordance with Section 5.321(c) of the Commission's regulations, parties may obtain discovery of any unprivileged matter which is relevant to the subject matter involved in the pending action,

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<sup>2</sup> Objections at 1-2 (Exh. A).

<sup>3</sup> 52 Pa. Code §5.342(c)(3).

<sup>4</sup> *Pa. PUC v. Pa. American Water Co.*, Docket No. R-2011-2232243, et al., 2011 Pa. PUC LEXIS 1523 (Order on Motion to Compel of ALJ Angela Jones, issued July 21, 2011).

whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party.<sup>5</sup> The Commission applies a liberal standard with respect to relevancy.<sup>6</sup>

**A. Objections relating to Met-Ed's four-year record retention policy should not prevent the Company from providing available records in response to interrogatories.**

Met-Ed objects to each information request in Set I Interrogatories that is outside the four-year period that the Company is required to keep customer records.<sup>7</sup> Interrogatories 1, 4, 5, 8 and 10 fall into this category of request.<sup>8</sup> Although the specific provision that requires Met-Ed to keep records for four years is not cited in the Objections, Met-Ed presumably refers to Section 56.202 of the Commission's regulations, which states, in relevant part:

A public utility shall preserve *for a minimum of 4 years* written or recorded disputes and complaints, keep the records accessible within this Commonwealth at an office located in the territory served by it and make the records available for examination by the Commission or its staff. Information to be maintained includes the following:

- (1) The payment performance of each of its customers.
- (2) The number of payment agreements made by the public utility company and a synopsis of the terms, conditions and standards upon which agreements were made.
- (3) The number of service terminations and reconnections.
- (4) Communications to or from individual customers regarding interruptions, discontinuances, terminations and reconnections of service, including the name and address of the customer, the date and character of the dispute or complaint and the adjustment or disposal made of the matter.

52 Pa. Code §56.202 (emphasis added).

It is important to note that the Commission's regulations do not prohibit Met-Ed from keeping records for a period longer than four years. The regulations specifically provide that certain types of records are to be retained for a *minimum* of four years. In other words, records

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<sup>5</sup> 52 Pa. Code §5.321(c)

<sup>6</sup> See, e.g., *Pa. PUC v. Equitable Gas Company*, 1986 Pa. PUC LEXIS 110, 61 Pa. P.U.C. 468, 477 (1986).

<sup>7</sup> See, *Objections at 2*.

<sup>8</sup> See, Exhibit A.

must be retained for at least four years and, Aradiant respectfully submits, that records regarding this complaint and similar complaints should be maintained for a significantly longer period of time. This proceeding involves claims that Aradiant has been improperly billed and overcharged over a period of several years going back to, at least, 2011. In addition, Aradiant was told by Met-Ed representatives that some of the estimated bills that the Complainant is contesting were based on usage during the prior year. If Complainant was improperly billed and overcharged in 2011 based on its power usage in 2010, Complainant should have access to information going back to 2010.

Based on the foregoing, Met-Ed's objections regarding the four-year record retention requirement should not be a bar to full answer to Set I Interrogatories. The four-year requirement is a minimum requirement and records going back to 2010 are exceedingly relevant given the facts and circumstances of this case.

**B. The three-year statute of limitations cited by Met-Ed is not applicable to Aradiant's complaint, and therefore, it is not a bar to discovery of relevant information and documents.**

Met-Ed argues in its Objections that there is a three-year statute of limitations that applies to formal complaints filed with the Commission, and that this limitation is justification for denying interrogatories and document requests that seek information going back to 2010. This claim is inapposite for several reasons. First, the three-year statute of limitations referenced by Met-Ed is not applicable to this matter. Also, even if there was a three-year statute of limitations that applied to this matter, the statute of limitations would operate to bar claims filed too late after the alleged wrongdoing by the utility and would not serve as a limitation on discovery.

The four-year statute of limitations under Section 1312 of the Public Utility Code<sup>9</sup> is the appropriate statute of limitation governing this Formal Complaint. Section 1312(a) states, in relevant part:

If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to *refund* the amount of any excess paid by any patron, in consequence of such unlawful collection, within *four years* prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment.

66 Pa. C.S. §1312(a) (emphasis added).

Section 1312 is the correct statutory provision to apply because Aradiant is seeking a refund of amounts it believes it is due as a result of improper billing by Met-Ed.<sup>10</sup> It is well established that the four-year statute of limitations provided in Section 1312, not the three-year limitations period under Section 3314 for penalties and forfeitures, applies in a utility customer refund proceeding.<sup>11</sup> In fact, one the very cases that Met-Ed cites makes it clear that, although there is a general three-year statute of limitations for certain complaints, the three-year limitation is extended to four years in the case of complaints seeking a refund.<sup>12</sup>

Based on the applicable law and the decisions interpreting the Public Utility Code, the complaint that is the subject of this proceeding is governed by a four-year statute of limitations, and Met-Ed's claims that a three-year statute of limitations should prevent Aradiant from having full responses to its discovery requests are unsupported and should be rejected.

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<sup>9</sup> 66 Pa. C.S. §1312(a).

<sup>10</sup> *See, Complaint, generally.*

<sup>11</sup> *LP Water & Sewer Co. v. Pennsylvania PUC*, 722 A.2d 733, 1998 Pa. Commw. LEXIS 912 (Pa. Commw. Ct. 1998), *appeal denied by* 742 A.2d 678, 1999 Pa. LEXIS 2308 (Pa. 1999).

<sup>12</sup> *Suburban East Tires, Inc. v. Pennsylvania PUC*, 582 A.2d 727, 1990 Pa. Commw. LEXIS 612 (Pa. Commw. Ct. 1990) at fn. 4.

Despite the foregoing, even if there was a three-year statute of limitations for this matter, the limitation would prevent the Complainant from filing a complaint claiming that a utility engaged in an actionable offense more than three years ago. The statute of limitations does not prevent a party from exercising its right to submit interrogatories and avail itself of the Commission's discovery rules. It simply sets the deadline to file an action after the alleged wrong has occurred. A statute of limitations, regardless of length, should not be used to obstruct the discovery process.

Lastly, it is important to note that the Complainant in this case is basing its Formal Complaint on what has been an ongoing pattern of improper billing going back several years. As Mr. Burgio and representatives of Aradiant attempted to investigate their bills and charges, they spoke with customer service representatives of Met-Ed who explained that estimated billings were based on Aradiant's prior years' usage. If this is the case and the use of estimated bills has been going on for three years, records that go back four years are necessary to determine whether Met-Ed has properly billed the customer or has overbilled Aradiant as the Complaint claims. In any event, it is necessary and important for Aradiant to have records from 2010 to substantiate its claims that it has been improperly billed as far back as 2011.

#### IV. CONCLUSION

WHEREFORE, for the reasons set forth above, Aradiant respectfully requests the Presiding Officer and Pennsylvania Public Utility Commission:

1. Grant this Motion;
2. Overrule the Objections of Met-Ed; and
3. Compel Met-Ed to answer Aradiant's Set I Interrogatories Nos. 1, 4, 5, 6, 7, 8, and 10 in full at a time established by the Commission;
4. Grant any other relief deemed appropriate under the circumstances.

Respectfully submitted,

THE LANZA FIRM, LLC



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Counsel for Aradiant

March 21, 2014

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Burgio for Aradiant	:	
	:	
v.	:	Docket No. C-2014-2401287
	:	
Metropolitan Edison Company	:	

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the Motion to Compel of Aradiant upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

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Date: March 21, 2014



Edward G. Lanza, Esq.

# EXHIBIT A

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOSEPH T. BURGIO<sup>1</sup> :  
 :  
 v. : Docket No. C-2014-2401287  
 :  
 :  
 METROPOLITAN EDISON COMPANY :

**METROPOLITAN EDISON COMPANY’S OBJECTIONS TO FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS OF THE COMPLAINANT JOSEPH T. BURGIO**

Metropolitan Edison Company (“Met-Ed” or “Company”), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.342 (c) hereby submits its Objections to Interrogatories and Requests for Production of Documents of the Complainant, Joseph T. Burgio (“Complainant”), on behalf of Aradiant Corporation (“Customer”). In response thereto, Respondent responds as follows:

Met-Ed objects to each of the Discovery Requests on the following general grounds pursuant to 52 Pa. Code § 5.361. Such objections are expressly incorporated into each response set forth herein. The Company’s responses are without waiver of these General Objections or any further specific objection that is stated herein.

1. Met-Ed objects to the “Instructions” to the extent that they purport to impose discovery obligations on Met-Ed beyond those imposed by the Rules and other applicable provisions of law.

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<sup>1</sup> Counsel for Aradiant Corporation unilaterally changed the caption; the Company will use the Secretary’s caption.

2. Met-Ed objects to the “Instructions” to the extent that they purport to expand the scope of the individual data requests beyond their express terms.
3. Met-Ed objects to each Request that is outside the four-year period that the Company is required to keep customer records.
4. Met-Ed objects to each Request to the extent that it requests information outside the three-year statute of limitations for filing a formal complaint contesting a bill. See, Duquesne Light Co. v Pennsylvania Public Utility Com’n, 611 A.2d 370 (Cmwlth. 1992); Suburban East Tires, Inc. v Pennsylvania Public Utility Com’n, 583 A.2d 727 (Cmwlth. 1990).
5. Met-Ed objects to each Request to the extent that it requests information that is neither relevant to the subject matter of this litigation nor reasonably likely to lead to the discovery of other admissible evidence. 52 Pa. Code § 5.321(c).
6. Met-Ed objects to each Request to the extent that it seeks information that is equally available to Met-Ed and the Complainant where it thus would impose unnecessary costs or burdens on Met-Ed were it required to answer. 52 Pa. Code § 5.361(a)(2).
7. Met-Ed objects to each Request to the extent that the information has been previously provided. 52 Pa. Code § 5.361(c).
8. Met-Ed objects to each Request to the extent that it seeks information for “other similarly situated customers.”

## **OBJECTIONS**

### **REQUEST # 1:**

Regarding Met-Ed’s service to Aradiant (“Customer”) at 101 N. Harrison St., Palmyra, PA 17078 under Account No. 100016033118 (“Account”), please provide a detailed statement of account from January 1, 2010 to the present, including without limitation,

- a. the customer's monthly consumption;
- b. how the customer's monthly consumption was determined (actual or estimated);
- c. the rate or rates charged to the customer;
- d. the monthly amount billed to the customer;
- e. any and all payments made by the customer for Met-Ed charges;
- f. any and all adjustments made to the account by Met-Ed;
- g. any and all re-billings issued on the customer's account by Met-Ed;
- h. a running account balance reflecting charges, payments and any adjustments or re-billings made to the customer's account.

**OBJECTION:**

In addition to its General Objections, Met-Ed objects to the Request that seeks information outside the three-year statute of limitations to support the above-captioned complaint due to the fact that because of the three-year statute of limitations, said information would not be admissible at hearing and thus the Request does not lead to the discovery of admissible evidence. In addition, the Requested information requests information outside the four-year time period for which it is required to maintain customer records as overly broad and unduly burdensome. The Request for information within the three-year statute of limitations period was provided with Met-Ed's Answer and New Matter and reflected on the monthly bill. Subject to and without waiver of its General and Specific Objections, Met-Ed will re-produce the document in response to this request to the extent the information is in its possession, custody, or control.

**REQUEST #4:**

Please provide copies of any and all termination notices sent to Aradiant from January 1, 2010, including

- a. dates of the notices;
- b. reasons for the issuance of the termination notice;
- c. amounts due at the time of the notice;
- d. the resolution, if any, of the reason(s) for termination.

**OBJECTION:**

In addition to its General Objections, Met-Ed objects to the Request that seeks information outside the three-year statute of limitations to support the above-captioned complaint due to the fact that because of the three-year statute of limitations, said information would not be admissible at hearing and thus the Request does not lead to the discovery of admissible evidence. In addition, the Requested information requests information outside the four-year time period for which it is required to maintain customer records as overly broad and unduly burdensome. Met-Ed further objects to the Requested information as redundant since the termination notices were sent to the Customer and the requested information is clearly set forth on each termination notice. Subject to and without waiver of its General and Specific Objections, Met-Ed will

produce documents in response to this request to the extent they are in its possession, custody, or control and are within the period covered by the three-year statute of limitations.

**REQUEST # 5:**

Please provide records, including transcripts, logs, notes, or recordings of calls, communications, conversations or discussions between any representatives of Met-Ed and Aradiant regarding the account from January 1, 2010 to the present.

**OBJECTION:**

In addition to its General Objections, Met-Ed objects to the Request that seeks information outside the three-year statute of limitations to support the above-captioned complaint due to the fact that because of the three-year statute of limitations, said information would not be admissible at hearing and thus the Request does not lead to the discovery of admissible evidence. In addition, the Requested information requests information outside the four-year time period for which it is required to maintain customer records as overly broad and unduly burdensome. Subject to and without waiver of its General and Specific Objections, Met-Ed will produce redacted documents in response to this request to the extent they are in its possession, custody, or control and are within the period covered by the three-year statute of limitations.

**REQUEST # 6:**

Provide any and all references to Met-Ed's tariff and/or the Commission's rules, regulations or orders which are applicable to estimated meter readings or billings for Aradiant's account.

**OBJECTION:**

In addition to its General Objections, Met-Ed objects to the extent that the request seeks a legal opinion/conclusion. 52 Pa. Code § 5.321(c).

**REQUEST # 7:**

With regard to each meter that serves or has served the account, please provide information, including but not limited to,

- a. Make, model and serial number;
- b. Detailed specifications, including functions and capabilities;
- c. Year of manufacture;
- d. Date of installation;
- e. Location of the meter at customer's premises;
- f. Whether it is a "smart meter";
- g. Whether the meter is capable of being read remotely;
- h. Whether the meter is a "demand meter";

**OBJECTION:**

In addition to its General Objections, Met-Ed objects to the Request as vague and ambiguous. Met-Ed objects to the Request as overly broad and unduly burdensome.

Subject to and without waiver of its General and Specific Objections, Met-Ed will produce documents in response to this request to the extent they are in its possession, custody, or control.

**REQUEST # 8:**

Provide maintenance records for any and all meters installed at the customer's premises from January 1, 2010 to the present, including any issues or problems with the meters and any notification provided to the customer regarding the operational conditions of the meters.

**OBJECTION:**

In addition to its General Objections, Met-Ed objects to the Request that seeks information outside the three-year statute of limitations to support the above-captioned complaint due to the fact that because of the three-year statute of limitations, said information would not be admissible at hearing and thus the Request does not lead to the discovery of admissible evidence. In addition, the Requested information requests information outside the four-year time period for which it is required to maintain customer records as overly broad and unduly burdensome. Met-Ed further objects to the Request as vague and ambiguous. Met-Ed objects to the Request as overly broad and unduly burdensome. Subject to and without waiver of its General and Specific Objections, Met-Ed will produce documents in response to this request to the extent they are in its possession, custody, or control and are within the period covered by the three-year statute of limitations.

**REQUEST 10:**

Provide information regarding whether the demand factor used to calculate the customer's charges and billings has been adjusted from January 1, 2010 to the present, how it was adjusted, if at all, and when the adjustments occurred.

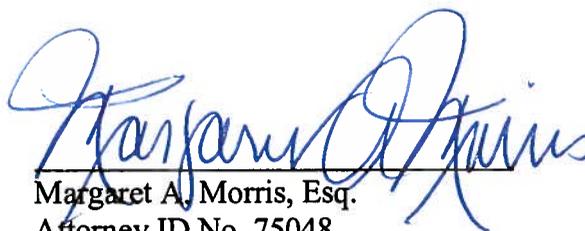
**OBJECTION:**

In addition to its General Objections, Met-Ed objects to the Request that seeks information outside the three-year statute of limitations to support the above-captioned complaint due to the fact that because of the three-year statute of limitations, said information would not be admissible at hearing and thus the Request does not lead to the discovery of admissible evidence. In addition, the Requested information requests information outside the four-year time period for which it is required to maintain customer records as overly broad and unduly burdensome. The Request for information within the time period covered by the statute of limitations was provided with Met-Ed's Answer and New Matter and reflected on the monthly bill.

Subject to and without waiver of its General and Specific Objections, Met-Ed will produce documents in response to this request to the extent they are in its possession, custody, or control and are within the period covered by the three-year statute of limitations.

Respectfully submitted,

Dated: March 11, 2014



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