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May 11, 2015

VIA E-FILING

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

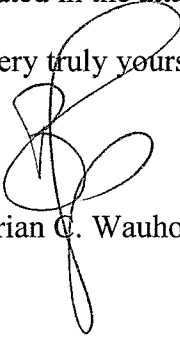
Re: Yanling Chen and Jianming Hu v. Metropolitan Edison Company
Docket No. C-2013-2397061

Dear Secretary Chiavetta:

On behalf of Metropolitan Edison Company, I have enclosed for electronic filing the Replies to Exceptions of Metropolitan Edison Company in the above-captioned proceeding.

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: Office of Special Assistants (*via email only*)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLIES TO EXCEPTIONS
ON BEHALF OF
METROPOLITAN EDISON COMPANY**

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Dated: May 11, 2015

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I. BACKGROUND AND PROCEDURAL HISTORY

On December 5, 2013 Yangling Chen and Jianming Hu (“Complainants”) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) alleging that Metropolitan Edison Company (“Met-Ed” or “Company”) cut down two trees in the back yard of their property located at 1126 Chadwick Circle, Hummelstown, Pennsylvania without prior notification. In addition, Complainants alleged that a Company representative refused to speak with them about the matter. The Complainants are not customers of Met-Ed,¹ but Met-Ed holds an easement over their property to accommodate a 230 kilovolt (“kV”) transmission line constructed near the rear of the Complainants’ property.² The Complainants demanded that a Company representative meet with the township development director to discuss the easement and that the easement boundary line be re-measured by a third party. The Complainants also sought reimbursement for the trees the Company removed.

On January 6, 2014, the Company filed an Answer and Preliminary Objection to the Formal Complaint. In the Answer, the Company admitted to removing the trees and denied that this act constituted unreasonable service. The Preliminary Objection argued that the Complainants were asking the Commission to resolve a property dispute.

On March 3, 2014, Administrative Law Judge Joel H. Cheskis (“ALJ”) issued an Order partially granting the Company’s Preliminary Objection with respect to the property issues. The Order determined that issues regarding the scope and validity of an easement, and the request for money damages, were beyond the Commission’s jurisdiction. The Order stated that all other remaining issues would be evaluated at a hearing scheduled March 27, 2014.

¹ N.T 13:13-15.

² Finding of Fact No. 4.

On March 21, 2014, the Company advised the ALJ that the parties were attempting to resolve the dispute among themselves and requested a continuance of the hearing in order to facilitate settlement. In response, the ALJ canceled the March 27, 2014 hearing and allowed the parties to discuss the matter.

On November 10, 2014, a hearing notice was issued scheduling a hearing on December 3, 2014. The parties appeared for the December 3, 2014 hearing and after discussion, reached an agreement resolving the dispute.

On December 10, 2014, the Company filed a Certificate of Satisfaction.

On December 16, 2014, the Complainants filed an Objection to the Certificate of Satisfaction and as a result, the Commission scheduled a telephonic hearing for Wednesday, January 14, 2015.

On January 14, 2015, the hearing was held as scheduled. The parties appeared and submitted exhibits and testimony.

On February 12, 2015, the Complainants submitted additional proposed exhibits to the ALJ and the Company. The ALJ admitted these materials, over the Company's objection, via an Order entered March 3, 2015.

On March 30, 2015, the ALJ issued an Initial Decision ("Initial Decision" or "I.D.") dismissing the Formal Complaint. The Initial Decision was served upon the parties on April 10, 2015.

On April 29, 2015, the Complainants filed Exceptions to the Initial Decision.

In accordance with Section 5.535 of the Commission regulations, 52 Pa. Code § 5.535, Met-Ed submits the following Replies to the Complainant's Exceptions.

II. REPLIES TO EXCEPTIONS

The Exceptions are substantively erroneous, procedurally flawed and therefore should be dismissed. In their Exceptions, the Complainants repeat the same arguments they unsuccessfully advanced at hearing without identifying any error and attempt to introduce new facts. The Complainants provide no reason to reverse the Initial Decision, and the Company urges the Commission to deny these Exceptions.

A. The ALJ properly found that the Complainants had the burden of proof and failed to satisfy that burden.

As pointed out by the Initial Decision, the Complainants seek affirmative relief from the Commission³ and, as such, they bear the burden of proof in this proceeding pursuant to Section 332(a) of the Public Utility Code (“Code”).⁴ To satisfy this burden, the Complainants must demonstrate that Met-Ed was responsible for the problems alleged in the Formal Complaint through a violation of the Code, a Commission regulation, or an order.⁵ The Complainants must prove the Code violation by a preponderance of the evidence.⁶

Once a complainant in a Commission proceeding presents evidence sufficient to initially satisfy the burden of proof of a violation on the part of the utility, the utility has the burden of rebutting the complainant’s *prima facie* case.⁷ If the evidence presented by the utility is of equal weight or greater, the complainant has not satisfied his burden of proof.⁸ The complainant

³ I.D. p. 9.

⁴ 66 Pa.C.S. § 332(a).

⁵ See 66 Pa.C.S. § 701.

⁶ *Patterson v. Bell Telephone Company of Pennsylvania*, Docket No. F-8966524 (Order entered February 8, 1990). “Preponderance of the evidence” means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990) *alloc. den.*, 602 A.2d 863 (Pa. 1992).

⁷ *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980).

⁸ *Id.*

then must provide some additional evidence to rebut the utility's evidence.⁹ While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission, in this case, the Complainants.¹⁰ In addition, the Commission must ensure that the decision is supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion.¹¹ A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient.¹²

In this proceeding, the parties presented the ALJ with a comprehensive factual record consisting of sixteen exhibits and a hearing transcribed into 83 pages of testimony. The ALJ thoroughly discussed the parties' respective positions.¹³ After reviewing the evidence submitted at hearing, the ALJ properly concluded that the Complainants failed to establish that the Company violated the Code, a Commission order, regulation, or Commission-approved Company tariff with regard to vegetation management, and that the Complainants failed to establish a *prima facie* case of unreasonable service against Met-Ed.¹⁴

Based on the Company's detailed evidence, the Initial Decision made several critical and important findings with respect to the reasonableness of the service the Company provided to the Complainant regarding the removal of the trees:

⁹ *Burleson v Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

¹⁰ *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

¹¹ *Application of Samir Ouaqerrouch*, Docket No. A-2011-2218369 (Order entered September 27, 2012); *Yellow Cab Company v. Pa. Pub. Util. Comm'n*, 524 A.2d 1069 (Pa. Cmwlth 1987).

¹² *Application of Samir Ouaqerrouch*, Docket No. A-2011-2218369 (Order entered September 27, 2012); *Norfolk and Western Railway v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

¹³ I.D. p. 10.

¹⁴ I.D. p. 16.

- Met-Ed’s Transmission Vegetation Management Program (TVMP) complies with state and federal mandates regarding utilities maintaining safe and reasonable electric service through effective vegetation management and line clearance;¹⁵
- Met-Ed’s TVMP is designed in accordance with the applicable American National Standard Institute (ANSI) standard, ANSI A300;¹⁶
- Met-Ed’s TVMP requires removal of incompatible vegetation in the transmission corridor to avoid an outage created by vegetation growing too close to the lines;¹⁷
- Vegetation that can grow too close to the transmission lines is incompatible and the only way to avoid future interference is to remove the vegetation because pruning creates uncertainty due to the variables with tree growth;¹⁸
- The trees growing on the Complainants’ property were Autumn Blaze trees and were approximately 15 feet tall at the time they were removed;¹⁹
- An Autumn Blaze tree can become large enough to interfere with a transmission line and is therefore incompatible with the TVMP;²⁰ and
- A survey conducted by the Company revealed that two trees were within the easement and Scott Wirs, Supervisor of Met-Ed’s Transmission Vegetation Management, informed the Complainants that both trees would have to be removed.²¹

The ALJ also found that Met-Ed’s adoption of the more stringent federal vegetation management policy for its transmission corridors was prompted by Congressional action enacting the Energy Policy Act of 2005, which created federal enforcement of reliability standards for high-voltage transmission lines of 200 kV and greater.²² The transmission line crossing the Complainants’ property—known as the “1094 line”—is a 230 kV line, and as such, it is subject to the federal reliability standard.²³ The ALJ concluded that in light of federal action

¹⁵ Finding of Fact No. 14.

¹⁶ Finding of Fact No. 21.

¹⁷ Finding of Fact No. 22.

¹⁸ Finding of Fact No. 23.

¹⁹ Finding of Fact No. 27.

²⁰ Finding of Fact No. 30.

²¹ Finding of Fact No. 41

²² I.D. p. 14.

²³ Finding of Fact No. 24.

on this issue, the Company's evidence was particularly persuasive and established that the Company's actions removing the two trees were reasonable.²⁴ The ALJ properly found that the Complainants' subjective arguments and demands regarding vegetation management were unreasonable when compared to Met-Ed's responsibility to provide safe, efficient, reasonable and reliable service to its entire customer base.²⁵

Furthermore, the ALJ properly concluded that the Complainants failed to establish that Met-Ed provided insufficient notice before removing the trees or that the Company provided unreasonable customer service to the Complainants.²⁶ The ALJ carefully considered the evidence presented by the parties and concluded that the Complainants failed to produce substantial evidence to demonstrate that Met-Ed violated Section 1501 of the Code.²⁷ The ALJ concluded that the Complainants provided no evidence that a Met-Ed employee refused to identify themselves to the Complainants or called the Complainants a rude name.²⁸ The ALJ further concluded that the Complainants failed to establish that the Company did not provide sufficient notice to the Complainants prior to the tree removal in December 2013.²⁹ On the contrary, the ALJ found that the substantial evidence submitted by the Company established that (i) nearly a year elapsed since the time a Met-Ed contractor first spoke with the Complainants about the tree removal and the time the trees were removed; and (ii) Scott Wirs contacted the Complainants and visited the property at least twice before the trees were removed.³⁰

²⁴ I.D. pp 15, 16.

²⁵ I.D. p. 16.

²⁶ I.D. pp. 16-18.

²⁷ I.D. p. 18.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

It is indisputable that the Initial Decision's factual findings are supported by a preponderance of evidence and the ALJ's legal conclusions are correct based on that evidence. Therefore the Initial Decision should not be reversed.

B. Response to the Complainants' specific numbered Exceptions.

The Complainant takes exception to some Findings of Fact, Conclusions of Law, and several isolated sentences in the I.D. The Complainant's Exceptions are completely without merit because each Finding of Fact, Conclusion of Law or mixed factual finding and legal conclusion under attack is amply supported by substantial and unrebutted evidence that was noted in the I.D. The Complainant's Exceptions are answered as follows:

1. Exception: In the second paragraph on page 13:

"In response to the Complainants' arguments, Mr. Wirs testified on behalf of the Company that Met-Ed's TVMP complies with state and federal mandates requiring utilities to maintain safe and reasonable electric service... Mr. Wirs also discussed the particular trees that were removed from the Complainants' property noting some of variations of those particular trees can grow to 80 feet in height..."

First, the Federal Energy Regulatory Commission (FERC) does not require the cutting down of all trees near power lines for vegetation management. See attached Exhibit G #1 and # 12.

Second, based on FirstEnergy Vegetation Management Program (FVMP) for Distribution Lines on their own website (illustration page 7); the Complainants' trees were neither within the Right-of-Way nor within the wire or boarder zone. See attached Exhibit H.

Lastly, Mr. Wirs provided no evidence that the Complainants' trees would grow tall enough and are close enough to interfere with the transmission lines. He first insisted that the two trees would grow 80 feet tall, which would be incompatible according to him. When we showed him evidence that our trees would only grow up to 50 feet tall, he insisted that 50 feet was also incompatible. During the hearing, he further stated that even if the two trees were only above 15 feet, they would be incompatible. He never showed us any written policy anywhere that specifies all these "rules;" it is all just his word – arbitrary, inconsistent, and not supported by evidence. (Transcript 64-66).

Reply: In this Exception, the Complainants are attempting to rebut Mr. Wirs's hearing testimony with facts they provide only now, after the close of the record. The Complainants also confuse the Company's distribution vegetation maintenance policy with the transmission vegetation maintenance policy and argue that the standards for distribution lines apply to the transmission lines behind their house. Finally, the Complainants repeat the arguments they made at hearing (and were rejected by the ALJ) that the trees were not incompatible vegetation under the Company's TVMP.

First, the Complainants' claims and evidence asserting that FERC guidelines do not require removal of all trees to properly maintain transmission corridors are new, not part of the record, and cannot be raised or decided now.³¹ To support this argument, the Complainants attached new documents to the Exceptions that they titled "Exhibit G" and "Exhibit H." The Complainants are improperly attempting to use Exceptions to assert extra-record factual allegations about FERC guidelines. Since the hearing occurred on January 14, 2015 and the record was officially closed on March 3, 2015, any factual allegations regarding events that occurred after that time are clearly impermissible and raise serious due process problems. The record in this proceeding properly contains facts, testimony and exhibits up to the time the record was closed on March 3, 2015.³² In lieu of formally moving to strike this information, the

³¹ The Company never asserted that "clear cutting" of trees was required by FERC, and neither did the Complainants.

³² The Complainants have a history of introducing additional facts evidence and argument at inappropriate times in this proceeding. On February 12, 2015, the Complainants made a submission of photographs and other papers that the ALJ ultimately concluded was a Motion to Admit Late-Filed Exhibits. Over the Company's objection, the ALJ admitted these materials titled Later-Filed Exhibits 1-3 into the record. The Complainants have been afforded ample time to develop an evidentiary record. Any consideration of new facts provided now, for the first time in these Exceptions, would be highly prejudicial to the Company and is a clear violation of due process because (i) the Company would be denied the ability to confront the facts with its own facts; (ii) for all practical purposes, the record would never close; and (iii) Commission regulations do not permit submission of new facts via Exceptions.

Company requests the information be ignored by the Commission and not reflected in the final order issued in this proceeding.

Second, the Complainants' new argument that the Company's policies for distribution lines somehow applies to transmission lines is just wrong. The 1094 line is a 230 kV transmission line, not a distribution line, and distribution vegetation maintenance policies do not apply here. The Initial Decision clearly explained which standards apply to this transmission line: FERC FAC-003-1.³³ The Initial Decision also found that Met-Ed's TVMP complies with state and federal standards for *transmission lines*.³⁴ The Complainants' new argument that standards applicable to distribution lines should apply here and their attempt to introduce new facts to support it must be rejected because it is improper, untimely and irrelevant.

Last, the Complainants attack Mr. Wirs's hearing testimony via a rehash of their failed argument that their trees would not interfere with the transmission line. This argument carries no greater weight now than it did the first time the Complainants raised it, and it should be rejected yet again. As the ALJ found in the Initial Decision, the Company provided substantial and compelling evidence that the Company's policy requiring removal of incompatible vegetation was reasonable and reasonably applied to the Complainants.³⁵ The ALJ specifically found that Met-Ed's TVMP requires removal of incompatible vegetation in the transmission corridor.³⁶ The ALJ found that vegetation that can grow close enough to interfere with the transmission line is incompatible and removal of that vegetation is the only way to avoid future interference.³⁷ And critically, the ALJ found that the Autumn Blaze maple trees planted by the Complainants in

³³ Finding of Fact No. 17.

³⁴ Finding of Fact No. 14.

³⁵ I.D. pp. 15-16.

³⁶ Finding of Fact No. 22.

³⁷ Finding of Fact No. 23.

the Company's easement were incompatible and would become large enough at maturity to interfere with the Company's transmission line.³⁸ The substantial evidence presented by the Company clearly supports the findings of the ALJ on this issue. The Complainants Exception provides no reason to reverse the ALJ's findings.

2. **For #1 and #3 on page 19 under [sic] CONCLUSIONS OF LAW, the Complainants provided strong evidence in their exhibit 3 that the two trees being removed are not going to interfere with the power lines even under the worst circumstances, such as arcing in extreme weather conditions.**

Reply: Conclusions of Law 1 and 3 are nothing more than correct statements of law that a complaining party must carry its burden of proof by a preponderance of the evidence in order to prevail in a formal complaint proceeding before the Commission. The Complainants' Exhibit 3 was submitted on February 12, 2015, after the hearing concluded. Complainants' Exhibit 3—which is a series of pictures, sketches and calculations apparently completed by the Complainants—provides absolutely no evidence whatsoever establishing that the trees would not interfere with the 1094 line. As explained in the Company's Reply to Exception No. 3 *infra*, the ALJ analyzed Complainant's Exhibit 3 and rejected the Complainants' arguments about what that exhibit established. Not only is Exhibit 3 completely devoid of any analysis of arcing or weather conditions, the Complainants have not established that they would be competent to provide expert opinions on these issues. The Commission should deny this Exception as baseless and without merit.

3. **In the last paragraph, the last sentence on page 15 in the INITIAL DECISION, the statement:
“This argument will be rejected because it fails to consider issues regarding consistency and cost-effectiveness...”
Right next to the two trees that were removed, other trees even closer to the transmission line are still standing there as of today. This evidence was included in the Complainants' Exhibit E submitted earlier. The fact speaks**

³⁸ Finding of Fact Nos. 30, 41, 42.

for itself on how INCONSISTENT Met-Ed is in conducting their vegetation management. In our opinion, the Company is INCONSISTENT by removing our two trees, which they showed no evidence that would ever interfere with the power lines and did not remove other trees that are even closer to the power lines.

Reply: The Complainants take a sentence of the ALJ's reasoning out of context and then mischaracterize its application. The full context of the ALJ's reasoning on page 15 and 16 of the Initial Decision is set forth below:

In contrast to Mr. Wirs' testimony and evidence, the Complainants' arguments are without merit. The Complainants, for example, argued that, even at the mature size of the trees and in the worst case scenario (i.e., the entire tree falling down), Met-Ed's lines would not be affected. The Complainants made this argument based on their calculations regarding the height of the power line, the proximity of the trees to the power line and the anticipated growth of the trees to 50 feet. *See*, Complainants' Exh. No. 3. The Complainants concluded that "if the tree falls, the closest distance between the tree and the line would be 66 feet." ***Id.* This argument will be rejected because it fails to consider issues regarding consistency and cost-effectiveness** as well as the larger impact on the electric grid involved with a transmission line of greater than 200 kv. While the Complainants' arguments may be reasonable on an individual basis – i.e., as applied only to the Complainants – these arguments are not reasonable when applied to the entirety of Met-Ed's customer base.³⁹

Clearly, the ALJ was analyzing Complainant's late-filed Exhibit 3 and explaining why it is reasonable for Met-Ed to remove all incompatible vegetation throughout its transmission corridors. The ALJ was not analyzing Exhibit E. After considering the evidence provided by the Company, the ALJ found Complainants' Exhibit 3 and the arguments advanced by Complainants about it to be meritless.⁴⁰

Moreover, the Company's witness specifically addressed the "consistency" issue raised by the Complainants regarding trees located on their neighbor's property. After reviewing

³⁹ I.D. pp. 15-16 (emphasis added).

⁴⁰ *Id.*

Complainants' Exhibit E, the ALJ asked Mr. Wirs if the trees growing in the yard next to the Complainants' property are incompatible vegetation and mentioned that these trees appeared to be even closer to the 1094 line than the Complainants' trees.⁴¹ Mr. Wirs explained that the neighboring landowners told the Company that they would relocate the incompatible vegetation away from the 1094 line.⁴² Mr. Wirs emphasized that if the landowners did not relocate the incompatible vegetation within the agreed time to do so, the Company would remove the incompatible vegetation.⁴³ Again, removal of incompatible vegetation in the transmission corridor *is entirely consistent* with the Company's TVMP. The Complainants offered no evidence to rebut the Company's approach regarding the adjoining landowner's incompatible vegetation, which again, requires removal of vegetation that could interfere with the Company's transmission lines.

4. **In the third paragraph on page 18 in the INITIAL DECISION, "...during that time, the Complainants could have had the property surveyed by their own surveyor, filed a Complaint with the Commission..." The Complainants wish to point out that they did contact the Pennsylvania Public utility Commission in September 2013 and filed an informal complaint as instructed by the representative and were told the Met-Ed could not remove the trees during their investigation. In addition, Met-Ed's own survey also showed that the two trees were out of the Right-of-Way based on the description in the official easement (i.e., 90 feet wide strip) (Complainants' Exhibit A, Exhibit 1 and 2).**

Reply: The Complainants improperly insist that the Commission hear and evaluate their arguments about the scope and interpretation of the easement encumbering their property. The ALJ properly held that these issues are beyond the Commission's jurisdiction:

The record in this case is replete with argument regarding whether the trees that Met-Ed removed from the Complainants' property were within the easement held by the Company. *The Commission*

⁴¹ N.T. 70:19-25.

⁴² N.T. 71:22-25.

⁴³ N.T. 71:25, 72:1-2.

is not the proper forum for establishing where easement lines are drawn on a particular property, and then determining which side of that easement line particular trees are located. Furthermore, in this case, whether the trees were within the easement held by Met-Ed is irrelevant and beyond the scope of this proceeding. What is relevant is whether Met-Ed cutting down the trees constitutes reasonable vegetation management. Regardless of whether the trees were within the easement, I conclude that Met-Ed's actions constitute reasonable vegetation management based on the record that was developed in this matter. The Complainants have failed to satisfy their burden to demonstrate that the Company's actions in any way violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff.⁴⁴

The Complainants presented no evidence showing the Company removed the trees while an informal complaint was pending at the Commission. On the contrary, the Company's Exhibit 6 established that on November 6, 2013, the Commission's Bureau of Consumer Services closed the Complainants' Informal Complaint at case No. 3145563.⁴⁵ The Company removed the trees in December 2013.⁴⁶

The Complainants are just wrong that the Company's measurements showed the trees were outside the easement. On the contrary, Mr. Wirs specifically testified that the Company confirmed the trees were located in the Company's easement: "When we made our first measurement, we saw that one tree was within our right-of-way. But after the survey, it was shown that two trees were inside the right-of-way. So two trees were removed."⁴⁷ The ALJ properly recognized the *only issue* the Commission could decide is whether Met-Ed's actions maintaining the vegetation in the transmission corridor were reasonable. The ALJ concluded that Met-Ed's actions were reasonable. The Complainants provide no basis to reverse this conclusion in Exception 4.

⁴⁴ I.D. p. 12 (emphasis added).

⁴⁵ Met-Ed Ex. 6.

⁴⁶ Finding of Fact No. 5, N.T. 29:12.

⁴⁷ N.T. 66:16-20.

5. **In the second paragraph, #13 on page 21 of the INITIAL DECISION, “Vegetation maintenance constitutes a utility service and must be performed in a safe, adequate, reasonable and efficient manner...”**
The tree stumps hidden in the grass after the trees’ removal are obvious hazards to the safety of children riding bikes, playing sports and elderly walking in the area. Met-Ed has refused to remove the stumps.

Reply: The Company incorporates its response to Exception 1 herein regarding the Complainants’ further inappropriate attempt to introduce new facts into this proceeding to support new allegations. The Complainants did not raise issues regarding tree stumps at hearing, and are once again trying to assert new arguments based on new facts that are not contained in the record. The Initial Decision properly addressed the issues raised by the Complainants in this proceeding based on the substantial facts of record, and there is no lawful basis to consider any other information offered after the close of the record in March 2015.⁴⁸ The Commission should deny this baseless Exception.

6. **In the first paragraph #10, on page 21 in the INITIAL DECISION, “The Commission has jurisdiction over matters involving vegetation management within a right-of-way.”**
In the last paragraph #9 on page 20 “...the interpretation of a valid right of way agreement are exclusively within the jurisdiction of the Courts of Common Pleas.”
The conclusion of whether Met-Ed’s cutting down the trees constitutes reasonable vegetation management could not be determined by the Initial Decision of the Administrative Law Judge when trees were outside the Right-of-Way.
We maintain that the easement strip is 90 feet wide as clearly spelled out in the official document, not 95 feet wide as insisted by the Company with no valid evidence. The hand drawing that the Company showed to us and claimed to be the easement is no official easement at all and was approved to be wrong by Mr. Charles W. Emerick, Jr., Director of Community Development in Derry Township, an expert with over 30 years of engineering experience. (This evidence was provided in the Complainants’ Exhibit C).

⁴⁸ See *Application of Samir Ouaqerrouch*, Docket No. A-2011-2218369 (Order entered September 27, 2012); *Yellow Cab Company v. Pa. Pub. Util. Comm’n*, 524 A.2d 1069 (Pa. Cmwlth 1987).

Reply: The Complainants cite a correct statement of the law—that the Commission is not the correct forum to interpret an easement agreement—and then proceed to argue their interpretation of the easement that encumbers their land. As clearly explained in the March 4, 2014 Order, the Initial Decision and the Company’s Reply to Exception 4, questions regarding the scope and interpretation of an easement are beyond the Commission’s jurisdiction to hear and evaluate. It is irrelevant what evidence or argument the Complainants provided on this issue because it relates to an issue outside the Commission’s jurisdiction.

Furthermore, Charles Emerick, Jr., did not appear and testify for the Complainants. The Complainants provide nothing whatsoever—other than their bald and unsupported assertion—to establish that Mr. Emerick is an expert on anything. The ALJ evaluated the Complainants’ evidence and determined the Complainants failed to carry their burden. The Complainants’ tactic of repeating arguments without identifying any error and offering new, unpersuasive evidence is insufficient to justify reversal of any Finding of Fact or Conclusion of Law in the Initial Decision. This entire Exception is redundant and irrelevant and provides no basis to change the Initial Decision.

7. **According to the definition, the “Evidence” is the available body of facts or information indicating whether a belief or proposition is true or valid. The Complainants’ exhibit A through F and exhibit 1 through 3 are either facts or information about facts. They are either verified by experts or official documents or can be verified. Original copies of the evidence can be provided if requested. The Complainants request that the Commission carefully review again all of the evidence that the Complainants provided.**

Reply: In this Exception, the Complainants argue that their evidence is more persuasive than the evidence submitted by the Company and that they should have prevailed at hearing. Again, the ALJ carefully reviewed the evidence submitted at hearing and determined that the Complainants’ failed to carry their burden. The ALJ concluded that

...the Complainants have failed to satisfy their burden of demonstrating that Met-Ed violated the Public Utility Code, a Commission Order or regulation or a Commission-approved Company tariff with regard to either its vegetation management or in its dealings with the Complainants. Met-Ed's vegetation management with regard to the line across the Complainants' property – a nearly seven-mile long, 230 kv line that impacts the overall reliability of the electric grid – was reasonable and consistent with the Company's obligation to provide safe, reliable and adequate utility service. Similarly, the Complainants did not provide substantial evidence demonstrating that Met-Ed treated the Complainants' inappropriately throughout the process.⁴⁹

The Complainants offer nothing new in Exception 7 to disturb the ALJ's findings.

Moreover, allegations that the Complainants "verified" their evidence with "experts" is false; no expert testimony was provided by Complainants at hearing. Similarly, the Complainants' argument that the evidence they submitted "can be verified" or that more evidence "can be provided" are inappropriate at this stage of the proceeding. As the Company explained in its Reply to Exceptions 1 and 5, the record has closed in this matter and the time for submitting evidence has passed.

C. Requests for Relief

On the last page of the Exceptions, the Complainants ask the Commission to direct Met-Ed to remove the tree stumps in their back yard and provide monetary compensation for the "irreversible loss [they] suffered as a result of the tree removal."

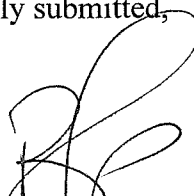
Exceptions are not the stage in this proceeding to renew requests for relief, especially forms of relief that are beyond the Commission's jurisdiction to grant (money damages). The Complainants' requests are inappropriate and, as a matter of law, beyond the Commission's jurisdiction to grant. The Commission must deny the requests for relief in the Exceptions.

⁴⁹ I.D. p. 19.

III. CONCLUSION

For the reasons set forth above, Met-Ed respectfully requests that the Commission (i) reject the Exceptions and (ii) affirm the March 30, 2015 Initial Decision in this proceeding.

Respectfully submitted,



Date: May 11, 2015

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Attorneys for
Metropolitan Edison Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**YANGLING CHEN AND
JIANMING HU**

v.

METROPOLITAN EDISON COMPANY:

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:
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:
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Docket No. C-2013-2397061

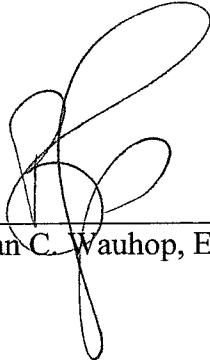
CERTIFICATE OF SERVICE

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

Yangling Chen
Jianming Hu
1126 Chadwick Circle
Hummelstown, PA 17036

Dated this 11th day of May, 2015.



Brian C. Wauhop, Esq.