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February 25, 2015

VIA E-FILING

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

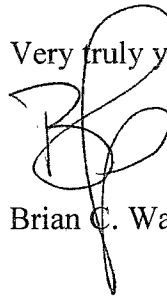
Re: Yanling Chen and Jianming Hu v. Metropolitan Edison Company
Docket No. C-2013-2397061

Dear Secretary Chiavetta:

On behalf of Metropolitan Edison Company, I have enclosed for electronic filing the Answer of Metropolitan Edison Company in Opposition to Complainants' Motion for Admission of Late-Filed Exhibits in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,



Brian C. Wauhop

BCW/tlg

Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

YANLING CHEN AND JIANMING HU	:	
	:	
v.	:	Docket No. C-2013-2397061
	:	
METROPOLITAN EDISON COMPANY	:	

**ANSWER OF METROPOLITAN EDISON COMPANY IN OPPOSITION TO
COMPLAINANTS' MOTION FOR ADMISSION OF LATE-FILED EXHIBITS**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Metropolitan Edison Company (“Met-Ed” or the “Company”), by and through its counsel, Brian C. Wauhop, Alan Michael Seltzer and Buchanan Ingersoll & Rooney PC, files, in accordance with Section 5.571 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.571(c), this Answer in Opposition (“Answer”) to the Motion of Yanling Chen and Jianming Hu (collectively, the “Complainants”) seeking to introduce certain documents into evidence after the close of the record in this proceeding (“Motion”),¹ and, in support thereof, avers as follows:

I. Introduction

1. As described in further detail below, the Commission should deny the Motion to admit late-filed evidence into the record of this already completed proceeding because: (i) the Complainants have failed to show good cause why the evidence should be admitted; and (ii) the claimed “new evidence” was available to the Complainants and could (indeed, should) have been presented at the January 14, 2015 evidentiary hearing. As a result, the Motion should be rejected.

¹ As noted further below, on February 13, 2015, the presiding administrative law judge contacted counsel for the Company and advised that he had received additional materials from the Complainants that would be considered a Motion for Admission of Late-Filed Exhibits.

II. Procedural History

2. On December 5, 2013, the Complainants filed a Formal Complaint against the Company at Docket No. C-2013-2397061 alleging that the Company cut down two trees in the rear of their premises located at 1126 Chadwick Circle, Hummelstown, Pennsylvania 17036 (“Service Location”). The Complainants requested that: (i) a Met-Ed representative meet with the local township’s development director to discuss issues related to the easement in favor of the Company that encumbers the Service Location; (ii) the easement line at the Service Location be re-measured by a certified third party; and (iii) the Company be directed to reimburse the Complainants for the market value of the trees that were removed previously by the Company from the Service Location. The Complainants attached various documents to the Formal Complaint.

3. On January 6, 2014, Met-Ed timely filed an Answer to the Formal Complaint admitting that it removed two trees at the Service Location and denying the remaining substantive allegations. On January 6, 2014, the Company also filed a Preliminary Objection to the Formal Complaint alleging that the property dispute with the Complainants at issue in the Formal Complaint was beyond the Commission’s jurisdiction to adjudicate.

4. On January 10, 2014, the Complainants filed a response opposing the Company’s Preliminary Objection and disputing the notice provided to them by the Company prior to the removal of the trees at the Service Location.

5. On March 3, 2014, Administrative Law Judge Joel H. Cheskis (“ALJ”) sustained the Company’s Preliminary Objection, in part holding that issues related to the scope and validity of the easement at issue in the Formal Complaint and the Complainants’ request for money damages are beyond the Commission’s jurisdiction. The ALJ held that the only issues to

be considered at the evidentiary hearing would be the Company's vegetation management plan at the Service Location, the notice the Complainants received prior to the trees being removed, and the Complainants' interactions with the Company throughout the vegetation removal process.

6. Prior to the hearing scheduled for December 3, 2014, the Complainants and the Company resolved all the issues in the Formal Complaint, and advised the ALJ accordingly. A Certificate of Satisfaction was filed with the Commission on December 10, 2014.

7. However, on December 17, 2014, the Complainants filed with the Commission a notification that they disagreed with the entry of the Certificate of Satisfaction.

8. A new evidentiary hearing was scheduled for January 14, 2015 at which time the Company presented one witness and sponsored seven exhibits, while the Complainants presented six exhibits along with oral testimony.

9. On January 30, 2015 the transcript of the evidentiary hearing and the hearing exhibits were filed with the Commission.

10. On February 13, 2015, the ALJ contacted counsel for the Company and advised that he had received additional materials from the Complainants that would be considered a Motion for Admission of Late-Filed Exhibits.

11. On February 17, 2015, counsel for the Company received eleven pages of materials from the Complainants dated February 12, 2015, consisting of a two-page cover letter and nine pages of additional "exhibits."

III. Legal Standards

12. In order to submit additional evidence after the record has closed but before a final decision is entered, a party must file a petition to reopen the record. 52 Pa. Code Sec. 5.571 provides in pertinent part as follows:

(a) At any time after the record is closed but before a final decision is issued, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence.

(b) A petition to reopen must set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(c) Within 10 days following the service of the petition, another party may file an answer thereto.

(d) The record may be reopened upon notification to the parties in a proceeding for the reception of further evidence if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding.

13. In general, the record in a formal complaint proceeding before the Commission closes at the conclusion of a hearing. 52 Pa. Code Sec. 5.431(a) (providing that “[t]he record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.”). Presiding officers typically consider the record closed once they receive a copy of the hearing transcript. *See, i.e., Smithy v. Metropolitan Edison Company*, Docket No. C-2014-2440467 (Initial Decision entered January 28, 2015); *Harper v. PPL Electric Utilities Corporation*, Docket No. F-2014-2422449 (Initial Decision entered January 27, 2015); *Armour v. Verizon Pennsylvania*, Docket No. C-2013-2395643 (Initial Decision entered January 27, 2015); *Williams v. PECO Energy Company*, Docket No. C-2013-2383376 (Final Order entered January 16, 2015). Additional materials will not be accepted by the presiding officer after the close of the record unless good cause is shown. 52 Pa. Code Sec. 5.431(b).

14. The record “may be reopened upon notification to the parties in a proceeding for the reception of further evidence *if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires*, the reopening of the proceeding.” 52 Pa. Code Sec. 5.571(d) (emphasis added).

15. The Commission may deny a request to reopen the record where evidence of all the facts alleged was available at the time of the hearing. *Application of Cen-Clear Child Services, Inc.*, Docket No. A-2010-2155988 (Final Order entered March 18, 2011); *accord Hess v. Pennsylvania Public Utility Commission*, 2014 WL 7242855 (Pa. Cmwlth. 2014).

IV. Argument

16. The Commission should deny the Motion for three primary reasons. To the extent the Motion has been deemed by the ALJ to be a petition under Section 5.571(a) (a view the Company does not share and does not waive in this Answer), the Complainants failed to establish good cause to reopen the record. The Complainants have also failed to show that any facts or law have changed to warrant the admission of additional evidence after the record has closed. Finally, the exhibits the Complainants seek to admit were available to them at the January 14, 2015 evidentiary hearing, and should have been presented at that time.

17. First, the Motion does not provide good cause for admitting additional evidence into the record at this late stage of the proceeding. Indeed, the cover letter explicitly explains the Complainants' reason for submitting the materials:

Some questions were raised during hearing without getting answered and the answers to those questions only came after further investigation . . . we believe it's necessary to clarify the easement issue so the company's misinterpretation won't be taken as fact.

By their own admissions, the Complainants are simply trying to rebut the Company's case and bolster positions they argued at hearing. The Motion is completely silent as to how admission of the late-filed materials would further the public interest. As a whole, the Motion fails to establish good cause sufficient to reopen the record. *See* 52 Pa. Code §§ 5.431(b), 5.571(d).

18. Second, the Complainants do not identify any changed facts or law that would warrant reopening the record. The Motion fails to identify a single changed fact or change in the

law that would justify reopening the record.

19. Third, the three “exhibits” the Complainants desire to admit into the record were available to the Complainants at the time of hearing. The documents attached to the Motion as “Ex. 1” have already been admitted into the record as Complainants’ hearing Exhibits A and B and Met-Ed Exhibits 1 and 2. The Complainants provide no justification (other than a restatement of their previous arguments) to support the inclusion of this clearly cumulative evidence into the record. The document attached to the Motion as “Ex. 2” appears to be a series of drawings or plot plans. The Complainants do not allege that these materials came into existence *after* the January 14, 2015 evidentiary hearing. Because this material was available prior to the evidentiary hearing, there is no basis for it to be admitting now at the advanced stage of this proceeding. *Hess v. Pennsylvania Public Utility Commission; Application of Cen-Clear Child Services, Inc.* The same is true for the photographs and calculations in “Ex. 3” attached to the Motion. The Complainants had every opportunity to provide photographs and calculations, if relevant, at the evidentiary hearing. The Complainants do not allege that the “Ex. 3” documents were not discoverable through the exercise of due diligence or were otherwise unavailable prior to the evidentiary hearing. It is too late at this stage of the proceeding, after the close of the record, to attempt to introduce evidence that was clearly available to the Complainants at the time of evidentiary hearing.

20. Moreover, the Complainants cite no authority for allowing additional evidence or argument into the record at this late stage of the proceeding and, in fact, allowing these materials into the record for consideration raises serious due process issues and prejudice against the Company. As a result, the Motion must be denied.

V. **Conclusion**

For the reasons stated above, Metropolitan Edison Company respectfully requests that the Commission (i) deny the Complainants' Motion for Admission of Late-Filed Exhibits with prejudice; (ii) strike the three proposed "Exhibits" from the record; and (iii) grant the Company such other relief as is just and reasonable under the circumstances.

WHEREFORE, Metropolitan Edison Company hereby requests that the Commission dismiss the Motion filed by Yangling Chen and Jianming Hu and grant the Company such other relief as is just and reasonable under the circumstances.

Respectfully submitted,



Dated: February 25, 2015

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Harrisburg, PA 17101
(717) 237-4975

Attorneys for
Metropolitan Edison Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**YANGLING CHEN AND
JIANMING HU**

v.

METROPOLITAN EDISON COMPANY:

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Docket No. C-2013-2397061

CERTIFICATE OF SERVICE

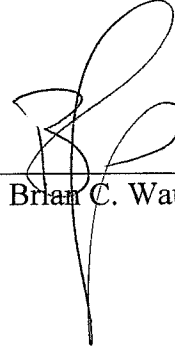
I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via First Class Mail

Administrative Law Judge Joel H. Cheskis
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Yangling Chen
Jianming Hu
1126 Chadwick Circle
Hummelstown, PA 17036

Dated this 25th day of February, 2015.



Brian C. Wauhop, Esq.